

## TRANSFORMATIVE MEDIATION

by Carole Durbin and Peter Doogue

The authors of this article have experienced first hand an authoritative view on the transformative style of mediation from Professor Joe Folger and Dorothy Della Noce in their May workshop in Auckland. Many LEADR members may not yet have been exposed to this style of mediation. We set out some brief "highlights" in the article. For more detail we recommend you read the book "The Promise of Mediation" by Barach Bush and Folger (see Bibliography below).

How is transformative mediation different from the standard LEADR model? One clear difference is that the statement that "the mediator is in charge of the process and the parties in charge of the content" needs some modification. Because the transformative model focuses on identifying and supporting opportunities for empowerment and recognition (for explanation of which see further below) it is considered important not to disempower the parties by directing them as to the process. The mediator focuses less on setting macro process rules and concentrates more on the micro level as a supporter of opportunities the parties create rather than being a director of events.

The starting point for the transformative mediation approach is the way that conflict itself is looked at. Rather than looking at it as a dispute which needs to be settled, it is looked at in human interaction terms. Conflict is defined as a crisis in human interaction. Because it is looked at in interaction terms the model focuses on the way the parties interact with each other during the mediation rather than on the outcome of the dispute.

The definition of mediation that was put forward as being appropriate to the transformative model was:

*"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."*

Empowerment has a special meaning in the context of the transformative model. It is about a party moving to be more aware of their own position and value and to be more able to deal with the difficulties they face. So where a party moves from being unsettled, confused, fearful, disorganised or unsure to being calmer, clearer, more confident, more focused or more decisive they are moving towards empowerment. Just as with recognition the mediator has to learn to pick up the opportunities for empowerment and support them.

So what is recognition? The way this word is used in transformative mediation is not in the normal dictionary sense. Recognition occurs when one of the parties moves, whether in a big way or small way, from being relatively self absorbed to being more responsive to the other. ("Self-absorbed" includes defensiveness, suspicious and inability to step outside one's own views.) So this might show up as being more attentive to the other party, more open, more willing to accept the other party is acting in good faith or being more able to see the other party's perspective. Sometimes recognition happens in ways that are not obvious to the other party. A skill that mediators need, is to pick up on when there are opportunities for recognition and to act in a way that is supportive of that opportunity. This doesn't always mean saying something. Depending on the context the mediator might choose to use a non-verbal cue or silence as a way to support the moment. Or the mediator might reflect back what has been said or summarise or ask a question or even simply check in with the parties as to what they think is happening at that moment.

There is a virtuous circle when empowerment and recognition work together. Shifts in the direction of empowerment often help a party to offer recognition to the other party and vice versa. Instead of a vicious downward spiral which is quite common in conflict there is a virtuous circle which provides the parties with an opportunity to transform their conflict into something constructive.

A quote which Folger and Della Noce gave to the workshop was an appealing metaphor for those attracted to the practice of transformative mediation. It was:

***The Power of Light***

*Moments of empowerment and recognition are like lights going on in a room that was always dark. Even if the lights go off after a time, you now know what the room looks like, so it's never the same again.*

The mediator looks for cues as to the existence of opportunities for empowerment and recognition. Folger and Della Noce use the Barach Bush analogy that, for the mediator, picking these cues is like facing a tennis practice machine. A stream of balls is coming towards you. You may see them all but can catch only some. This necessitates "following the parties around" in the detail of their exchanges rather than concentrating on crafting a macro plan for settlement and then working towards its achievement. Empowerment and recognition enhance the many opportunities for decision-making and revision of perspectives which arise throughout the mediation process.

In the models of mediation with which we are more familiar the mediator will often invoke process "rules" in the face of interruptions or other behaviours the mediator thinks to be inappropriate. In transformative practice the mediator is alert for cues and may use such behaviours to aid the parties to achieve some empowerment or recognition. Such behaviours may be a cue for the mediator to see a need for clarification; to summarise the progress to that point; to reflect on what has been said; or to ask some open-ended questions of the parties. Appropriately chosen interventions of these types support party empowerment and inter-party recognition. It is however important to the process that these opportunities are not used by the mediator for directive purposes.

The effects of each intervention by the mediator may well be imperceptible to an observer, but it is their cumulative effect and the shifts they promote which can help advance the parties' communication and decision making. There are no phases in this practice, it is just a continuous process.

The transformative mediator encourages and assists the parties to develop their own ground rules for the mediation. This can provide useful empowerment and recognition opportunities from the outset.

Folger and Della Noce explain transformative mediation in terms of dynamic cycles of activity, unique to each mediation as to their nature, sequence and direction, but which will always present opportunities for empowerment and recognition. The mediator uses these opportunities to aid the parties to develop and enhance their perceptions of the problems and their abilities to decide how to deal with them. The mediator's focus remains on the here and now of empowerment and recognition. That is itself a continuous cycle with both factors being part of the virtuous circle referred to above. The mediator works away with these tools all the time. By doing so the mediator helps the parties to themselves better understand the context of their problems; to share perspectives about the problems; to think about them in different and more constructive ways; and to make decisions.

There is a three step process used in empowerment and recognition practices. First, opportunities for empowerment and recognition are identified as they arise. Second, the mediator avoids directive impulses that can undermine effective response to these opportunities. Third, the mediator makes a supportive response to the emerging opportunities for empowerment and recognition. The first step is the micro attention already referred to. In relation to the second step, directive impulses take many forms such as controlling discussion processes; guiding the parties to an outcome the mediator thinks a good one; taking decision making away from the parties; dealing with only those tangible issues the mediator feels should be dealt with; and driving for a settlement.

The transformative framework is philosophically directed towards improving human interaction. However Folger and Della Noce report that such mediation exit data as exists suggests that agreement is as much the product of transformative practices as it is of settlement-oriented practices. These views merely reinforce our awareness that there are many different mediation styles; types of disputes; and types of disputant.

It should not be thought from any of the foregoing that the workshop leaders are mere theoreticians. They are in fact very experienced mediators who have moved consciously and deliberately from the use of settlement-oriented to transformative practices. In 1997 working with Baruch Bush and Sally Pope, Folger and Della Noce designed and introduced into the US Postal Service, which has more than a million employees, a programme for the mediation of employee complaints, using the transformative framework.

This article may not do justice to the merits of transformative mediation and the impressive qualities and experience of the workshop leaders, but it is to be hoped it conveys information of sufficient interest to readers to encourage them to continue their own studies into differing mediation types and practices.

## **Bibliography**

The Promise of Mediation, Barach Bush and Folger

"Respecting the Struggle: Following the Parties Lead", Trina Grillo, *Mediation Quarterly* 13:4 (Summer 1996)

"Empowerment and Mediation: A Narrative Perspective", Sara Cobb, *Negotiation Journal* 9:3 (July 1993)