

Robert A. Baruch Bush
Joseph P. Folger

.....

The Promise of Mediation

.....
The Transformative Approach
to Conflict

Revised Edition

MIDDLEBURY COLLEGE LIBRARY

 **JOSSEY-BASS**
A Wiley Imprint
www.josseybass.com

Contents

Copyright © 2005 by John Wiley & Sons, Inc. All rights reserved.

Published by Jossey-Bass
A Wiley Imprint
989 Market Street, San Francisco, CA 94103 1741 www.josseybass.com

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, scanning, or otherwise, except as permitted under Section 107 or 108 of the 1976 United States Copyright Act, without either the prior written permission of the Publisher, or authorization through payment of the appropriate per-copy fee to the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923, 978-750 8400, fax 978-750-4470, or on the Web at www.copyright.com. Requests to the Publisher for permission should be addressed to the Permissions Department, John Wiley & Sons, Inc., 111 River Street, Hoboken, NJ 07030, 201-748-6011, fax 201-748-6008, e-mail: permcoordinator@wiley.com.

Jossey-Bass books and products are available through most bookstores. To contact Jossey-Bass directly call our Customer Care Department within the U.S. at 800-956-7739, outside the U.S. at 317-572-3986, or fax 317-572-4002.

Jossey-Bass also publishes its books in a variety of electronic formats. Some content that appears in print may not be available in electronic books.

Excerpt in Chapter Three from Louise Phipps Senft is used by permission. Copyright © 2004 Senft.

Excerpt in Chapter Three from Patricia Gonsalves is used by permission. Copyright © 2003 Gonsalves and Hudson.

Excerpt in Chapter Three from Judy Saul is used by permission. Copyright © 2004 Saul.

Excerpt in Chapter Three from Jody Miller and Sara Jane Wellock is used by permission. Copyright © 2004 Miller and Wellock.

Excerpt in Chapter Three from Kristine Paratica is used by permission. Copyright © 2004 Paratica.

Excerpt in Chapter Three from Tom Wahlrab is used by permission. Copyright © 2004 Wahlrab.

Excerpt in Chapter Three from Sharon Press is used by permission. Copyright © 2003 Press.

Excerpt from *Directing and Administering a Mediation Program: The Transformative Approach* by Janice Fleischer. Copyright © 1996. This material is used by permission of John Wiley & Sons, Inc.

Library of Congress Cataloging-in-Publication Data

Bush, Robert A. Baruch.

The promise of mediation : the transformative approach to conflict /

Robert A. Baruch Bush, Joseph P. Folger.— Rev. ed.

p. cm.

Includes bibliographical references (p.) and index.

ISBN 0-7879-7483-8 (alk. paper)

1. Mediation. 2. Conflict management. 3. Conflict (Psychology) 4. Social conflict. 5.

Social interaction. 6. Interpersonal conflict. I. Folger, Joseph P., date-

II. Title.

HM1126.B87 2005

303.6'9—dc22

2004009427

Printed in the United States of America

REVISED EDITION

HB Printing 12

Acknowledgments	ix
Introduction	1
1. The Mediation Field: An Overview and Four Stories	7
2. A Transformative View of Conflict and Mediation	41
3. Gaining Sight of the Goal of Transformation	85
4. Putting Transformative Theory into Practice: The "Purple House" Mediation, with Commentary—Part One	131
5. Putting Transformative Theory into Practice: The "Purple House" Mediation, with Commentary—Part Two	185
6. Myths and Misconceptions About Transformative Mediation	215
7. Paths Toward the Future: Living with Differences in Values and Practice	237
References	267
About the Authors	279
Index	281

Introduction

.....

Ten years ago, we wrote *The Promise of Mediation* to call our colleagues' attention to a disturbing state of affairs in the mediation field. In our view, the potential that mediation offered to foster and support positive human interaction within conflict was being squandered. Instead mediation was being used to shore up institutional processes that operate to control, contain, and settle conflict, because of a prevailing view that conflict interaction is a fundamentally negative social force. We argued for an alternative approach to mediation, now known as *transformative mediation*, basing our argument on a theory of the larger political and social values implicit in different conflict intervention approaches.

Part of the reason for linking our model to certain underlying values was our conviction that those values—referred to in the first edition as constituting a *relational worldview*—are the soundest basis for constructing social institutions. However, the emphasis on underlying values was also part of the wake-up call that we intended our book to carry: we wanted to suggest that mediation practice in general is not “value-free” but is based on ideological or value premises, no matter what model is being used. Indeed, in the Foreword to the first edition, series editor and Harvard scholar Jeff Rubin noted, “The fact that Bush and Folger are so frankly ideological and value driven in their analysis will also disturb those readers who wish for a value-neutral appraisal of the mediation industry.” Rubin foresaw that—in

large part due to its explicitly value-based approach—*The Promise of Mediation* would garner both ardent support and strong criticism. And he was right on both counts. Many have found the book's clarification of value premises helpful in giving them a more stable place to stand: a value center that they sensed but could not easily find on the then-existing map of the field. It helped people align their practices with the implicit values, the core ideology, that ultimately made practice meaningful and coherent. But others found the book's message unsettling, because it challenged the presumption of value neutrality that allowed them to practice without articulating any core premises to explain and justify their enterprise.

In both of these kinds of response, appreciative and critical, the first edition of our book has fulfilled the purpose we had in mind. That purpose, stated most generally, was to wake up the field from its inattention to the link between core values and practices and to shift it toward a greater attention to those values, especially *relational values*, and the practices they engender. We believe that this shift has begun to take place. There is greater and more critical attention today to the value implications of particular forms of mediation practice, and there is greater acknowledgment that there are indeed distinct "models" of practice being used. We see the disagreement that has unfolded about these various models as a healthy sign, a sign that the field is moving through its awkward adolescence. Equally important to us, there is greater acceptance that the transformative model of mediation is not only appealing and coherent at the value level but also workable and sustainable at the level of actual practice. Transformative mediation has become a well-defined choice, as the ideological foundations of this model have been more fully articulated, and as the nature of transformative training and practice has been developed. Our experience with implementing transformative mediation in numerous organizational, governmental, and private practice arenas has strengthened our sense of the appropriateness and viability of this model of practice in all contexts where mediation is practiced.

In keeping with the shifts we see in the field, our intentions in this new and revised edition are different than they were ten years ago. Our goals in this book are to explain why this form of practice is important and needed, to illustrate how mediators actually work within this framework, to clarify the impact that this practice has on parties' conflict interaction, and to suggest how it can be implemented in the present institutional context of mediation practice. We describe the ways in which the field has shifted—in discourse, conceptualization, and practice—toward recognizing both the value dimensions of mediation and the viability of alternative models of practice, and the transformative model in particular. At the same time, we address the fact that there is still resistance to transformative values and practices, stemming most of all from the pressures and demands of institutional users and stakeholders in certain arenas with historical importance to the field. And we propose ways of understanding and dealing with these sources of resistance.

Chapter One offers some further context for discussion of the transformative model, by describing several different views of the mediation process that are often heard in the field, and situating the transformative model among those views.

Chapter Two sets forth a full picture of the premises, goals, and benefits of the transformative model of mediation, grounded in theory and research on human conflict and accompanied by concrete illustrations. The definition of mediation as supporting *conflict transformation* is explained, as is the nature of the mediator's role. This chapter also clarifies certain ambiguities in our articulation of the values and practices of the transformative model in the first edition that led to difficulty for some in grasping the aims and methods of the model. In particular, we clarify our use of the term *moral growth* and its relation to the transformative model and the process of changing conflict interaction. We also make a clearer distinction between the private and public benefits of transformative mediation and focus more on the benefits of the model to disputing parties themselves.

This chapter draws in part from a chapter coauthored by Baruch Bush and Sally Pope for another volume (Bush and Pope, 2004).

Chapter Three documents how the transformative model has influenced the field and has gained a solid foothold within it in the decade since the publication of the first edition of *The Promise of Mediation*. First, the chapter shows that the concerns we raised in the first edition, about the field's undue emphasis on the goal of settlement, have come to be shared much more widely. Second, the chapter describes how the rhetoric of "good practice" has shifted to give more attention to values and practices similar to those of the transformative model. Finally, the chapter documents the growth in the explicit use of the transformative model in many organizations and contexts, as well as the substantial advances in the "technology" of transformative practice that have been achieved by trainers and practitioners using the model.

Chapters Four and Five present, in two parts, an entirely new case study to illustrate the use of the transformative model. The case—a difficult contract dispute between a homeowner in an upscale development and the development's homeowner association—is taken from a videotaped mediation simulation, based on a real case but using professional actors as parties. The case is presented in full, in script form, with commentary by the authors that includes considerable material on the essential skills of transformative mediation practice. The videotape itself is available from the Institute for the Study of Conflict Transformation, mentioned previously in the Acknowledgments.

Chapter Six offers a review of some of the most common misconceptions about the transformative model of mediation, as well as clarifications that address and correct these misconceptions.

Finally, Chapter Seven addresses, at a deeper ideological level, the reasons why many in the mediation field are increasingly moving away from certain forms of prevailing practice that are viewed as troublesome and toward transformative practice. We show how understanding this shift rests on a clear view of the values and worldviews on which fundamentally different forms of practice are built.

In summary, these are the main benefits that readers can expect to get from this new and revised edition of *The Promise of Mediation*:

- A broad picture of how the field has shifted in the last decade and how that shift has resulted in more acceptance of the transformative model
- A significantly clearer articulation of the values, theory, and practices of the transformative model, including the clarification of ambiguities that may have caused difficulty in accurately understanding the model
- A rich new case study, based on a videotaped mediation session, that offers a vivid picture of the model in practice and a substantial amount of new information about how to be an effective practitioner
- A vision for the future that shows how the model can coexist with other approaches to mediation, as well as where the market for transformative mediation specifically is emerging and developing

.....

The Mediation Field

An Overview and Four Stories

Roughly thirty-five years ago, in a variety of places around the United States, many groups and individuals became interested in a process of dispute resolution called *mediation*. Although mediation had long been used in labor disputes, the new surge of interest extended to many other contexts, including community, family, and interpersonal conflict. The use of mediation has grown over the last three decades or so. Prior to 1965, mediation outside the labor relations arena was practically unheard of. Then, in the late 1960s, attention was focused on mediation from two very different directions: civic leaders and justice system officials saw in mediation a potential for responding to urban conflict and its flash points; and community organizations and legal reformers saw in mediation a potential for building community resources alongside the formal justice system. Though the motives and approaches were quite different, the combined effect was to make the idea of mediation of neighborhood or community disputes a widely accepted and legitimate concept.

In practical terms, this meant the expansion of the community mediation field from a few isolated programs in 1970 to nearly two hundred by the early 1980s and to more than double that number today. Moreover, as a result of its acceptance in this field, mediation was used in an increasingly broad range of nonlabor disputes: divorce, environmental, housing, institutional (including prisons,

schools, and hospitals), small-claims, personal injury and insurance, and general business disputes, as well as claims involving governmental agencies (Singer, 1990). In recent years, this trend has continued. Private businesses and even lawyers are finding mediation attractive, spurring the start-up and expansion of for-profit mediation services. The use of volunteer and professional mediators has been institutionalized in many court programs, so much so that courts often cannot imagine how caseloads could be handled without the use of these mediation programs. In many instances, the increasing reliance on mediation within the courts has been due to the courts' proclivity to require mediation, not only in divorce and small-claims cases but in civil litigation generally.

Across the mediation field, mediation is generally understood as an informal process in which a neutral third party with no power to impose a resolution helps the disputing parties try to reach a mutually acceptable settlement. This common formulation captures some of the major features of the process, especially its informality and consensuality. It also reflects the view that the most significant effect of the process is the production of a voluntary settlement of the dispute. Settlement is often seen as the primary or even sole value of mediation in institutional settings like the courts, where disposition of cases is the main motivation for using mediation.

There is nevertheless an extraordinary divergence of opinion about how to understand the growth of the mediation field and how to characterize the mediation enterprise itself. This divergence is so marked that there is no one accepted account of how the mediation field evolved or what it represents. Instead the literature of the field reveals several very different accounts or "stories," told by different authors and stressing different dimensions of the mediation process and its private and public benefits. Thus mediation is portrayed by some as a tool to reduce court congestion and provide "higher-quality" justice in individual cases, by others as a vehicle for organizing people and communities to obtain fairer treatment, and by still others as a covert means of social control and oppres-

sion. And some (including us) picture mediation as a way to foster a qualitative transformation of human interaction. Indeed these are the four main accounts that run through the literature on mediation. We call them, respectively, the Satisfaction Story of the field, the Social Justice Story, the Oppression Story, and the Transformation Story.

Four Stories of the Mediation Process

The fact that there are four distinct and divergent stories of the mediation field suggests two important points. On one level, it suggests that the field is not monolithic but pluralistic—that there are in fact different approaches to mediation practice, with varied impacts. The stories represent these different approaches. On a deeper level, the existence of divergent stories suggests that although everyone sees mediation as a means for achieving important private and public goals, people differ over what goals are most important. So the stories also represent and support different goals, some of which are seen by some people as more important than others for the process to fulfill.

Recounting the different stories of the field is therefore a good way both to illustrate the diversity of mediation practice and to identify the value choices implicit in varying approaches to practice. The following summary of the four stories presents each one as it might be told by its authors and adherents.

The Satisfaction Story

According to this story, "The mediation process is a powerful tool for satisfying human needs and reducing suffering for parties to individual disputes. Because of its flexibility, informality, and consensuality, mediation can open up the full dimensions of the problem facing the parties. Not limited by legal categories or rules, it can help reframe a contentious dispute as a mutual problem. In addition, because of mediators' skills in dealing with power imbalances,

mediation can reduce strategic maneuvering and overreaching. As a result of these different features, mediation can facilitate collaborative, integrative problem solving rather than adversarial, distributive bargaining. It can thereby produce creative, 'win-win' outcomes that reach beyond formal rights to solve problems and satisfy parties' needs in a particular situation or, alternatively, remedy parties' difficulties. The mediation field has employed these capabilities of the process to produce superior quality solutions for private disputants in cases of all kinds—that is, solutions that best satisfy the parties' needs and remedy their difficulties.

"Furthermore, in comparison with more formal or adversarial processes, mediation is characterized by an informality and mutuality that can reduce both the economic and emotional costs of dispute settlement. The use of mediation has thus produced great *private* savings for disputants, in economic and psychic terms. In addition, by providing mediation in many cases that would otherwise have gone to court, the mediation field has also saved *public* expense. It has freed up the courts for other disputants who need them, easing the problem of delayed access to justice. In sum, the use of mediation has led to more efficient use of limited private *and* public dispute resolution resources, which in turn means greater overall satisfaction for individual 'consumers' of the justice system.

"This holds true for all the various contexts in which mediation has been used. Child custody mediation, for example, has produced better-quality results for both children and parents than litigated rulings. Small-claims mediation has resulted in higher party satisfaction with both process and outcome, and higher rates of compliance than litigation. Environmental and public policy mediation have produced creative and highly praised resolutions, while avoiding the years of delay and enormous expense that court action would have entailed. Moreover mediation in these areas has reduced court case-loads and backlogs, facilitating speedier disposition of those cases that cannot be resolved without trial in court. In these and other

kinds of disputes, mediation has produced more satisfaction for disputing parties than could have been provided otherwise."

* * * * *

The Satisfaction Story is widely told by a number of authors. Many are themselves mediators, either publicly employed or private practitioners or "entrepreneurs" (Williams, 1997; Hoffman, 1999; Moorc, 2003). Some are academics. Some who are both practitioners and scholars have been very influential in supporting this story of the movement (Stemple, 1997; Golann, 1996; Susskind and Field, 1996; Menkel-Meadow, 1995; Mnookin and Ross, 1995; Fisher and Brown, 1989; Susskind and Cruikshank, 1987; Folberg and Taylor, 1984; Fisher and Ury, 1981). Also quite influential are the many judges and other justice system officials who tell this story, including former Chief Justice Warren Burger (1982) and many other judicial leaders (see Galanter, 1985).

The next two interpretations of the mediation field, the Social Justice Story and the Transformation Story, differ somewhat from the Satisfaction Story. The Satisfaction Story claims to depict what has generally occurred in the use of mediation thus far, whereas the other two describe something that has admittedly occurred only in part thus far. In effect, these are "minority" stories of the field, but each is still seen by its adherents as representing mediation's most important potential.

The Social Justice Story

According to this story, "Mediation offers an effective means of organizing individuals around common interests and thereby building stronger community ties and structures. This is important because unaffiliated individuals are especially subject to exploitation in this society and because more effective community organization can limit such exploitation and create more social justice. Mediation can support community organization in several ways.

Because of its capacity for reframing issues and focusing on common interests, mediation can help individuals who think they are adversaries perceive a larger context in which they face a common enemy. As a result, mediation can strengthen the weak by helping establish alliances among them.

"In addition, mediation reduces dependency on distant agencies and encourages self-help, including the formation of effective grassroots community structures. Finally, mediation treats legal rules as only one of a variety of bases by which to frame issues and evaluate possible solutions to disputes. Mediation can therefore give groups more leverage to argue for their interests than they might have in formal legal processes. The mediation field has used these capacities of the process, to some extent at least, to facilitate the organization of relatively powerless individuals into communities of interest. As a result, those common interests have been pursued more successfully, helping ensure greater social justice, and the individuals involved have gained a new sense of participation in civic life.

"This picture applies to many, if not all, of the contexts in which mediation is used. Interpersonal neighborhood mediation has encouraged co-tenants or block residents, for example, to realize their common adversaries, such as landlords and city agencies, and to take joint action to pursue their common interests. Environmental mediation has facilitated the assertion of novel (and not strictly legal) claims by groups that have succeeded in redressing imbalances of power favoring land developers. Even mediation of consumer disputes has helped strengthen consumers' confidence in their ability to get complaints addressed, which has led to other forms of consumer self-help and has increased consumer power. In short, mediation has helped organize individuals and strengthen communities of interest in many different contexts—and could be used more widely for this purpose."

.....

The Social Justice Story of the mediation field has been told for a long time, though by a relatively small number of authors, usually

people with ties to the tradition of grassroots community organizing. Examples include Paul Wahrhaftig (1982), an early figure in community mediation, and Ray Shonholtz (1984, 1987), founder of the Community Boards Program, long known for its organizing orientation. More recently, Carl Moore (1994) and Margaret Herrman (1993) have echoed this account. Although the numbers of its adherents are few, this story has been told consistently from the earliest stages of the field.

The third story, the Transformation Story, focuses on some of the same features of the mediation process as the first two. However, it characterizes them, and especially their consequences, in distinct and quite different terms than the other stories.

The Transformation Story

According to this story, "The unique *promise of mediation* lies in its capacity to transform the quality of conflict interaction itself, so that conflicts can actually strengthen both the parties themselves and the society they are part of. Because of its informality and consensuality, mediation can allow parties to define problems and goals in their own terms, thus validating the importance of those problems and goals in the parties' lives. Further, mediation can support the parties' exercise of self-determination in deciding how, or even whether, to settle a dispute, and it can help the parties mobilize their own resources to address problems and achieve their goals. The mediation field has (at least to some extent) employed these aspects of the process to help disputing parties activate their inherent capacity for deliberation and decision making in adverse circumstances. Participants in mediation have, as a result, gained a greater sense of strength of self, including self-respect, self-reliance, and self-confidence. This has been called the *empowerment* dimension of the mediation process.

"In addition, the private, nonjudgmental character of mediation can provide disputants a nonthreatening opportunity to explain and humanize themselves to one another. In this setting, and with mediators who are skilled at enhancing interpersonal communication,

parties often discover that they can feel and express some degree of understanding and concern for one another despite their disagreement. The field has (again, to some extent) used this dimension of the process to help individuals activate their inherent capacity for understanding the problems of others. Mediation has thus engendered, even between parties who start out as fierce adversaries, acknowledgment and concern for each other as fellow human beings. This has been called the *recognition* dimension of the mediation process.

"Although empowerment and recognition have been given only partial attention in the mediation field thus far, a consistent and wider emphasis on these dimensions would contribute to the transformation of conflict interaction from a negative and destructive social force into a positive and constructive social force—helping individuals to interact with more confidence in themselves and empathy for each other, and helping to transform society as a whole from a truce between enemies into a network of allies.

"This picture captures the potential of mediation in all types of disputes, not just certain areas in which human relationships are considered important (implying that elsewhere they are not). Consumer mediation can strengthen the confidence of and evoke recognition between merchants and consumers, transforming the character of commercial transactions and institutions. Divorce mediation can strengthen and evoke recognition between men and women, changing the character of male-female interaction generally. Personal injury mediation can strengthen and evoke recognition between insurance assessors and accident victims, transforming the character of compensation processes. In every area, mediation could, with sufficient energy and commitment, help transform the quality of social interaction and, ultimately, social institutions."

.....

The Transformation Story of the mediation process was not widely told in the published literature of the field prior to the publication

of the first edition of this book. The few who expounded it included practitioners such as Albie Davis (1989) and academics such as Leonard Riskin and Carrie Menkel-Meadow (in some of their work, see Riskin, 1982, 1984; Menkel-Meadow, 1991; see also Dukes, 1993), as well as the authors of this volume (see Folger and Bush, 1994; and Bush, 1989–1990). Nevertheless, beyond the world of the printed word, this story was given voice in informal discussions among both academics and mediation practitioners. It was, as it were, the underground story of the movement, often the motivating force behind practitioners' involvement. The publication of *The Promise of Mediation* gave greater voice to this story and attracted numerous authors to articulate the story more fully (Burns, 2001; Della Noce, 1999; Pope, 1996; Jorgensen, 2000; Beal and Saul, 2001; Moen and others, 2001; Jorgensen and others, 2001; Bush and Pope, 2002).

Here, then, are three very different accounts of the mediation enterprise. Each of them expresses two different kinds of messages about the field. On one level, each story is a *description*, purporting to recount what the mediation field has actually done and what its actual character is today (in whole or in part). On another level, each story is a *prescription*, suggesting what the field *should* do to fulfill what the story's authors see as the most important private and public goals or values that mediation can help achieve.

The final story of the field differs from all the others. The first three all see positive effects or potentials in the process, although each sees them differently. The fourth, by contrast, sees only negative effects or potentials. It presents not a prescription for the field but a warning against it. We call it the Oppression Story.

The Oppression Story

According to this story, "Even if the field began with the best of intentions, mediation has turned out to be a dangerous instrument for increasing the power of the state over the individual and the

power of the strong over the weak. Because of the informality and consensuality of the process, it can be used as an inexpensive and expedient adjunct to formal legal processes, seeming to increase access to justice but actually operating to extend the control of the state into previously private domains of social conduct. Once having entered those domains, and given its lack of both procedural and substantive rules, mediation enlarges the discretion and power of state-sponsored decision makers, and it can magnify power imbalances and open the door to coercion and manipulation by the stronger party. Meanwhile the posture of 'neutrality' excuses the mediator from preventing this. As a result, in comparison with formal legal processes, mediation has often produced outcomes that are unjust—that is, disproportionately and unjustifiably favorable to the state and to stronger parties. Moreover, because of its privacy and informality, mediation gives mediators broad strategic power to control the discussion, giving free rein to mediators' biases. These biases can affect the framing and selection of issues, consideration and ranking of settlement options, and many other elements that influence outcomes. Again, as a result, mediation has often produced unjust outcomes.

"Finally, because mediation handles disputes without reference to other, similar cases and without reference to the public interest, it results in the disaggregation and privatization of class and public interest problems. That is, the use of mediation has helped the strong 'divide and conquer.' Weaker parties are unable to make common cause and the public interest is ignored and undermined. In sum, the overall impact of the field has been to extend the state's control of individuals' lives; to neutralize social justice gains achieved by the civil rights, women's, and consumers' movements, among others; and to reinforce the status quo and the privileged position of those who benefit from it.

"This oppressive picture is found in all of the field's uses of mediation. Divorce mediation removes safeguards and exposes women to coercive and manipulative 'bargaining' that results in unjust prop-

erty and custody agreements. Landlord-tenant mediation allows landlords to escape their obligations to provide minimally decent housing, which results in substandard living conditions and unjust removals for tenants. Employment discrimination mediation manipulates victims into accepting buy-offs and permits structural racism and sexism to continue unabated in businesses and institutions. Even in commercial disputes between businesses, mediation allows the parties to strike deals behind closed doors that disadvantage consumers and others in ways that will never even come to light. In every area, mediation has been used to consolidate the power of the strong and increase the exploitation and oppression of the weak."

.....

The Oppression Story is clearly a different kind of story than the other three. Rather than offering a description of and prescription for the mediation field, it sounds a warning *against* it. This story is almost as widely told as the Satisfaction Story, but by very different authors. They include numerous critics of the mediation field, such as early and influential figures Richard Abel (1982) and Christine Harrington (1985). Minority critics of the process, like Richard Delgado (1985), and feminist critics, like Trina Grillo (1991) and others (Bryan, 1992; Fineman, 1988), also tell the Oppression Story. In general, many—although not all—writers and thinkers concerned with equality tend to interpret the mediation field through the Oppression Story and to see it as a serious threat to disadvantaged groups (see Menkel-Meadow, 1991; Fiss, 1984; Tomasic, 1982; Nader, 1979).

Now that all the stories have been presented, a clarification of one crucial term is in order. Some authors have used the term *transformation* to mean the *restructuring of social institutions* in a way that redistributes power and eliminates class privilege (see Harrington and Merry, 1988; and Dukes, 1993). It should be clear that as we use the term here—in the Transformation Story and throughout the book—transformation does *not* mean institutional restructuring in

this sense but rather *a change in the quality of conflict interaction*. When the term is used to mean institutional restructuring, it does not carry any necessary implication of qualitatively different social interaction, but rather connotes a reallocation of material benefits and burdens among individuals and groups. We see this aim as encompassed within the concept of social justice or fairness, and in the framework presented here this kind of societal restructuring is the concern of the Social Justice and Oppression Stories, not the Transformation Story. Transformation, in the sense used here, connotes change in the quality of social interaction, in and beyond conflict, although this kind of change will very likely lead to changes in social institutions as well.

Implications of the Stories: What Is and What Should Be

Although all four accounts of the mediation field are in circulation, they are rarely laid out side by side as presented here. A few observers have noted the existence of multiple accounts of the field, although they have not identified the whole range described here (for instance, Harrington and Merry, 1988). Far more commonly, however, only one of the four stories is told by a given author or speaker who believes it to be the “true” story of the field. One account describes mediation as creative problem solving, which produces settlements that satisfy needs and reduce suffering on all sides of conflicts. Another sees mediation as helping to organize and build coalitions among individuals, so as to generate greater bargaining power for the “have-nots.” A third pictures mediation as working to support empowerment and recognition and thus changing the quality of conflict interaction so as to increase human strength and understanding even within the crucible of human conflict. The fourth sees mediation as enhancing state control and applying pressure and manipulation in ways that cause greater unfairness to the already disadvantaged.

Placing all four stories side by side reveals some important points. First, it supports the view that the mediation field is diverse and pluralistic. Not all mediators follow the practices described by any one story of the process. Rather, there are different approaches to mediation practice, with different and varied impacts, and the different stories depict these different approaches. Therefore, at a factual level, none of the stories is “the true story” of the field; rather, each is probably a valid account of the practices of some number of mediators working in the field today.

At the same time, setting out all the stories together, and then looking at what we know about current mediation practice in general, makes it clear that the stories are not all equally reflective of the actual state of the field today. For example, a growing body of research tells us that despite diversity among mediators a dominant pattern of practice has emerged, and this dominant approach to mediation practice focuses on getting settlements (see Henlser, 2001; Welsh, 2001a; Kolb and Associates, 1994; Folger and Bush, 1994; Greatbatch and Dingwall, 1994; Alfini, 1991; Silbey and Merry, 1986). It gives little attention to coalition building or to transforming conflict interaction through empowerment and recognition. In short, the different stories of the field are not equally accurate as reports of the overall state of mediation practice and its impacts at present.

Although views differ, people in the mediation field itself generally see the Satisfaction Story as the most convincing report of the current state of the field. Supportive outsiders share this view, although critics tend to see the Oppression Story as more reflective of the current reality of practice. And almost everyone would agree that neither the Social Justice nor the Transformation Story reflects the “what is” of the mediation field today, although this situation has been changing in the decade since the first edition of this book was published (Folger and Bush, 2001a).

As noted earlier, however, a second insight that emerges from recounting the four stories is that there are different views of what

private and public benefits mediation practice should aim to supply. In this light, each of the four stories presents a different view of not only *what* is but also *what should be* the character of mediation practice. Regardless of which story we accept as a report of the field's present character, the future depends on which story we believe in as a prescription for what mediation should be providing, for both private parties and society. If the Satisfaction Story reflects the bulk of what is actually going on today and the Transformation Story reflects a minority voice in the field, the question remains: Does this correspond to our view of how things should be? The answer depends on how we feel about each story's premises regarding what are the most important private and public benefits (or harms) of the mediation process.

Those premises should be evident from the stories themselves. The Satisfaction Story's premise is that the most important private benefit of mediation is maximizing the satisfaction of individuals' needs or, conversely, minimizing their suffering—producing the greatest satisfaction, or the least harm, for the individuals on both (or all) sides of a conflict. This story stresses mediation's capacity to reframe conflicts as mutual problems and to find optimal solutions to those problems, because this is how the ultimate benefit is produced: needs are met and harm is avoided. In addition, the important public benefit of mediation is an increase in systemic efficiency, as mediation relieves pressures on more formal, legal institutions like courts.

Both the Social Justice and Oppression Stories are driven by another, although related, premise: the most important concern is promoting equality between individuals or, conversely, reducing inequality. This premise is still indirectly concerned with meeting needs and avoiding suffering; but the emphasis here is that needs should not be met, nor suffering alleviated, unequally, and especially that structures that permit such inequality should be altered. These two stories take opposite views of the mediation field from one

another, but only because they make different assessments of mediation's impact on equality. The Social Justice Story stresses mediation's capacity to organize individuals around common interests and concludes that the resulting coalitions produce the benefit of increasing equality. The Oppression Story stresses mediation's capacity to manipulate and exert pressure covertly and warns that such manipulation and pressure will work against the disadvantaged and risk making inequality worse.

Finally, the Transformation Story's premise is that the most important benefit of mediation is the transformation of the parties' conflict itself from a negative and destructive interaction to a positive and constructive one—which represents both a private benefit to them and a public benefit to society, as discussed in the following section. This story stresses mediation's capacity for fostering empowerment and recognition, because when these occur in conflict, the quality of the interaction is transformed from destructive to constructive.

Whatever our view of where mediation practice stands today, our view of what its future direction should be depends on which of the premises regarding mediation's private and public benefits we find most convincing. Let us assume that the present reality of mediation practice, and its impacts, are most accurately described by the Satisfaction Story. If so, and if we agree with the premise that satisfying needs and alleviating suffering should be considered the most important benefit of the process, continuing in the present direction makes good sense. If instead we adopt the premise that preventing inequality is the most important factor, we might argue for less attention in mediation practice to settlement and more to coalition building and safeguarding weaker parties against pressured settlement. In either case, we would not care much whether mediation was able to transform conflict interaction and probably would not even be aware of this when it occurred. Only the premise that conflict transformation is the most important benefit would lead us to

argue for less attention to settlement *and* protection and more focus on conflict transformation.

Implicit in this discussion is the assumption that in mediation, as in any other social process, it is difficult if not impossible to produce all the different benefits together (Bush, 1984). In practice, producing one benefit inevitably means forgoing the others to some degree, whether because of direct conflicts between the steps necessary to achieve them or simply because of limited resources. Consequently, setting our own direction as mediators, as well as setting policies that govern the field's future direction, requires a view of which of the different benefits promised by the different stories we believe is most important, both to private users of mediation and to society as a whole. Just as the stories cannot be combined into a single description of the field, they cannot be combined into a single prescription either. Rather, the stories present us with choices regarding what mediation's future should be. To explain our own choice to work within the transformative model of mediation, we offer an initial overview of why we think conflict transformation matters; then, in Chapter Two, we explain the theory of this model of mediation.

The Value of Conflict Transformation: An Initial View

The mediation process contains within it a unique potential for transforming conflict interaction and, as a result, changing the mindset of people who are involved in the process. This transformative potential stems from mediation's capacity to generate two important dynamic effects: empowerment and recognition. In simplest terms, *empowerment* means the restoration to individuals of a sense of their value and strength and their own capacity to make decisions and handle life's problems. *Recognition* means the evocation in individuals of acknowledgment, understanding, or empathy for the situation and the views of the other. When both of these processes are held central in the practice of mediation, parties are helped to trans-

form their conflict interaction—from destructive to constructive—and to experience the personal effects of such transformation.

Discovering the Potential for Empowerment and Recognition

When the use of mediation first expanded to new arenas of practice, few fully grasped either the special capacity of mediation for fostering empowerment and recognition or the immense importance of the phenomenon of conflict transformation. Nevertheless many had strong intuitions on both counts. So even though the emphasis was on mediation's capacity to help resolve disputes and effectuate settlements, there was an awareness that mediation had other important though somewhat less tangible impacts. It was as though a researcher had discovered a substance, very useful for one purpose, that she realized was capable of other valuable effects; but she had not yet determined what those other effects were or how they could be generated.

Gradually, practitioners and scholars have gained a clearer picture of the valuable effects and benefits of mediation. Increasingly, attention is being paid to the special capacities of the process to transform conflict interaction by supporting empowerment and recognition. Some have even come to realize that working with empowerment and recognition usually results in reaching settlements that the parties build, whereas focusing on settlement usually results in ignoring empowerment and recognition. So even though these different dimensions of mediation are not necessarily inconsistent, the relative emphasis given to them makes a crucial difference in what happens during a mediation session and what comes to be defined as valuable or needed.

Many in the mediation field have begun to grasp how important it is to focus on empowerment and recognition, and why. The broader significance of these phenomena is becoming clearer as dispute resolution scholars see that mediation's transformative dimensions are connected to an emerging, new vision of self and society, one based on *relational connection* and understanding rather than on

individual autonomy alone. Scholars and thinkers in many fields have begun to articulate and advocate a major shift in *moral and social vision*—from an *individualistic* to a *relational and interactive conception*. They argue that although the individualist ethic of modern Western culture was a great advance over the preceding social order, it is now possible and necessary to go still further and to achieve a full integration of individual freedom and social conscience, in a relational social order enacted through new forms of social processes and institutions.

Mediation, with its capacity for transforming conflict interaction, represents an opportunity to express this new *relational vision* in concrete form. Indeed this potential is what drew many to it in the first place. Mediation was appealing not because resolution or settlement was good in itself and conflict bad, but because of the way in which mediation allowed disputing parties to understand themselves and relate to one another through and within conflict interaction. In short, many have come to feel that empowerment and recognition—the transformative dimensions of mediation—are important in themselves as expressions of a much broader shift to a new social and moral vision. So, like the researcher who finally grasped the fuller workings and importance of her mysterious discovery, some in the mediation field have developed an appreciation for the workings and importance of mediation as a transformative process.

Since the initial writing of this book, an increasing number of people within the mediation field and in related areas of conflict practice have spoken of and supported the value of a *transformative vision* of mediation practice. Important public and private discussions and debates have occurred among theorists and practitioners about why transformative practice matters and how it differs from other approaches to mediation. These discussions have gone on at international conferences and at national and regional meetings of practitioners, as well as during mediation training sessions and within mediation centers across the country. These discussions have been useful because they have allowed many in the field to become

clearer about the benefits they believe mediation can provide, in both the short and the long term, and for both private parties and society as a whole.

In addition, funders in the conflict field have given substantial support over the past ten years to developing methods of training and assessment for transformative practice. As a result of this support, the technology of transformative work has advanced significantly since 1994. The development of practice tools has helped to clarify how empowerment and recognition can be achieved in the interaction among disputing parties during mediation sessions. This support for training has also helped to spark interest in how the core principles of the transformative framework can be carried into other third-party practice arenas. Perhaps most important, the past decade has seen an increasing number of institutional stakeholders—administrators, program managers, and organizational consultants—clarify for themselves and for their organizations why this vision of practice matters. As a result, these institutional stakeholders have designed and implemented programs that strive to enact the transformative model of mediation practice. All of these developments are clear signs that the transformative potential of mediation is receiving increasing attention and support in mediation theory, policy, and practice.

But in a larger sense, this is not simply a book about mediation. This is a book about a process that has the potential to express a new vision of social interaction. The future of mediation is a matter of general and serious concern, because it implicates the future of an emerging relational vision of social life as a whole. If the vision cannot be expressed in a concrete context such as mediation, it remains mere theory. Just as that vision suggests a possible integration of individual freedom and social conscience, mediation offers a potential means to integrate the concern for rights and justice and the concern for caring and connection. In short, mediation presents a powerful opportunity to express and realize a particular vision of human life. To help capture this opportunity and to bring that vision into reality are the larger purposes of this book.

Those in the mediation field who sense that this vision of human interaction can be realized in mediation have seen powerful glimpses of it in their practice. Cases unfold in ways that illustrate how the quality of parties' interaction is changed during mediation sessions as they achieve greater clarity about themselves and their concerns, and as they gain greater understanding of each other. Although mediation sessions in which these shifts occur are often emotional and sometimes painful, the change in the conflict interaction is valued highly by the parties—independent of whether agreement is possible on any particular set of issues being discussed. Often, by the end of such sessions, asking parties to commit to specific points of agreement may seem unnecessary or superfluous because something of greater value has occurred: the interaction between the parties has changed in ways that eclipse any particular problem or dispute. This change is valued by parties not only because it alleviates the consequences of destructive escalation in their current conflict but also because it has a positive impact on them as individuals.

I'll Never, Ever, Train You!

One case recently mediated in the U.S. Postal Service REDRESS Mediation Program illustrates in a general way the value that transformative mediation offers to parties in conflict. The REDRESS program is an internal mediation program that addresses claims of employment discrimination within this governmental agency. Other employers, public and private, are adopting similar programs. The REDRESS program, in particular, has adopted transformative mediation as its preferred model of practice. Employees who file claims of discrimination of any kind may choose to mediate their claims prior to a formal, internal investigation. Although attendance in mediation is mandatory for managers who have been named, the managers are under no obligation to make any concessions or take any corrective actions as they participate in the process. They can raise and address any issues related to employee conduct and behavior and respond as they wish to the charges of discrimination. At the

conclusion of mediation, employees who have filed charges can maintain or withdraw their claims of discrimination. If they maintain their charges, they can take their issues to the next step in the administrative process.

Mark, a letter carrier in his early thirties with ten or so years of experience, had filed a claim of discrimination against the postal service. His claim specifically targeted the actions of his immediate supervisor, Louis, and Gwen, the manager to whom Louis reported. Louis and Gwen were of the same age, fifteen or twenty years older than Mark.

After some introductory remarks by the mediator, Mark chose to speak. Addressing the mediator, he described himself as having a history of activism within the postal service; he said he had advocated for himself and other letter carriers over the years when demands on carriers' productivity had exceeded what could be fairly expected of them; he spoke of having a better knowledge than other employees of the postal guidelines that govern managerial prerogative and set standards of performance for carriers, as well as the labor contract between the postal service and the carriers' union. He said that he had always acted as a source of information for other carriers regarding the boundary between their rights and management's expectations of them.

After ten or fifteen minutes of speaking in this vein, Mark paused; Louis and Gwen, sensing that Mark had more to say, did not speak. When Mark resumed speaking, he shifted his focus away from the mediator, but still not directly toward Louis or Gwen. Now, there was an introspective quality to his demeanor, as if he were in conversation with himself. He said that he had come to feel that he wanted to be doing more with himself than driving a mail truck and delivering mail. For some months, he had been toying with the possibility of trying to become a supervisor. But although the idea of broadening

his experience and taking on more responsibility was attractive, he wasn't sure he really wanted to take this step because he felt uneasy with the prospect of exercising authority over employees, especially those with whom he had a personal history. He said he had not applied for formal training as a supervisor because being accepted as a trainee would, in a sense, commit him to becoming a boss. He knew that managers and supervisors could, if they chose to, undertake to informally train employees. Informal training, Mark felt, would allow him to experiment with a shift in his circumstances without demanding that he ultimately choose to change.

Here, Mark directed his gaze directly at Louis and continued. He said that it had been difficult for him to approach Louis with the idea of training because Louis had always "had it in for" Mark. Louis was brusque in issuing Mark instructions; he was intolerant and dismissive of input or suggestions from Mark. In fact, Mark felt that for years it had been impossible to have a two-way conversation with Louis. Mark's worst expectations about Louis were confirmed a month or so before the mediation, when he did ask Louis about the possibility of an informal training.

For the first time, rather than making reference to Louis, Mark addressed himself to Louis directly, "When I asked you about training, you told me, 'I will never, ever, under any circumstances train you to do anything.'"

Despite the fact that Mark's long narrative had taken over thirty minutes, both Louis and Gwen maintained attentive postures throughout—sometimes looking directly at Mark, sometimes gazing downward in a thoughtful way. They displayed no sign of impatience or restlessness.

After giving a summary of Mark's narrative and confirming with him that he had voiced all he wished to at that moment, the mediator turned to Louis and Gwen and invited them to

speaking. "You've been listening, following along with what Mark has been saying. Are there points either of you want to make?"

Louis chose to begin by responding to Mark's accusation about the refusal to train him. "I should probably never say 'never.' But of all the people under me, you have been about the last I would want to train. Although I have no complaints about you doing your job—you're good at that—you've made a career of opposing everything I try to do. When I reassign or change [delivery] routes, you've had objections. When I make any change in how the mail is cased [sorted], you've opposed it. When I do anything to make our operation more efficient or try to raise morale, you've been loud in objecting to it. Your attitude, which you've shared with everybody, is that there is a war between management and employees. We're the enemy, and it's been your job to do everything you can to resist us."

Louis had become visibly angry; his speech grew sharper and more intense as he continued to unfold a history of what he viewed as obstructive, antagonistic behavior on Mark's part. It seemed that in describing those instances of resistance by Mark, he was revisiting the moments in which they had occurred. He continued on in that vein for several more minutes before reaching a conclusion.

"As I said, you're good at your job. You're smart, you adjust to what comes up in doing your route, you get through it on time, and you're here when you're supposed to be here. You don't make mistakes. When you're just doing your job, you're an asset. (Here, Louis raised his voice and leaned forward, toward Mark.) But what makes you think I would want to extend myself to someone who has spent years trying to make everything I do harder by being a 'jailhouse lawyer'? What makes you think I've seen you as having potential when everything you do has made me think you just don't get it?"

After the long pause that followed, Gwen said, "Getting it' means taking what we do here seriously and wanting to do more." After a further pause, the mediator summarized all that Gwen and Louis had said, taking care to reflect the force with which Louis had at times conveyed his response to Mark.

In the aftermath of the mediator's summary, Mark addressed Louis, "Well, I've been thinking of doing more. That's why I came to you."

Louis appeared thoughtful, as if weighing Mark's words. He said, "I'm not sure you understand what 'more' really means."

Now, Louis, and sometimes Gwen, delineated what, from experience, they felt the role of being a manager in the postal service demanded. As they spoke at length, Mark leaned back in his chair in a stance of listening. More than once, he said, "I think I could do that." In response to this, Louis said, "Well, you'd have to do more," and he went on to further depict the posture he felt being an effective manager required.

Gwen told of her own trajectory: how she had determined that she wanted to try to become a supervisor; how hungry she had been to acquire a knowledge of postal operations; how she had, of her own initiative, sought out and read the manuals that described those various complex operations.

Louis said that undertaking to become a supervisor shouldn't be easy. Mark said that he would like to try. Louis said, "I want you to apply for formal training. Don't worry about being accepted. Nobody is the first time. But putting together the information and completing the form really takes time and it's really hard. I want to see you do that. I'll even help you if you want me to." Louis paused for a moment, then continued, "If you do that, I'll start training you within three months." Mark agreed that he would apply for formal training.

The mediator stated the understanding that the three had reached and then asked if they wanted to keep their agreement an informal one or if they preferred to capture it in writing,

in contractual form. Gwen and Louis said it was up to Mark. Mark leaned back in his chair, folded his arms, and looked downward. After some moments had passed, he made eye contact with Louis and said, "I'll just drop the complaint." Gwen said, "You did the right thing," and she and Louis each extended their hand across the table.

Louis then said, his voice full of emotion, "It will be a privilege to train you." He laughed and went on, "And fun too, because I'm going to watch you start to see the world the way I do."

Following the Transformative Route Through a Conflict

This mediation "closed" a discrimination case that arose in the U.S. Postal Service. It ended a conflict that had surfaced as a charge of discrimination by an employee against his manager. From a purely case management point of view, the case "settled"—it did not escalate into a formal administrative hearing or a court battle. But in another sense, the closure of this case was a minor part of what this mediation accomplished. What happened during the mediation was a powerful shift in interaction that could be felt by the parties and was supported by the mediator as the session unfolded. The interaction between the employee and his managers shifted from being closed, defensive, and self-absorbed to being more open, trusting, and acknowledging. This shift, although at times difficult and challenging for the parties, allowed for an exchange of perceptions, feelings, and desires as they clarified what was important to them and as they gained a more accurate understanding of each other's perspectives.

Mark, Louis, and Gwen were all able to clarify for themselves and to each other their own views about what transpired between them and how they saw the roles and responsibilities of management. Mark indicated that he saw himself as an advocate for employees, protecting them from undue pressure or infringement by management. He clarified how he viewed these actions—actions

he knew Louis and Gwen saw as objectionable to some degree. He suggested that in stepping beyond his letter carrier role he was demonstrating that he had the capability to accept greater responsibility. Mark also expressed his desire to move up in the organization and explained his fears about how a possible promotion might affect his relationships with his coworkers. He clarified that his request for informal training was linked to his concerns about preserving these relationships. He felt that signing up for formal training would make his fellow employees aware of his intentions and thereby jeopardize his coworker relationships. This was of particular concern to Mark because he had no assurance that taking the formal training would definitely lead to a management position. Mark's ability to clarify these views for himself and to Louis and Gwen throughout this session contributed significantly to opening up and changing the escalating conflict interaction that had led to Mark's formal charge of discrimination.

Louis and Gwen also contributed to the shift in conflict interaction as they articulated their concerns about Mark's behavior and indicated their views about what effective management entails. They were able to explain why they saw Mark's efforts to support employees as obstructionist and unsupportive of the organization. For them, Mark's moves to protect employees were seen as blocks to needed change and development within the postal service. Louis also explicitly acknowledged the quality of Mark's competent performance in his current role as a letter carrier, and both Louis and Gwen clarified what "doing more" as a manager meant to them. They were, in a way, giving Mark concrete and useful information about how he could reach his goal of becoming a manager. They were also revealing to Mark how they saw themselves and their work, and what it meant to them—something they assumed he had never understood before.

Expressing these important and revealing views opened and deepened the discussion. Although the change in interaction created discomfort and heated argument, it allowed for the exchange

of important information that was not openly and clearly discussed in their prior workplace interactions. All of the parties became clearer about their own views through the open expression of them, and all found a voice to express their sentiments to each other in a direct and revealing way.

The expression of each person's views was accompanied by increasing acknowledgment of each other. The willingness to listen and take in what each was saying conveyed an intention to hear and think about the other's point of view. In the face of the personally challenging comments that were being made, this willingness to hear the other's views was significant in reshaping the interaction. Beyond being attentive to each other, the parties expressed an understanding of each other's experiences and views. Louis acknowledged the quality of Mark's letter carrier work and noted his efforts to extend himself further, while still clarifying that he held a very different sense of how aspiring managers should act. Louis also acknowledged Mark's concern about taking the risk of formal training and tried to allay his fears about accepting this option as a route to a managerial position. Sensing that Mark felt unsure about his abilities to succeed at the training, he offered to help Mark start this training process and assured him that most people don't make the cut in their initial attempt. All of these comments showed understanding and concern for what Mark was thinking and feeling.

Similarly, Mark was willing to consider Louis and Gwen's views on what is entailed in preparing for and enacting the management role. Mark indicated a willingness and ability to do what these managers were suggesting—including the option of applying for formal training. The support that Mark received from Louis and Gwen as this session unfolded made him less concerned about losing the close relationships he had built with his current coworkers. The connection Mark was developing with his managers in mediation helped him to want to take the risk of applying for the formal training. He now was developing personal support that mattered as much as the camaraderie he had with his coworkers.

Although this conflict came to mediation as a charge of discrimination, the discussion that occurred as the interaction unfolded soon turned to a wide range of important issues that had more to do with clarifying and understanding expectations and professional objectives than it did with charges of inequitable treatment or favoritism. The shift in interaction that occurred in this session brought forth the parties' capacities to articulate their own views and to stand up for themselves as an employee or as managers. The ability to clearly and coherently explain themselves laid the groundwork for them to step beyond their own defensive and self-absorbed postures and to make the decisions they wanted to make. For Mark, it meant being able to try out the managerial training role. For Louis and Gwen, it meant supporting Mark in his efforts to be successful in that attempt.

All of these people knew, at some level, that during this session they had made choices—about revealing their desires and about acknowledging each other's views—that had powerful reparative effects on their working relationship. They were aware that they themselves had made statements and decisions that profoundly changed their interaction—interaction that easily could have continued to escalate. Failure to change their interaction in this way through this mediation could have led to continued frustration for Mark, a waste of his potential managerial talent, continued strained and threatening communication, and perhaps an increasingly tense work environment for the entire unit in which these employees worked. But instead, as a result of this experience of their own power to redirect events, they left the session with a firmer connection with each other and a greater awareness of their own potential resources—resources they could draw from when confronted with other workplace conflicts.

The Value of Conflict Transformation

Mediators who focus on the transformative potential of mediation often experience sessions much like this one. They see the turns that this conflict took not as serendipitous events but as the result of a

focus on opportunities for empowerment and recognition that arise as conflict interaction unfolds. What this case suggests (and others like it, not only in the workplace but in many other contexts) is that an approach to practice is possible that realizes the transformative potential of the mediation process. But taking this approach requires a sustained focus on mediation's capacity to support conflict transformation. Transformative mediators concentrate on empowering parties to define issues and decide settlement terms for themselves, and on helping parties to better understand one another's perspectives. In keeping this focus, transformative mediators help parties recognize and exploit the opportunities for balancing strength of self and connection to others. When people can talk through difficult issues—making clear choices with greater understanding of those with whom they differ or disagree—they learn how to live in a world where difference is inevitable. They move outside themselves in attempting to understand and connect with others while remaining true to their own decisions and choices.

The strongest reason for believing that the Transformation Story should guide mediation practice is the story's underlying premise: that the benefit of conflict transformation—that is, changing the quality of conflict interaction—is more valuable than the other benefits that mediation can be used to produce, even though those other benefits are themselves important. The workplace mediation just described was intended to illustrate concretely why this view makes sense. At a more general level, it makes sense to see conflict transformation as the most important benefit of mediation both because of the character of the benefit itself and because of mediation's special capacity to achieve it.

Conflict transformation has a unique character compared with the benefits promised by the other stories of the mediation process, both private and public. Obtaining satisfying and fair outcomes is undoubtedly important to parties in conflict, as is minimizing the economic and emotional cost of doing so. However, the importance of these benefits rests on the assumption that people are separate

beings who are affected by but not essentially connected to each other, so that meeting needs can be accomplished without necessarily changing the quality of the interaction itself. By contrast, the importance of conflict transformation rests on the assumption that people are, by their essential nature, both separate and connected beings, who are distressed whenever negative interaction between them continues, even if their separate needs get satisfied.

Some thinkers, including communitarian scholars, describe this quality as the inherent social nature of human beings. Others, including feminist and *dialogic* moral philosophers, describe it as the inherent moral nature of human beings—with the term *moral* connoting sensitivity to the claims of both self and other. Both kinds of thinkers are using different terms to describe the same quality of human nature. They and others, who follow what is generally known today as a *relational account of human nature and society*, recognize this dual consciousness, of simultaneous separateness and connection, as inherent in human beings. As will be discussed in Chapter Two, there is considerable evidence that the desire to change negative interaction is a primary motivator for parties in dealing with conflict, precisely because of this dual quality of human nature. In this light, the benefit of conflict transformation responds to the parties' inherent sense of *social or moral connection*, a basic part of their nature as human beings that is not addressed by the other benefits of mediation. Conflict transformation is therefore a different kind of benefit than those of the other stories of mediation.

Regarding public benefits, there is also a qualitative difference between the benefit of conflict transformation and the benefits of the Satisfaction and Social Justice stories. In a society where private needs are met and unfairness is prevented when conflicts occur, it is logical to assume that public benefits like increased productivity, freedom, equality, and order will follow. However, the attainment of those public benefits is likely to be short-lived if negative conflict interaction itself is not addressed—because then conflict

will probably recur or even worsen, undermining the public benefits supposedly achieved. To put it differently, satisfying needs and reducing suffering and unfairness can make people temporarily better off, but solved problems are quickly replaced by new ones and justice done is quickly undone. Therefore people are made better off in one instance only to be made worse off in the one that follows, because nothing has changed fundamentally in the way people interact with each other, especially when conflict arises. But when parties are helped to change the quality of conflict interaction itself, so that when conflict arises people are more able to respond with self-confidence and empathy, it is possible to imagine fuller and fairer satisfaction of needs becoming a permanent condition. In this respect, the goal of transformation is unique because it carries the other goals along in its train.

Not only is the benefit of conflict transformation uniquely important, it is also a benefit that the mediation process is uniquely capable of achieving. This is an additional reason to see transformation as the primary benefit that mediation can offer to private parties and to the society. Other dispute resolution processes, like adjudication or arbitration, can probably do as good a job as mediation, or even better, in satisfying needs and ensuring fairness. But by the very nature of their operation, those other processes are far less capable than mediation (if at all) of fostering in disputing parties greater confidence and understanding, and thus producing conflict transformation. Mediation's capacity for doing so, by generating empowerment and recognition, is unique among third-party processes (Bush, 1989). Adjudication and arbitration both disempower disputants in differing degrees, by taking control of outcome out of the parties' hands and by necessitating reliance on professional representatives. As for fostering recognition, at best these processes ignore it; at worst, they destroy even the possibility of recognition, by allowing or encouraging varying degrees of adversariness. In short, even if the benefits of satisfaction and fairness are

important, there are other and perhaps better means to obtain them; but if conflict transformation is important, only one dispute resolution process is likely to produce it: mediation. It therefore makes sense to see transformation as the most important benefit of mediation, because this valued end is one that mediation alone can achieve.

Many people in the field share this view of mediation's ultimate value, though they may not label it as a transformative view. This was exemplified by a conversation we had at a workshop with a colleague, a veteran mediator and program administrator. "What is so impressive about mediation," she said, "is that it assumes people are competent—that they have the capacity to handle their own problems." And, we added, it also assumes they have the capacity to give consideration to others. People can work things out for themselves, and they can extend themselves to each other. They also have the desire at some level to do both of these. "And even though they may not do these things automatically," our colleague pointed out, "if you create the right environment and give them some support, which is what mediation can uniquely do, people often will rise to the occasion and fulfill all these potentials. And when this happens, the conflict interaction changes and ultimately that changes the whole social environment." At another workshop, one of the participants put it even more simply: "It's obvious why this makes sense," he said. "Clear, confident, connected people don't hurt themselves or each other."

Whether or not the label was used, the point is clear: conflict transformation matters, and mediation is unique among third-party processes in its capacity to be transformative. It is this transformative power that makes mediation so important and worthwhile, not simply its usefulness in satisfying needs. This is the message the Transformation Story conveys: not that satisfaction and suffering, justice and injustice, are unimportant—but that conflict transformation, and the resulting achievement of the inherent human potential for social and moral connection, are even more important.

And mediation has a unique capacity for producing this benefit, for engendering conflict transformation.

This abbreviated account of why conflict transformation matters, both to disputing parties and to society as a whole, sets the stage for the following chapter, which offers a thorough introduction to the theory and practice of mediation as a conflict transformation process.