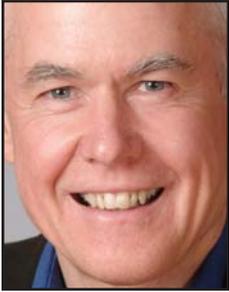

Transformative Mediation: Putting Party Self-determination into Practice



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In this article the author draws an intimate portrait of Transformative Mediation. He describes its theory of conflict, its objectives, and he reveals the specific methods that transformative mediators use to assist parties in regaining their sense of balance between self and other.

John Peter Weldon M.A., LL.L., C.Med

What is the work of mediation?

For over thirty years, many mediators have viewed conflict as an expression of competing party needs and interests³. By conducting a managed process of rational enquiry, they have aimed at uncovering overlapping areas in the parties' respective needs and interests, leading disputing parties through a series of predetermined negotiation steps designed to bring them to a settlement⁴.

There is another way of looking at it. In the alternate view, conflict is mainly about a crisis in human interaction: people caught up in conflict tend to lose their sense of perspective. They find it hard to see themselves and their opponent objectively as they succumb to the reflex of fight, flight or freeze⁵. They feel cut off from their own resources and tend to see their adversary in the worst possible light, creating a vicious circle of mutual victimhood and hostility which further escalates the conflict.

The transformative view is that people who are dealing with ongoing conflict have a tendency to feel more vulnerable, confused, fearful, disorganized, indecisive and unsure about themselves – in a more weakened state generally – than before the conflict began. They also tend to feel more self-protective, defensive, suspicious, hostile, and demonizing towards their oppo-

nent – more self-absorbed generally – than previously.

Just as a cut finger heals by itself within a week or so without having to consult a health professional, most of our conflicts resolve themselves on their own without calling in a conflict specialist. When they do resolve themselves, it is usually a result of our being able to regain a calmer, clearer, more confident, more focused, more articulate, more decisive, and therefore stronger state generally – all by ourselves. It also may mean that we have, on our own, become relatively more attentive to our opponent's plight, more apt to grant the benefit of the doubt, more open to another point of view – in a word, more ready to treat our opponent like another human being.

But for the rare conflict that pushes us past our limits, keeps us awake at night, and makes us miserable, it may be necessary to get help. But what kind of help do we need? There is no longer just one answer to that question. It's no longer just a choice between consulting a lawyer, say, or calling a mediator. With the maturing of the mediation field have come diversity and consumer choice⁶. Because mediation itself now comes in different shapes and sizes⁷, it's important to know what kind of

mediator is needed in any given situation.

Transformative mediators believe that what people in conflict need most is someone who is skilled in accompanying them in a particular kind of conversation whereby each party is helped to regain their footing, gradually shifting to an enhanced sense of personal agency (empowerment shifts) and to a more attentive view of the other party's experience of the dispute (recognition shifts). Fostering an improved climate of communication between parties in conflict, from which appropriate and lasting outcomes can emerge, has been the hallmark for the past twenty years of Transformative Mediation.

Party self-determination

What distinguishes all types of mediation from adjudication is the foundational principle of party self-determination. According to this principle, it is the parties themselves who should be responsible for making any decisions affecting them, assisted by a neutral third-party without decision-making power (barring the arbitration component of med-arb). This principle of self-determination has a central place in definitions of mediation to be found in the mediation literature⁸, mediator codes of conduct⁹ and various regulatory instruments¹⁰ around the world.



Here's how authors Boule and Kelly¹¹ present the central position of self-determination in their discussion of mediation :

The informality and flexibility of mediation allows for extensive and direct participation in the process. Mediation is a highly accessible system of dispute resolution. This access and participation is available firstly to the disputants who, subject to elementary rules of decorum, can talk, negotiate and discuss options throughout the process. Direct party participation in mediation is justified in terms of the promotion of responsibility for choices and the dignity of individuals. It assumes that the parties themselves can make better decisions about their interests than outsiders, such as judges and arbitrators, and that if they perceive themselves to 'own' the process they will be more supportive of the outcome. No other contemporary method of dispute resolution accommodates as much direct participation by the parties as does mediation and this 'self-determination' aspect of the process has been highly evaluated by the parties, even when no settlement has been reached.

While sharing with other types of mediation the ethical values of independence, impartiality and confidentiality, what distinguishes Transformative Mediation is the extent to which party self-determination is applied, not only to the content, but to the very process of the parties' mediation conversation¹².

This has led some people to assume that transformative mediators, by taking a non-directive stance towards the parties, risk allowing the stronger one to dominate a session¹³. This is a misconception. Parties have an equal say in the direction of the transformative mediation session, and each party has a veto over how it is to take place. If at any point one party believes that the other has overstepped the bounds and is

no longer acting reasonably, he or she can call a halt, request a separate meeting, end the session, or terminate the mediation. No one will be forced to do anything they don't want to do. As a mediator I don't just let things happen; non-directive does not mean passive. As I explain later in this article, I intervene regularly¹⁴ in the parties' conversation in very specific ways that allow parties to reconsider their own comments and adjust their behavior accordingly.

My own journey

I had been practicing family and then criminal litigation for fifteen years in Montreal and Sherbrooke, Quebec, when in 1993, dissatisfied with the hard-edged decisions of the adversarial system, I opted to train as a family mediator, intending to bring parties to agreement while avoiding conflict.

In 1994 I began reconsidering the role of conflict in mediation—whether avoiding conflict was the best way to resolve disputes. That year I read the groundbreaking book, *The Promise of Mediation*¹⁵, by Robert A. Baruch Bush and Joseph P. Folger, where the authors argue that parties in mediation, given the opportunity to speak frankly and freely to each other, and supported by a specially trained mediator, tend to resolve issues more satisfactorily than when mediators set restrictions on conflictual interaction.

I was intrigued by the integrity and consistency of the Transformative Mediation approach. Since that time I have gained accreditation as a Certified Transformative Mediator™ and have practiced this type of mediation in over 800 cases, first as a family mediator and more recently mediating conflicts in the workplace. I currently teach Transformative Mediation in Canada, the U.S., and France.

Here in Quebec, I have trained over 200

mediators in the transformative approach for the Continuing Legal Education Service of the Quebec Bar¹⁶, over 50 of whom have recently formed the Network for a Transformative Approach to Conflict¹⁷. L'Institut de médiation et d'arbitrage du Québec (IMAQ) has sponsored two major ADR symposia in Montreal highlighting transformative mediation, the first in April 2011¹⁸ and the second scheduled for November 15, 2012¹⁹. In April 2011, Professor Baruch Bush and I co-taught an intensive course in transformative mediation to 20 of Quebec's leading mediators, mediation trainers, and scholars.

The evolving face of Transformative Mediation

It should be noted that Transformative Mediation practice evolved dramatically between 1994, when the first edition of *The Promise of Mediation* was published, and 2005 when the New and Revised Edition²⁰ came out. The main message of the original edition was that if mediators wanted to take party self-determination seriously, they would have to avoid mediator directivity.

Unfortunately, this message was not accompanied by a detailed description of what the mediator should put in its place, so that early transformative mediators were often loath to intervene much at all, taking a relatively hands-off approach towards party interaction in order not to influence party decision-making. A basic confusion arose between mediator directivity and mediator participation in party interaction, with the result that early transformative mediations, while successful, could be unnecessarily lengthy and prolonged.

It was not until the 2005 edition that a complete description of the method was fully articulated. Although the two editions bear the same name, they are essentially two different books—something that escaped the attention of many in the field, the un-



dersigned included. The 2005 edition, informed by the tens of thousands of mediations that had taken place at the United States Postal Service (USPS) and elsewhere in the intervening period, provides a detailed portrait of Transformative Mediation practice. The updated model that now emerged was decidedly interventionist and hands-on, equipping the transformative mediator with a powerful array of non-directive intervention strategies designed to accelerate the process of conflict transformation by the parties²¹.

The broad diversity of settings in which the transformative approach has been successfully applied is the subject of *Transformative Mediation: A Sourcebook*²², edited by Folger, Bush and Della Noce, published in 2010. The book provides a comprehensive survey of mediation theory and practice, with specific chapters devoted to how transformative mediation has been used successfully in the court system, family law, workplace disputes, work team development, the schools, community issues, elder care, victim-offender mediation, aboriginal issues, and ethno-political conflict. I have been granted the exclusive rights to translate this essential new book into French for the Quebec, French-Canadian and European mediation communities.

What's so different about transformative mediation?

Transformative Mediation is a powerful means of helping parties resolve interpersonal conflict. It differs from other mediation methods in two important ways: parties are allowed to engage in frank, open conversation, and they determine their own agenda and goals.

Mediators using other methods often say that they control the process and the parties control the outcome, but transformative mediators look at it differently. Con-

vinced that process has a direct bearing on outcome, they present mediation not as a procedure to be followed, but as a conversation to be held – in the way that will best address the parties' needs for "voice" and "choice".

You might wonder how a responsible mediator could give up control of such things as ground rules and still remain effective. I will describe several techniques that will answer that question in detail, but the key is for the mediator to take a non-directive approach while allowing the parties to engage in direct conversation. This stems from the mediator's conviction that with the appropriate accompaniment, parties have what it takes to achieve clarity, to make considered decisions, and to take into account each other's viewpoint. In the end, if everyone has been heard, all parties will consider the results achieved as fair and reasonable—creating an outcome that will stand up over time.

A proven track record

By 1994, USPS, the second largest employer in the US, had accumulated a backlog of over 14,000 discrimination and harassment complaints. The service had also been traumatized by over forty workplace homicides, originating that unfortunate expression "going postal". USPS approached Bush and Folger to find some means of creating a safer, more productive workplace. USPS had two related goals: they wanted to provide employees with a rapid, informal, and confidential complaints treatment process, and they wanted a process that would give both employees and supervisors skills to deal with conflict in the future. At their request Bush and Folger oversaw the training of 3,000 outside mediators, 1,500 of whom were retained to serve in this massive nation-wide program²³.

Results from the first ten years of the REDRESS™ transformative mediation program at USPS (1998-2008) were documented and collated from 227,000 post-mediation exit surveys concerning over 65,000 mediations by the

research team of Lisa Bingham²⁴ at the University of Indiana. Rated by employees and supervisors who went through the mediation process, which had a voluntary participation rate of **80%**, satisfaction with outcomes averaged 67%, satisfaction with the process averaged 90%, and satisfaction with the mediator averaged 97%. Moreover, upon full implementation of the program, formal discrimination complaints dropped by 25% and informal complaints by 35%, an indication that employees and supervisors were better equipped to resolve their disputes on their own.

Broadening the scope of mediation

Transformative Mediation works well because it deals not only with issues, but with emotions and attitudes, and it helps people take a broader view of their situation. Although people come to mediation hoping to resolve their conflict, literature from a wide range of academic fields²⁵ has shown that what is most disturbing and difficult for people in conflict is the way it makes them feel about themselves and the way it makes them act towards the other party—especially towards someone they previously got along with. People dislike being resentful and hostile. As strongly as they might feel about resolving specific issues, and as much as they want justice, what they desire most and first is to regain a sense of control over their own lives and to end the ongoing state of hostilities with the other side.

In practical terms, for people in conflict, the purpose of mediation is to help them understand what they need, what they want, and what they can do to bring it about. To get to that point parties will need to express what is important to them, begin to listen differently to each other, and be heard by each other. Only after they have seen the situation from a broader perspective can they make decisions about an appropriate outcome.

A frank, open, and self-regulating conversation

Some mediators believe there are good reasons for keeping parties with volatile emotions apart, or for insisting that they do not engage in frank, open discussion. By doing so the mediator hopes to maintain con-



trol of the session so that logic, rather than emotion, will prevail.

The problem with this approach is that when parties defer control of the process to the mediator, and are not permitted to express how they really feel about the situation, they can become more like spectators than full participants at their own mediation. They may have to deal with what the mediator wants them to consider or how she wants them to talk, rather than what they want to discuss, in their own way. People in a state of conflict are often very upset. Until they have expressed their own views and had some assurance that they were heard, they will remain unwilling to consider the other side's point of view or reconsider their own position. With this state of mind prevailing, constructive options are unavailable to them.

The transformative mediator takes a different approach. Parties are offered the opportunity to set boundaries involving both topics and tone, and to establish what they regard as appropriate for inclusion in the conversation. While the transformative mediator does not provide a policing function over party dialogue, she encourages parties to become their own regulators—with the mediator's assistance.

For example, if both parties have agreed to refrain from abusive language, but one party becomes abusive during the mediation, here's how I might handle it: I will reflect back what the offending party has said, giving him or her the opportunity to correct or retract. If the abusive language continues, and the person receiving it appears offended, I could ask him or her if they would like to have a private meeting with me. Upon returning to the mediation room, I would propose a similar private meeting to the other party. Back with both parties, the offended party might then feel strengthened enough to say to the other:

“I would like to ask you not to use abusive language. If you do I will end the session.”

The effect of a statement like this coming from an offended party can be transformative for both parties. In this model of mediation, the mediator does not deliver the

message, the offended party does. This can provide a context allowing the offending party to realize that using abusive language is not acceptable²⁶, a large part of the transformation taking place in each party's own inner dialogue.

The transformative mediator therefore allows parties to express themselves and to go as far as they need to go towards the heart of the conflict. When party interactions heat up, the mediator does not lose her footing. She knows from training and experience how the negative and destructive downward spiral of conflicting interaction can change into a positive and constructive upward spiral of respectful, civil communication. By fostering small shifts in perspective, the mediator helps each party regain a sense of personal authority and respect for the other party's point of view.

Shifts in position and perspective

Transformative mediators find that during the conflict interaction in a mediation session, both parties experience incremental and cumulative shifts in position and perspective that allow them to clarify their own views ('empowerment shifts') and take into account the other person's point of view ('recognition shifts').

Tracking these subtle but palpable shifts in attitude, expression, and demeanor are central to transformative mediation practice. To help these shifts take place the mediator uses four main non-directive and supportive communication techniques: reflecting, summarizing, check-in questions, and backing out/staying out²⁷ that can act as potent accelerators of the parties' transformation of the conflict interaction. Proactive listening underlies all of these techniques. The mediator monitors carefully how parties are expressing themselves, paying particular attention to their tone of voice, facial expressions, physical gestures, tempo of speech, particular choice of words and expressions, as well as moments of silence.

Reflecting

The main technique described by Bush and Folger is what they call reflecting²⁸, a term

that has been given a particular meaning in the transformative model. Whereas other mediators may use reflection as an opportunity to reformulate or reframe the speaker's message, the intention here is different.

When a party has said something that seems important to him or her, the mediator reflects back what the person said in a way that conveys not only the logical meaning but the emotional meaning of their words, as evidenced by the energy with which they expressed them:

“Anne, you seem really annoyed that Jack keeps coming back to the question of your arriving late to work that day, when you consider that it was an isolated incident due to the sudden illness of your daughter.”

Reflecting confirms for the party who spoke that the mediator gets what she said, even if the other party still does not. The mediator reflects one party at a time, without moving back and forth between parties; the mediator does not attempt to convey the message to the other side, but rather delivers the message back to the speaker for consideration.

When parties hear an accurate reflection of what they have expressed they are given the opportunity to reconsider whether what they said is complete, or whether they should rephrase, reiterate, or correct their message. Even when a person is reluctant to speak, a mediator can reflect this reluctance back to the person – basic acknowledgment can be helpful. Reflection shows respect for the message. When speakers receive this respect they are more inclined to present their position respectfully. In this way the reflection can be transformative for the speaker.

The experience for the listener can be transformative also. When the mediator is reflecting back to one party, the other party, who might not have been listening closely to his adversary, or even listening at all, is given a second opportunity to listen in and consider what is being said, without being put on the spot. In this way, each party becomes more aware of the other's position.



Summarizing

Another powerful technique for helping parties keep track of their conversation is what is referred to in Transformative Mediation as summarizing²⁹, which is also given a specific meaning in this model. Addressing both parties, the mediator might begin the summary with a general comment:

“You both have put a lot on the table in your conversation.”

The mediator will start tentatively with a suggestion like:

“Maybe it would be helpful if I summarize the points where you agree and those where you disagree, so you can decide where to go from here.”

For each topic that has been discussed, the mediator will briefly summarize what has been said by each party,

“On the topic of what was said coming out of the meeting, Mary, you said that George deliberately humiliated you in front of the others by imitating your accent.”

and to the other party,

“George, on that same topic, you said that it was all meant as a joke to ease the tensions of a difficult meeting and that you meant Mary no harm.”

The summary recaps the themes of the conversation, pointing out where the parties differ and where they agree on each theme, until the summary has covered precisely and concisely the main issues raised in recent conversation.

In making a summary, the mediator does not emphasize the positive or downplay any disagreements. She does not comment or make judgments or draw conclusions;

but describes the positions accurately so that both parties can see where they stand. Summaries provide clarity. They represent opportunities for parties to consider where they are at that moment. By providing regular summaries throughout the session, the mediator helps parties keep track of areas where they agree and, more importantly, where they disagree, while always leaving them the freedom to decide what they want they want to do about them. When parties have heard a summary they will usually pick up the conversation and continue.

Check-in Questions

A third transformative communication technique is a specific type of open-ended question, known as a check-in³⁰. This technique can be very helpful when parties experience a lull or an impasse in their conversation. Unlike in other types of mediation that rely heavily on mediator questioning, this is one of the few instances where you will hear a transformative mediator ask questions, almost all other mediator interventions in this model taking the form of declarative statements.

When the mediator pauses after a summary, she is allowing both parties to decide what they will do next. If no one jumps in, then the mediator might want to check in with the parties by asking a question like:

“So where do you want to go from here? You might want to talk more on any of these topics, or raise a new topic, or do something completely different. That is entirely up to the both of you. Where would you like this conversation to go now?”

By phrasing the options in this open-ended way the mediator is reminding the parties that they are in charge of the conversation.

Mediators can also help the process along by asking questions about points that might need elaboration. For example, the mediator

might say,

“You keep referring to November as a turning point. Would you like to say more about what happened then?”

When parties lose track of time the mediator might say,

“You know there’s a half-hour left in your session. How would you like to use the remaining time?”

The mediator might use a question to get the discussion moving again after a tense exchange. For example, intervening after a pause, the mediator might say,

“Does anyone want a time-out, or a private meeting with me?” “Has this session gone as far as it can go? Would you prefer to end it here?”

Check-in questions like these are specific but they do not suggest a specific answer or course of action. They allow people in conflict to weigh their options. Knowing that they can end the session at any time, or take a break, or speak privately with the mediator, they are reminded that they are in control and that their choices are important to the outcome.

The mediator might also check in with a party to see if he or she is having a problem:

“You just turned away. I’m wondering if you’re uncomfortable with what’s being said?” or “Are you okay with how much you’re getting to say?”

Specific questions like these can help parties to remain engaged, clarify their position, or express themselves without being led by the mediator in any specific direction.

Staying/backing out

Staying/backing out is the fourth technique used in transformative mediation. When the conversation seems to have stalled, the mediator does not immediately jump in; sometimes it’s important to let the silence settle. Although no one is talking, it doesn’t mean that wheels are not turning. The mediator resists the temptation to push things along—people move more efficiently at their own pace, and by making their own choices they regain a sense of



control.

When the parties are communicating in a positive and constructive manner, the mediator stays out of the conversation, closely monitoring for party self-empowerment and inter-party recognition shifts, and preparing for summarizing. If the mediator senses that the session needs refocusing, after a pause she will either reflect back what the last party has said or, if there has been a period of party-to-party talk, she will make a summary of the two positions, followed by a check-in question.

Tracking shifts in tone, demeanor and position

The more heated the exchange between the parties, the more frequently the mediator intervenes in their conversation, with the specific transformative techniques of reflecting, summarizing and check-in questions. If a party speaks over her words, the mediator allows herself to be interrupted, so as not to obstruct the party's momentum. After waiting patiently, the mediator seizes the next opportunity to intervene. If a reflection or a summary is off the mark, she allows herself to be corrected. She regularly consults with the parties on how they wish to continue with the conversation. Throughout the session, the mediator displays a confident manner, following any new direction taken by the parties, without worrying that parties are straying from any agenda they may have agreed upon. Mediator patience, forbearance, and respect allow the mediation to take its own course.

While the parties are thus engaged in self-directed conversation, they are constantly making their own decisions about content:

what to bring up, what to withhold, and how and when to make a point. They also decide who speaks when, for how long, and how time will be used. Parties are constantly making decisions about how to behave in the conversation: whether they will interrupt, express frustration, or remain silent. Each time parties make these different kinds of decisions, they are distancing themselves from feelings of victimhood and enhancing their feeling of autonomy. They may also be reconsidering the reasonableness of their own positions³¹, thereby creating more flexibility and room for possible agreement.

Throughout the conflict interaction, the mediator is on the lookout for signs of increasing party self-regulation. A person might begin by overstating a position, then, after hearing it reflected back to him by the mediator, he might restate his position more accurately or less aggressively. Likewise, a party using offensive language, who hears his own words reflected back to him, may regret his choice of words and begin speaking more moderately; or the party listening to the other person being reflected might unexpectedly say that they understand what that party has been trying to say. All these statements express positive shifts in position within the conflict interaction. These shifts are the building blocks of increased clarity and understanding, laying a foundation for enhanced decision-making and cooperation.

Dealing with strong emotion

Transformative mediators are trained to be aware of the emotional component of party expression³². They have learned that emotions are a legitimate part of communication and should not be ignored, criticized

or dismissed as irrelevant. People use emotion to signal the importance of a topic, or to express strongly held beliefs, or to emphasize the effects of some past action. Their feelings can be traced to factual events. The mediator therefore takes emotional tone seriously. When reflecting strong emotion, a mediator might use words like sad, angry, afraid, bothered, fed up, anxious, surprised, relieved or pleased. Specific descriptive words help a party to clarify his or her position, and help the other party understand the intensity of that position.

Separate meetings

Because the real work of conflict transformation takes place where parties speak directly to each other, separate meetings in the transformative model serve mainly to help each party prepare for the direct meeting. In preparing for mediating an allegation of workplace bullying, for example, I always meet separately beforehand with each prospective party. This preparatory meeting allows each party to tell me about his or her specific situation—what led to the conflict, what was most upsetting about it, and what solution he or she may be hoping for. At that initial meeting, we also review the Mediation Participation Agreement prepared in advance for them to take home and consider. The agreement begins by stating, “This is your conversation; you’re the ones who decide what you want to talk about, how you want to express yourselves and for how long.” The agreement addresses such matters as confidentiality, objectives, any guidelines they may wish to adopt, private meetings, potential outcomes, writing up agreements, and follow-up.

During the mediation conversation parties may request, or the mediator may propose, separate meetings for various reasons. Separate meetings offer parties a safe interlude, where they can take a breather, gain strength in themselves, and sort out with the help of the mediator what they plan to say when they return to the mediation conversation.

What about settlement?

While the majority of mediators set themselves the goal of bringing the parties to

What do parties want from Mediation³³?

We saw that while our clients were indeed interested in working out agreements to problems, this was by no means their only concern. In fact, the use of a mediation model that emphasized a continuous drive toward the goal of agreement seemed to give short shrift to our clients' needs to fully work through the complex layers of interaction that so often characterize interpersonal conflict. (...) The agreement-focused model we were using emphasized identifying tangible issues and solving problems and, though our mediators had become adept at using it and could indeed help people find solutions, the most significant aspect of their difficulty was missed if the interaction between the parties was not addressed.

- Patricia Gonsalves, Director, Greenwich Mediation Centre, UK



settlement by leading them through a series of predetermined steps or stages, transformative mediators instead focus their ongoing attention on providing opportunities for each party to feel more empowered and subsequently more connected, as their conversation unfolds in a free-flowing and self-structuring manner.

The less a mediator strives for an agreement, and the more the climate of communication improves between the parties, the more likely is a valid, heartfelt agreement to emerge. This is not to say that agreements are more likely to result from transformative mediation, but that agreements that do result are more likely to stand up over time due to the highly participatory nature of the process. When parties control all the various aspects of their conversation, cover all the topics they consider important, and come to agreements of their own choosing in their own way, they tend to reach outcomes they can accept and act upon. And even where no formal agreement is signed, the fact that parties have had an opportunity to clarify their goals,

options, and resources, better understand the other person's viewpoint, and arrive at a broader picture can represent positive and valuable gains for them in their ongoing situation.

Conclusion

In the space of 20 years, Transformative Mediation has taken its place alongside other mediation models based on other theories of conflict with other forms of practice. Not only has it been widely recognized in the mediation literature and by national and international mediator accred-

iting bodies and associations, but it has had and continues to have considerable influence on the development of mediation theory and practice generally.

In this article I have attempted to describe what transformative mediation is and how it works. There is nothing mysterious or esoteric about the techniques used; they are based on practical experience and they help people who are in conflict. My hope is that this intimate portrait has increased your understanding of transformative mediation. 🌱

Read more about transformative mediation

1. Bush, R.A.B., and Folger, J.P., *The Promise of Mediation, New and Revised Edition*, 2005, San Francisco, Jossey-Bass.
2. Folger, J.P., Bush, R.A.B., Della Noce, éd., *Transformative Mediation: A Sourcebook; Resources for Conflict Intervention Practitioners and Programs*, 2010, New York, Association for Conflict Resolution (ACR) and Institute for the Study of Conflict Transformation (ISCT)
3. Institute for the Study of Conflict Transformation, *Annotated Bibliography of Institute Resources* (58 pages) – 70 published books, chapters, and articles on transformative mediation theory, practice implications, training implications, research, and policy implications. www.transformativemediation.org/sites/default/files/Institute%20Annotated%20Bibliography%20Update%20MAR%202012.pdf

1 Accredited as a mediator by the Quebec Bar, ADR institute of Canada, l'Institut de médiation et d'arbitrage du Québec (IMAQ), the International Mediation Institute (IMI) and the Institute for the Study of Conflict Transformation (ISCT), John Peter Weldon is a member of the Participatory Justice Committee of the Quebec Bar and spokesperson for the Network for a Transformative Approach to Conflict. For more information on transformative mediation, John Peter invites you to visit his website *Towards a Culture of Respect* at www.johnpeterweldon.com. He welcomes your comments and questions about this article at johnpeterweldon@gmail.com

2 <http://www.transformativemediation.org/>

3 Fisher, R. et Ury, W. *Getting to Yes: Negotiating an Agreement Without Giving In*, 1981, New York, Random House Business. This best-seller by two Harvard professors gave mediation its first theoretical underpinnings, interest-based negotiation, allowing it to gain a wide following in the ADR community, ADR being understood as an alternative to the adversarial system in Court, which is based on a distributive justice model. Interest-based negotiation, which uses an integrative justice model, is at the heart of facilitative mediation, which has been taught at Harvard since the early '80s, a variation of which, known as integrative mediation, has been taught at Sherbrooke University in Quebec since 1998.

4 See Christopher Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd ed., 1996, San Francisco: Jossey-Bass Publishers, amongst many others, for a description of facilitative mediation.

5 Cannon, W.B. (1929). *Bodily changes in pain, hunger, fear, and rage*. New York, Appleton-Century-Crofts

6 See *Mémoire amendé sur l'Avant-projet de loi instituant le nouveau Code de procédure du Québec* filed with the Institutions Commission of the Quebec National Assembly by le Réseau pour une approche transformative on March 30, 2012, available at: www.johnpeterweldon.ca

7 Alexander, N., *The Mediation Metamodel: Understanding Practice*, Conflict Resolution Quarterly, vol. 26, no.1, Fall 2008 © Wiley Periodicals Inc., identifies six distinct mediation models : evaluative, settlement, facilitative, wise counsel, traditional, and transformative; Boule, L. et Kelly, K.J., *Mediation Principles, Process, Practice*, 1998, Toronto, Butterworths, identify four models : evaluative, settlement, facilitative and transformative. The Association for Conflict Resolution's *Model Standards for Mediator Certification Programs* recognizes seven distinct mediation frameworks: facilitative, transformative, narrative, evaluative, inclusive, analytical and responsive - frameworks being defined as 'philosophies and methodologies that identify how the mediator carries out and identifies his practice' : [http://www.acrnet.org/uploadedFiles/Practitioner/ModelStandardsOfConductForMediatorsfinal05\(1\).pdf](http://www.acrnet.org/uploadedFiles/Practitioner/ModelStandardsOfConductForMediatorsfinal05(1).pdf). The International Mediation Institute (IMI) certifies mediators according to distinct criteria based on the three different mediation models recognized by the Institute : facilitative, evaluative and transformative : <http://imimediation.org/>

8 See, for example, Boule, L. and Kelly, K.J., Op.cit. (note 6)

9 For an example, see Section 3 of the ADR Canada, Inc. Code of Conduct for Mediators: http://www.adrcanada.ca/resources/documents/National_Mediation_Rules_2011April15withtaxnote_001.pdf

10 This is the thrust of France's treatment of mediation in Section 21 of Law n° 95-125 du 8 février 1995 relative à l'organisation des juridictions et à la procédure civile, pénale et administrative, as amended in 2011. <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000350926>

11 Boule, L. and Kelly, K.J., Op cit (note 6) page 41.

12 The US Model Standards of Conduct for Mediators, adopted by the American Arbitration Association, the American Bar Association and the Association for Conflict Resolution, of which Standard 1: Self determination was amended in 2005 to extend respect for party self-determination to the process of mediation itself: http://www.americanbar.org/content/dam/aba/migrated/dispute/documents/model_standards_conduct_april2007.authcheckdam.pdf

13 See Bush, R.A.B. et Folger, J.P., *Mediation and Social Justice: Risks and Opportunities* 2012, 27 Ohio St. J. on Disp. Resol. for an in-depth analysis of the criticism that when there is a power imbalance between the parties, any type of mediation can only produce an unjust outcome for parties and society as a whole. Article summarized by Simon, D., *Does Mediation Threaten Social Justice? Bush and Folger Weigh In:* <http://www.transformativemediation.org/?q=node/137>

14 *Author's note:* according to recent videos, I tend to intervene on average about every 90 seconds.

15 Bush, R.A.B., and Folger, J.P., *The Promise of Mediation*, 1994, San Francisco, Jossey-Bass.

16 Quebec Bar CLE Training : *La médiation d'une allégation de harcèlement psychologique : l'approche transformative* : <http://www.barreau.qc.ca/formation/activite.jsp?noActiv=1433&namePage=activite.jsp&Langue=fr>

17 Network for a Transformative Approach to Conflict is Launched:<http://www.johnpeterweldon.com/?p=272#more-272>

18 2011 IMAQ *Mediation at Work* Congress PowerPoint presentations are accessible on line (in French) at: <http://www.imaq.org/2011/04/24/la-mediation-au-travail-option-rentable-effets-durables-presentation-des-conferenciers/>

19 <http://www.imaq.org/>

20 Bush, R.A.B., and Folger, J.P., *The Promise of Mediation, New and Revised Edition*, 2005, San Francisco, Jossey-Bass.

21 *Author's note:* since updating my own intervention strategies a few years ago, my mediations, by providing better hands-on support for party interaction, now take on average half as long as before.

22 Folger, J.P., Bush, R.A.B., Della Noce, D.J., ed., *Transformative Mediation: A Sourcebook; Resources for Conflict Intervention Practitioners and Programs*, 2010, New York, Association for Conflict Resolution (ACR) and Institute for the Study of Conflict Transformation (ISCT), summarized by Zeman, A.W., *An Unabashedly Values-Based Mediation Practice:* <http://www.mediate.com/articles/ZemanA1.cfm>

