

DAY TWO

EMPOWERMENT AND RECOGNITION

In generic mediation, it is critical that the mediator constantly has a feel for the current level of empowerment and recognition⁴⁰. In transformative mediation, the level of empowerment and recognition is so highly prioritised that the transformative mediators regard improving it as their most important task. If the transformative mediator manages to get empowerment and recognition up to a satisfactory level, it is his understanding that the parties will from this point forward have what they need to reach agreement without further assistance.

At the University of North Dakota, Erling O. Jorgenson, Janet Kelly Moen, James R. Antis, Donna Turner Hudson and Linda Hendrickson have collectively contributed to the idea of making empowerment and recognition operational. They have studied numerous transcripts to learn how exchanges via conversation and discourse analysis demonstrate at which levels the parties' empowerment and recognition currently rank, and what contributes to any increase in them. On the surface, the mediator's estimation of the level of empowerment or recognition becomes more accurate by observing the communication, especially when taking into account any extra-level language (tone, tempo, volume, etc.) and body language⁴¹. As it is difficult to illustrate body language and extra-level language in a book via the written word, we will try to look at some exchanges between two people. We will observe the exchanges from a dispute between an employee and his supervisor. You shall soon see that there are certain utterances and verbal cues that can act as hints for the mediator, indicating the current level of empowerment or recognition.

Let us first take a look at empowerment. When the level of empowerment is low, it is due to a lack of oversight, feeling nervous, not being organised,

⁴⁰ *Designing Mediation*, Joseph P. Folger and Robert A. Baruch Bush (Ed.), Institute for the Study of Conflict Transformation, 2000.

⁴¹ View at the book's website.

being indecisive, etc. In this situation of low empowerment, we can hear a party express doubt, confusion, uncertainty and a general lack of ability to understand what is going on around him. A low level of empowerment will usually become apparent when hearing statements such as "I am not sure about..." and "I simply don't understand why..." At a low level of empowerment, the party also lacks the ability to act, which can be expressed in statements such as "There is nothing I can do about..." and "I can't really see how I..." In this circumstance, frustration and anger are also usually evident. Anger is a blended feeling constructed of basic emotions of pain, loss, uncertainty and lack of joy. Anger and frustration will often materialise through the use of swear words but can often be read even more clearly in the body language and in the extra-verbal language. Another sign of low-level empowerment if a party repeats what he has said earlier on, or if he refers to statements made earlier in the discourse. An indicative sentence could be something like, "As I have said over and over, I just want to say..."

An improvement in the level of empowerment can be apparent by some small and almost imperceptible changes in a party's dialogue. In the body language you will see, for instance, that the party lowers his eyes, pretending to scan his papers or looking at the mediator, but now he makes direct eye contact with the other party (emerging empowerment). In context, it is very habitual that parties try to distance themselves from the other party by speaking about the other party in third person (he/she), and even referring to the other party – with whom they may have shared a very intimate or close connection at one time – by a surname (Mr. Johnson or Ms. Smith). When we observe that a party's language has changed from the third person (he/she) to second person (you), the mediator regards this as a sign of improved empowerment.

Likewise, a party can change his language from general terms to being more specific, such as, "On August 22nd when I arrived at work, my supervisor thought that I was late, but if he had looked at my punched timecard, he would have known that he was wrong!" Such a sharply specific sentence bears witness about far more empowerment than a sentence such as, "I can't recall being late this year." Improvement of empowerment can also be seen by the transitioning of general statements to specific action language, such as, "But in the future I can just...!" and "I suggest that starting next Monday, we do..."

Let us take a look at a statement from the employee in a dispute⁴² with his supervisor. "I am under pressure from everyone to get more done. My customers don't think that I am getting them what they want fast enough, and my supervisors don't think that I am filling enough orders. They have even hired a consultant who is following some of us, but I am so overloaded that I really can't see how I can do even more. I am worried about whether this meeting is really sincere. I mean, the whole reason why I am here is because of a negative report about me, and how can I be sure that what I'm saying here isn't just going to be put into my file along with all of the other rubbish they put in it? And if that's not the reason why I'm here, I really can't see it."

Such a statement tips off the mediator to a low level of empowerment, and so he will slow down the mediation pace in order to have the parties discuss how they can together achieve a higher degree of assertiveness, action power, trust and self-esteem. After the first exchange, the mediator might say, "Perhaps it might be helpful before we move forward if the two of you talk about what it's like to work under duress." And after the last exchange, the mediator could say, "I wonder whether it might be useful for you to talk about if and how the two of you can reach confidence and trust to speak openly in this room."

Let us now assume that the employee, in the current of the following the last meta-conversation (about the dialogue), says, "It would be very helpful if he (his supervisor) would tell me what he intends to do with the information that surfaces here today." The mediator would regard such an exchange as a sign of the employee's level of empowerment improving. What the employee is actually doing is requesting empowerment, or requesting to be empowered.

Let us now assume that the supervisor says, "It was me who suggested to my superiors that we meet in this mediation because they originally discussed changing your terms of reference radically. But before I was promoted to my current position, the two of us had been working together, and I see qualities in you that the others might not have had the chance to see yet. I feel pressured, too, from my superiors. I really hope you understand

⁴² Inspired by *The Greeting Card Company*, Training video, Center for Instructional & Learning Technologies, University of North Dakota (701) 777-2129.

that I personally value you as much as when we were colleagues, but my situation is different now. I hope that this mediation will provide us the opportunity to find out what can be done that both you and my superiors can live with. How we achieve that, nobody else but us needs to know." Here we see that the words send a message about the ability to act, and the will and ability to think creatively, and in all of this, the mediator observes a high level of empowerment.

We also see how the supervisor requests understanding which, in professional jargon, is expressed as the supervisor requesting recognition.

Let us see how it looks when a party requests empowerment – that is, requests help from the other party to feel empowered.

An example may be an exchange of resentment or irritation that sounds like:

"I cannot really see why...",

Or an advice-asking exchange such as:

"What do you think about...?",

Or a hope for a change by one or another such as:

"If she would just..."

All of these are indicators to the mediator of requests by the speaker to be empowered.

In the same way that we were looking for signs in the exchanges about the level of empowerment, we will now look for the same in levels of recognition. As expressed in the supervisor's statements above, consider a remark such as:

"I hope that..."

This is a sign for a request for recognition. Now let us examine some other exchanges showing movements of recognition.

"The reason why I did it was ..."

"It was not at all what I meant to ..."

"You always say that ..."

"I am up to my neck with work and yet you still want me to ..."

"If he would just understand that ..."

All of these are examples of a party asking for understanding – that is, requests for recognition. A sign of success in giving better recognition could, for instance, be exchanges such as the following showing improving recognition:

"This is news to me that ..."

"If I had just realised ..."

"Maybe we should try to ..."

"Now I can see where you're coming from ..."

"It's okay to do it in that way if ..."

When recognition is requested, it is usually because the level of recognition is low. If that is indeed the case, it will often become apparent via statements such as:

"Oh, how original."

"Yes, that's usually the case with you."

"Okay, but this is a storm in a glass of water."

"That is impossible."

In intellectual language, irony and even sarcasm are generally regarded as acceptable and commonplace, but in dispute resolution, they are as toxic. Calling one another names and insulting the other's abilities all add up to low levels of recognition. One example of what a mediator can do to improve the level of recognition is to say:

"It looks like it is difficult for you (the supervisor) to not speak. That may be frustrating so I thought that I might gather some of what you've said that looked interesting. It seems like there have been big changes in the company."

The employee might interrupt (requesting empowerment), saying,

"I just want to say that I hope what he (the supervisor) is saying really can be trusted so that what we're talking about it not becoming public knowledge but is really candid and sincere."

The supervisor might respond directly (requesting recognition), saying,

“You have to believe me. I can see how it might be difficult but I really ask for your trust in me.”

And then the employee might say something (giving recognition after having been empowered by the supervisor’s exchange) like,

“If he says so, then I trust him. He’s always been honest with me.”

We see that the mediator, using his microskills, clarifies to the employee that the supervisor, according to the mediator’s perception, is close to losing his temper (decreasing recognition) out of frustration and is holding back only to gain (request for recognition) the employee’s trust. We see the employee hesitate, but then he reacts positively (empowered) to the request from his supervisor about needing personal recognition from him. In the ensuing exchange, the supervisor may (lacking recognition) say,

“I know that some of your colleagues have been frustrated, but they have gotten over it.”⁴³

Now we hear the mediator’s attempt to raise the level of recognition and neutralising the effect of the supervisors exchange by saying,

“So, you (the supervisor) agree that this is not about him (the employee) personally, and yet it sounds like it has still been kind of frustrating for you.”

The supervisor (empowered) responds,

“That is absolutely correct.”

And the mediator (encouraging the supervisor to request recognition from the employee) then asks,

“Could you tell more about what you want him (the employee) to understand?”

The supervisor (requesting recognition and encouraging the employee’s empowerment by a high level of recognition) then says,

“The old ways are gone. We’re in the digital era now, and computers and automatic switchboards are here to stay. You (the employee) should stay with us. I suppose you know that I regard you as a valued employee with outstanding skills. You are honest, and that attracts the customers. If you

⁴³ See comment below.

could just get over your negativity and your reluctance toward the computer system, everything would be okay. I know that you can do it.”

At this point, the mediator (giving recognition and encouraging empowerment) says,

“So you (the supervisor) feel like you are in some degree of trouble with your superiors because you really appreciate him (the employee)?”

We see in these exchanges that the supervisor initially demonstrates a low level of recognition by saying that the employee must get over his frustration like the others have done (that you cannot command anyone to do something). The supervisor reacts positively to the mediator’s invitation to express a higher level of recognition. The mediator summarises the recognition, which then makes the employee use the language expressing a higher degree of empowerment. When the parties first begin to give recognition – that is, really try to understand what the other is saying – they each become empowered and a virtuous circle upward to a higher level of both empowerment and recognition begins. The more empowered a party is, the more ways he will find to give recognition.

Occasionally, wording indicative of weakness (low empowerment) appears as strength (high empowerment), but via current discourse analysis, the mediator might clearly see that the spoken statements made by one party, perceived by the other as strong, are actually weak. The larger the weakness (low empowerment), the greater the need for defence and protection (decreased recognition), which again leads to aggressive and hostile dialogue or behaviour (which also may be sign of decreased recognition and even low empowerment). On the other hand, sometimes statements which may at first seem like recognition but actually are not, are perceived by the other party and perhaps also the mediator exactly as recognition. Later on there may be statements said that the listening party does not recognise as recognition, even if that is the other party’s intent. When it comes to empowerment or recognition, there is always talk about spirals, interfering with one another and going around in vicious and virtuous circles. To accurately comprehend what the other intends as recognition, sufficient empowerment and ability to hear the sometimes-buried message is required. But what can be done when we hear a sentence like:

“I can really see how difficult it is for you, but nevertheless, I am the one who is responsible for the customers.”

The statement's opening signals recognition, and yet we should still be attentive to the use of the word "but." "Yes, but..." is normally lip service, and lip service is usually an accurate sign of a lack of recognition. The main part of this statement (lacking recognition) is "...I am the one responsible for the customers." This implies that his role is the most important, thereby lessening the significance of the difficulties that the other party (the employee) has experienced.

TRANSFORMATIVE MEDIATION

Demonstration

The reader is encouraged to view the video cuts demonstrating parts of transformative mediation on the website.

Already by the opening of the transformative mediation, the reader will sense that this is a special style. We don't hear, as in other types of mediation, an opening presentation from the mediator. Instead, we hear the mediator enter into a live dialogue with the parties, clarifying what is it that they want to accomplish during this process. Through this dialogue, the mediator can address issues with the parties such as confidentiality, ground rules, breaks and duration of the mediation, among other topics. Transformative mediation is not a process of stages in the sense that one stage must be complete before moving on to the next stage.

Structure

1. Repeating and concentric cycles
2. that the mediator begins
3. when he chooses to focus on particular situations
4. that contain opportunity to improve empowerment or recognition.
5. The process runs in a simultaneous variety of levels or dimensions.

Along

6. with the mediator's aim of elevating levels of empowerment and recognition,
7. he is also dealing with the actual content of the conflict,
8. about which the parties are deciding which context to use – essentially, what needs to be done, and how to do it.

If a party or a party's lawyer requests that the mediator carry out the mediation process in a way other than what the mediator feels is appropriate, this is a good time for the mediator to remove himself from this particular

case and discuss with the parties whether another mediator might be more suitable for their sought-after process.

REACTION TO OTHER MEDIATION

Transformative⁴⁴ mediation may be regarded as a reaction to settlement-driven mediation (page ...), derived from generic mediation. Remember that in generic mediation achieving empowerment and recognition are prioritised as equally important, as is entering into agreement or achieving an understanding. In settlement-driven mediation, entering into agreement is prioritised above all else – that is, empowerment and recognition are less prioritised, if at all. In transformative mediation, developing and improving empowerment and recognition are prioritised as the highest goals.

WHAT IS CONFLICT?

In transformative mediation, conflict is defined as crisis or a breakdown in the interaction between parties. That crisis or breakdown still contains an opportunity to transform any hampering interactions to promoting interactions. Consequently, the mediator pays much more attention to promoting the quality of interaction compared to entering into an agreement or a transaction.

The mediator's hope is that after the mediation is complete, the parties will regard any future conflict in a manner originating from their own conflict experience. The transformative mediator is well aware of his influence on the process, and he never attempts to push or force, but rather he tries to encourage. The participants in the mediation form an ad hoc organisation, which in transformative mediation is characterised by being managed from the bottom up, and not from the top down.

⁴⁴ Joseph Folger and Robert A. Baruch Bush, *The Promise of Mediation*, 1994.

EMPOWERMENT AND RECOGNITION

Transformative mediation assumes that any style of mediation is grounded in a certain value system. When educating transformative mediators-to-be, much time is therefore spent on students discussing values in which their mediation work will be grounded.

It is important to get new mediators to understand that mediation is about experiencing the concept that change can happen, so that vicious circles can be transformed into virtuous circles – that is, disempowerment can be changed into empowerment, and a lack of recognition can be developed into an ability to provide recognition. It is therefore key that the mediators-to-be in groups tell one another about situations in their lives where conflict was resolved or not resolved, all the while reflecting on what the speaker would have liked to have been able to do, or how he felt about the situation afterward. On the basis of this narrative, the group discusses what it took to transform a feeling of weakness to a feeling of strength, and what it took to have deeper insight about what had already taken place and also what the speaker would like to have achieved. The group also discusses what in the speaker's language indicates his level of empowerment and recognition then – during the conflict – and now – telling the story. Further, the group talks about how conflict is something that people experience happening to them, and how that results in the feeling of somehow being “infected” by the conflict, thus creating a defensive position often taken by those involved in the conflict.

Empowerment is to be experienced by something dynamic, constantly in motion (see page ...), from a lower level to a higher level, and from a higher level to a lower level. Empowerment connects to a variety of aspects like clarification of goals, options and resources. In much mediation, it is assumed that agreement can only be entered between equal parties. Consequently, in other styles of mediation, the mediator tries to create a sense of power balance. The transformative mediator, however, does not try to achieve power balance during the process unless he senses imbalance being the source of a lack of empowerment. So don't be surprised when the transformative mediator keeps quiet even if one party is taking much more floor time than that other party.