

**Staying on Track with Transformative Practice:
How Do We Know if Mediators Have Internalized the Framework?**

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Staying on Track with Transformative Practice: How Do We Know if Mediators Have Internalized the Framework?

Assessing the extent to which an individual is effectively practicing an approach to mediation—any approach—is a difficult task because of all the activities that are involved in effective mediation, however defined. Evaluating the effectiveness of the practice of the transformative approach is especially daunting because the actual activities of the mediator are less important than the reason the mediator engages in the activity. That is, every intervention of the transformative mediator is guided by what the mediator believes about people, in general, represented specifically by the people at the mediation table. There are several basic premises that direct the transformative mediator's actions and objectively observable mediator behaviors are valid indicators of effective transformative practice only to the extent that they reflect and derive from these fundamental premises.

Consequently, presenting a list of desirable mediator behaviors would be a very misleading way to describe what effective transformative practice looks like. For example, consider the behavior “listen to participants describe the dispute that brought them to mediation”¹ as an indicator of effective practice. Certainly listening carefully to participants is something that transformative mediators do. It could also be legitimately claimed that it is something that mediators practicing from other orientations, e.g., problem solving, do as well. In order to ascertain the orientation from which a behavior derives, it is important to determine its purpose—in this case, what is the purpose of the listening behavior? If the mediator's purpose is to develop ideas about how the conflict might be resolved, or even simply to gain a better understanding of the conflict, then the behavior is driven by the motive to solve the parties' problem. This does not emerge from transformative premises. If, however, the purpose is to listen and watch for indicators of disempowerment and self-absorption, then the mediator is guided by transformative principles. Clearly, then, behaviors alone, without consideration of context or purpose, do not adequately express what effective transformative practice looks like.

Therefore, consideration of transformative practice begins with an understanding of the basic **premises** of the transformative approach. Mediators holding these premises follow particular **principles** in their mediating. These principles, then, are reflected in specific patterns of **behavior**. What follows is a description of these three levels of analysis of mediator practice.

Premises

Fundamental to practice within the transformative framework is belief in its basic premises about humans and their capabilities, conflict and its effects, and the processes of empowerment and recognition.

¹ Behavior demonstrating “analytical skills” as described in Self-Assessment Tool for Mediators. (1998). Madison, WI: Wisconsin Association of Mediators.

Humans and their capabilities

- **A person's reality is unique to that person and based upon his/her life experiences.**
- **People have inherent needs both for advancement of self and connection with others.**
- **People are capable of making decisions for themselves.**
- **People are capable of looking beyond themselves.**

Conflict and its effects

- **Conflict causes people to become relatively weak and relatively self-absorbed, thus diminishing their capacity to make decisions or consider multiple perspectives.**
- **Conflict is relational in nature and represents a challenge to the quality of the interaction among participants.**

Empowerment and recognition

- **Conflict resolution processes that promote empowerment and recognition provide the opportunity for people to restore their capability to make decisions and consider other perspectives.**

Principles

Belief in these premises is reflected in principles with which the mediator approaches mediation and the parties. Premises are beliefs about people, conflict, and conflict interventions. Another way to think of premises is in terms of *world view*. Premises represent one's world view of people and conflict—a basic understanding of human motives and capabilities and what happens to people in conflict. Principles represent guidelines for mediator conduct—how the premises are applied to mediation. Listed below are some principles of a mediator who practices from a transformative perspective.

- **Be comfortable with conflict, including strong emotion and the negative pattern of interaction between parties.**
- **Respect party choices, including choices about participation in mediation, even if they are choices the mediator would not personally make in a similar situation.**
- **Be comfortable with a limited understanding of the parties' conflict.**
- **Respect the parties, even if their actions, appearance, language, and attitudes seem completely different from those of the mediator.**
- **Be patient with the parties and the process of their interaction.**
- **Focus on the moment-by-moment events in the parties' interaction.**
- **Attend to empowerment and recognition opportunities.**
- **Choose interventions (and non-interventions) based upon opportunities for party empowerment and/or recognition.**
- **Relinquish problem solving and control of the process.**

Figure 1 present the connection between one of the principles and the premises giving rise to it. In a similar fashion, each principle is linked to one or more of the premises.

Behavior

These principles, and the premises from which they derive, are reflected in certain kinds of mediator behaviors. It is at the behavioral level that mediator activities are observable to others. Although behavior provides an indication of underlying principles and premises, when taken in isolation, it can be misinterpreted. Thus, mediator behavior must always be considered in the context of the mediation interaction and the mediator's guiding purpose. Examining mediator behavior within a particular context allows one to begin to make inferences about the premises and principles that drive that behavior. Thus, the evaluator is interested not so much in particular behaviors, but why the mediator engaged in a particular intervention at a particular point in the mediation.

The desired **context** for any mediator intervention (or mediator decision not to intervene) is the empowerment and/or recognition opportunity (ies) present at the moment. The mediator pays close attention to everything the parties say and do because these actions are indicators of disempowerment and/or self-absorption. It is as though the mediator is continually asking him/herself, "What is the empowerment and/or recognition opportunity present now?" This is accompanied by the question, "What should I do about it to increase the likelihood that empowerment and/or recognition are enhanced?" So, in addition to considering the context of mediator behavior, the evaluator must also examine **purpose**. What is the purpose of the mediator intervention? The desired purpose should always be to facilitate party empowerment and/or recognition. Thus, activities of the transformative mediator occur within an appropriate context (empowerment and/or recognition opportunity) and are guided by a particular purpose (facilitating party empowerment and/or recognition).

To provide a specific example, consider a circumstance early in mediation in which Party A exclaims, "I don't have clue why she thinks I've been mistreating her," and then there is a pause. The context present is that the mediator perceives an empowerment opportunity for A, who is expressing a need for clarity about what has been going on in the interaction with B. There is also a recognition opportunity for A, who is declaring some degree of interest in understanding the perspective of B. The mediator's purpose is to facilitate empowerment and/or recognition. The mediator has several choices in this regard, including:

1. Saying nothing and continuing to look at A. Party B may choose to respond. Depending on the response, it may provide some desired clarity to A (empowerment) and begin to provide A with some insight about B's thinking (both empowerment and recognition). It may also be the opportunity for B to say things she has been wanting to say (empowerment).
2. Saying nothing and turning to look at B. The potential is here for all that is described above. There is a risk in this mediator response that is not present above. With attention directed to B, there is explicit pressure on B to respond—thus less party choice (potential disempowerment). Party A knows

- this as well and thus has less certainty about the genuineness of B's response, whatever it is. This suggests less potential for empowerment or recognition.
3. Turning to B and asking if she has a response. The same risks described in 2 are present here, although perhaps amplified. The pressure on B is even more explicit, making it even more likely that B will say something either (a) perceived to be non-genuine, or (b) out of a defensive posture. In either case, the empowerment and recognition opportunities are diminished.
 4. Paraphrasing A's comment with something like, "So you'd really like to know what's going on for B that leads her to believe you are mistreating her." If the paraphrase is perceived to be accurate, this communicates to A that A's statement has been understood (empowerment). It also may communicate to B a modicum of clarity about what A's concerns are (empowerment and recognition).

There are, of course, many other possible mediator responses. But only considering the four described above, the transformative mediator would likely choose 1 or 4 because of the empowerment and recognition possibilities that are present and the limited potential for a disempowerment and self-absorption effect.

Notice the subtle point here. Mediator purpose within a particular context are not the only factors to consider in evaluating a certain response on the part of the mediator. It is also important to consider the likely empowerment and/or recognition **effect** on the parties. That is, although the mediator may *intend* to facilitate empowerment or recognition (as, for example, in options 2 or 3 in the above illustration), the actual intervention may have the *opposite* effect, let alone no effect. In general, if the mediator is attempting to force the action—in the words of many mediators-in-training, to “empower the parties” or “get them to recognize each other”—then the mediator is likely to disempower the parties and produce defensiveness. Such behavior on the part of the mediator, although well-intended, reveals a failure to incorporate several important principles of a transformative mediator, including respecting party choices, being patient with the parties and the process of their interaction, and relinquishing control. The obvious implication, then, is that the mediator must be aware of possible effects of different interventions on party empowerment and recognition.

In summary, then, in evaluating the behavior of a mediator to determine its compatibility with the transformative orientation, one must consider the **context**, **purpose**, and probable **effect** of the intervention. Thus, the mediator must consider what the empowerment and/or recognition opportunities are at any given moment (context), what he/she might do to facilitate party empowerment and/or recognition (purpose), and what the possible empowerment and/or recognition consequences are for the parties (effect).

Evaluation of Mediator Interventions

How might this approach to understanding the practice of the transformative orientation be used to help mediators who want to improve their practice? Two possibilities are described below.

The first takes the form of an interaction between the mediator and a coach/trainer. The resource necessary for the interaction is a videotape or audiotape (video is preferable) of a mediation session involving the mediator.

The coach/trainer begins the session by asking the mediator to identify specific aspects of transformative practice that the mediator would like to learn more about. This will help the coach/trainer in choosing when to stop the tape and in the discussion that follows. The tape is played from the beginning and stopped by the coach/trainer or the mediator at frequent points. The following interaction occurs:

1. The coach/trainer asks the mediator to describe his/her rationale for the intervention that has just occurred. The question might be framed, “What did you see or hear and what were you trying to do?” The mediator responds.
2. The coach/trainer interacts with the mediator about these points:
 - a. What the mediator saw or heard in terms of empowerment or recognition opportunities;
 - b. How the purpose of the mediator response might be considered in terms of party empowerment and recognition;
 - c. What possible empowerment and recognition effects were considered.
3. The mediator and coach/trainer discuss what these responses reveal about the mediator’s principles toward the parties and the situation, elucidating areas of compatibility and incompatibility with the principles described in this document.

It may even be desirable for the coach/trainer to work with the mediator using a modified version of the “Principles/Premises” diagram presented earlier. For purposes of illustration, consider the example described earlier involving four possible mediator responses to Party A’s statement expressing some confusion concerning Party B’s belief about being mistreated by A. Assume that the mediator engaged in option 2, remaining silent and turning to Party B. The diagram (see Figure 2) might be used to discuss how that behavior is largely **compatible** with these principles:

- Attend to empowerment and recognition opportunities.
- Focus on the moment-by-moment events in the parties’ interaction.
- Choose interventions (and non-interventions) based upon opportunities for party empowerment and recognition.

but **less compatible** with these principles:

- Respect party choices, including choices about participation in mediation, even if they are choices the mediator would not personally make in a similar situation.
- Be patient with the parties and the process of their interaction.
- Relinquish problem solving and control of the process.

This type of discussion for several interventions might reveal a particular pattern that will be helpful for the mediator to consider.

The second technique for evaluating mediator interventions expands the above to include the parties. This is especially valuable because it gives the mediator direct information about the empowerment and recognition **effects** of her/his behavior on the parties. It is generally done during a mediation simulation.

The coach/trainer prepares the mediators and parties to be interrupted, explaining that after a conversation about what is going on, the mediation will resume where it was stopped. Parties are encouraged to stay “in role” during the discussion.

The coach/trainer carefully observes the mediation and “stops the action” after a significant mediator behavior. The behavior selected will vary based on what the mediator wishes to learn more about, the mediator’s skill level, and the coach/trainer’s emphasis. Once the action is stopped, the following interaction occurs:

1. The coach/trainer asks the mediator to describe his/her rationale for the observed behavior. The question might be framed, “What did you see or hear that you were responding to?” or “What were you trying to accomplish?” The mediator responds.
2. The coach/trainer then asks one and/or both parties about the effect of the mediator’s behavior on each of them. The question might be framed, “Party A, how did you feel when the mediator asked that question?” or “Party B, what is going on for you right now?” The party(ies) respond.
3. The coach/trainer then interacts with the mediator about these points:
 - a. What the mediator saw or heard in terms of empowerment and recognition opportunities;
 - b. The purpose behind the mediator’s behavior;
 - c. New information gained from the parties’ input.
4. The mediator and coach/trainer discuss what these reveal about the mediator’s principles toward the parties and the situation, and the compatibility of these principles with the transformative framework. When appropriate, parties can be encouraged to expand on the effects of a particular mediator behavior on them.
5. The mediator and coach/trainer then discuss other possible interventions and select one more consistent with the principles of transformative mediation.

The mediator and parties return to the simulation, beginning, if possible, by repeating the action immediately preceding the mediator intervention.

Again, it may be helpful for the coach/trainer to use a modified version of the “Principles/Premises” diagram to link behavior with principles and principles back to premises.

Additional valuable learning comes when mediators experience the effect of interventions *as parties*. During most mediation simulations, trainees take turns being mediators and parties. A trainee learns a great deal from the experience of being a party

whose feelings are ignored, whose pace is not respected or who feels pushed by a mediator's question. While directiveness masquerading as subtle suggestion may seem appropriate when one is in the mediator's chair, it is rarely experienced positively when one is in the party's chair.

Learning Transformative Practice

A critical component of learning transformative mediation is connecting mediator behavior to principles and premises. This is necessarily done in the context of interactions with parties. As mediators experience the effects of their behaviors while in the role of parties, they come to appreciate the importance of creating space so that parties can move toward empowerment and recognition when and if they choose to. As mediators explore the reason behind the choice to make a comment, a gesture or to do neither, they gain the self-knowledge critical to mediating from the premises that are central to transformative practice.