
Review Essay

Striving to Fulfill the Promise: *The Purple House Conversations* and the Practice of Transformative Mediation

Ran Kuttner

Robert A. Baruch Bush and Joseph P. Folger. 2005. *The Promise of Mediation: The Transformative Approach to Conflict*, new and rev. edn. San Francisco: Jossey-Bass, 2005. 304 pages. \$35 (hardcover) ISBN: 0787974838.

Sally Ganong Pope, producer. *The "Purple" House Conversations: A Demonstration of Transformative Mediation in Action*. Grand Forks, ND: The Institute for the Study of Conflict Transformation, 2003. 2 hours, 45 minutes. \$325 (VHS and DVD) ISBN 0-9709492-1-9.

Introduction

In early 2005, Robert A. Baruch Bush and Joseph Folger released a new and revised edition of their important book *The Promise of Mediation*, first published in 1994. In the new edition, they added a transcript of *The Purple House Mediation*, a video documenting a mediation session, accompanied with commentaries. In so doing, Bush and Folger have taken additional steps to put the transformative theory of mediation into practice. In this essay, I use *The Purple House Mediation* as a lens through which to examine some of the underpinnings of the transformative approach and the relationship between theories of mediation and the actual practice of mediation.

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The Importance of Worldviews, Stories, and Orientations

In 1994, Robert A. Baruch Bush and Joseph P. Folger published *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*, a book in which they articulated a new, systematic view of mediation (Bush and Folger 1994). In 2005, they released a new and revised edition.

In the first edition of *The Promise of Mediation*, the authors expressed the concern that traditional views of mediation, which see it as a mechanism designed to satisfy the interests of each of the parties and in this way solve their dispute, are too limiting. “Substantial evidence today suggests,” wrote Bush and Folger in 1994, “that mediation practice still focuses largely on settlement, perhaps even more so than in the early years of the movement” (4). According to Bush and Folger, mediation incorporates a promise, a potential for “changing people, not just situations,” to transform participants’ perspectives more profoundly, but the transformative potential of mediation receives far too little attention today in mediation theory, policy, and practice” (1994: 4).

Transformation is not a particularly startling idea in itself: any given mediation session, holds the potential for participants to learn something about themselves in the process. However, Bush and Folger gave “learning about oneself” a broader meaning as the “transformative approach arises from particular philosophical foundations of what it means to be human and also articulates a vision of personal and social transformation to “a new and higher vision of human life” (1994: 4).

Bush and Folger assert that it is important to acknowledge and understand the underlying philosophies that govern not just the transformative approach but that underlie all mediation approaches. They argue that modern Western culture and its underlying values are governed by a view and philosophy of human nature that emphasizes separateness, autonomy, individuality, and self-interestedness, and such human capacities as self-knowledge, self-determination, self-assertion, self-awareness, and deliberation. According to this view, “individuality — the capacity of each individual to define and experience the goodness of life in his or her own terms — is what makes it possible for life’s potential to be fully utilized” (Bush and Folger 1994: 238). Consequently, preoccupation with self and self-satisfaction are the individual’s main concern. Bush and Folger’s vision includes the transformation of this worldview and they argue that such a shift is already taking place in current Western thought. “Scholars and thinkers in many fields,” they wrote, “have begun to articulate and advocate a major shift in moral and political vision — a paradigm shift — from an individualistic to relational conceptions” (3).

However, Bush and Folger (1994) believe that the “individualistic worldview,” as they call it, still governs our culture. They also believe that

common understandings of what mediation is — the mediation “story” — are shaped by this individualistic worldview. They call this story “the satisfaction story.” They wrote, “The Satisfaction Story captures the way most people in the field think about the practice of mediation today” (33). This story views mediation as a powerful tool to satisfy the needs and interests of separately defined individuals, needs and interests that can be addressed through collaborative, integrative problem solving rather than via adversarial, distributive bargaining and thereby produce creative, “win-win” outcomes.

From this story comes the dominant approach to the practice of mediation, which they call “The Problem Solving Orientation.” “The problem solving orientation,” they wrote, “predisposes people to accept the Satisfaction Story’s account of what mediation should be expected to accomplish. Underlying everything — the approach to practice, the view of mediation’s objectives, and the account that describes both — is the problem-solving orientation to conflict” (Bush and Folger 1994: 59).

The individualistic worldview, however, misses the fullness and complexity of the human situation because “human nature includes *both* the capacity for self-interestedness *and* the capacity for responsiveness to others” (Bush and Folger 1994: 242). Mediation holds the potential to help parties bring these conflicting capacities into the room, thus helping to transform their “individualistic worldview” to what the authors call a “relational worldview.” Individuals are thus “seen as both separate and connected, both individuated and similar . . . to some degree autonomous, self-aware, and self-interested but also to some degree connected, sensitive, and responsive to others” (242).

The relational worldview balances and integrates the quest for autonomy with the quest for harmony, that is, the inclination to emphasize “the survival and welfare of some collective entity” (Bush and Folger 1994: 240). The mediator, argued Bush and Folger, has the capacity to help balance these opposing tendencies and enable the parties to see how separation and connectedness relate to each other. The transformation they describe is a transformation in disputants’ abilities to experience both their separateness and connectedness.

In the second edition, Bush and Folger (2005) clarify their declared aim of “changing people, not just situations” and change their emphasis from people to the actual conflict interaction. “It is a communication-based rather than a psychological approach to practice” (233). “The mediator’s focus is never on changing the parties,” they claim (234). It is also not a form of therapy and its objectives can be distinguished in their view from the objectives of different forms of therapy (226). They believe that it is the role of the mediator to help parties reverse the downward and destructive, alienating and demonizing “negative conflict spiral” (50). Conflict, write the authors in the second edition diagnosing what

happens to parties' interaction when conflict arises, "alienates them [the parties] from their sense of their own strength and their sense of connection to others, thereby disrupting and undermining the interaction between them as human beings" (46). The parties' abilities to exercise their relational nature — experiencing both separateness and connectedness, strength of self, and responsiveness to others — are disrupted.

"The transformative theory asserts that when these capacities are activated, the conflict spiral can reverse and interaction can regenerate, even without the presence of a mediator as an intervener" (Bush and Folger 2005: 54). The mediator's role in this process, thus understood, is to help parties realize the strength of self and responsiveness to others, and to manage and express these capacities constructively. This, according to the "transformation story," is what the mediator is needed for.

The relational worldview that Bush and Folger describe serves as the philosophical foundation from which stems the transformation story a view of mediation that shapes the transformative approach to mediation. Stressing the importance of both strength of self and connectedness to others, the transformative approach focuses on two central dimensions: empowerment and recognition. According to this approach, the mediator should *empower* the disputants by restoring to individuals "a sense of their value and strength and their own capacity to make decisions and handle life's problems" (2005: 22). This means, as they clarify in the second edition, a shift "from weakness to strength." "Because of its informality and consensuality," they write, "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. Furthermore, mediation can support the parties' exercise of self-determination in deciding how, or even whether, to settle a dispute, and it can help parties mobilize their own resources to address problems and achieve their goals" (2005: 13).

Empowerment, the authors claim, will generate *recognition*, a shift from self-absorption to responsiveness to others.¹ A disputant may thus feel "secure enough to stop thinking exclusively about his own situation and to focus to some degree on what the other party is going through . . . to reflect about, consider, and acknowledge in some way the situation of the other party, not just as a strategy for helping himself but out of genuine appreciation of the other's human predicament" (Bush and Folger 1994: 89).

Mediation, the authors claim, has the capacity to express the relational worldview in concrete form, enabling the shift from an individualistic, autonomous understanding of oneself to a relational and interactive conception of self. "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” (Bush and Folger 2005: 24). Empowerment and recognition are thus understood to be important in and of themselves, expressing a much broader vision and view of mediation, both on the personal and the social levels.

Clarifying Goals, Setting New Challenges

In the second edition of *The Promise of Mediation*, the authors diagnose, as noted earlier, what happens to parties’ interaction when conflict arises. The transformative approach thus seeks to provide a remedial, transformational framework for addressing the conflict’s root causes, not its symptoms. “Our intentions in this new and revised edition,” Bush and Folger (2004: 3) write, “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.”

These challenges become especially significant when a relational worldview and its transformational aspects are at stake. As Leonard Greenhalgh and Roy Lewicki (2003: 27–28) note: although “the theoretical perspective that undergirds knowledge of negotiation has advanced considerably,” the teaching of negotiation “was a convenient simplification, because considering ‘the party’ as a single generic actor allowed scholars to apply all of their individualistically oriented theory to the intra-group, inter-group, intra-organizational, and international levels.”

Bush and Folger present an “approach” rather than a “model” or set of techniques. Dorothy Della Noce (2001: 71), a key transformative mediation theoretician and instructor, wrote: “Mediators note that the transformative framework does not appear to rely on stage models, and for mediators who are accustomed to thinking of the mediation process as a series of structured stages, this feels something like being lost in the woods without a map.” Finding the map, suggest Bush and Folger in both editions of the book, involves more than merely learning the right techniques; it requires that the mediator reflect on his or her own worldview and construct relational premises. Their approach, I believe, offers mediators an opportunity to transform themselves by making their own choices in the mediation room while showing recognition and being responsive to parties’ relational sense of self. This sense of self is to some degree separate (and thus in need of empowerment), but also, to some degree, connected (and thus in need of showing recognition).

Efforts to further define and clarify the transformative approach and its implications for the practical work of the mediator have been made in the decade since the publication of the first edition of *The Promise of Mediation*. (See Della Noce 2004 for a summary of the development

of transformative theory and practice since the publication of the first edition. Additional data may be found on the website of the Institute for the Study of Conflict Transformation at <http://www.transformativemediation.org>.)

These efforts included the 1996 publication of an article by Bush and Folger in which they suggested a more concrete set of guiding premises for helping the mediator “move from the more theoretical and conceptual framework to the practical level” (Bush and Folger 1996: 263, 265). In 1999, the Institute for the Study of Conflict Transformation was founded “to study and promote understanding of conflict and intervention processes from the transformative perspective” (Institute for Conflict Transformation 1999), and in 2001, the institute published a collection of essays entitled “Designing Mediation: Approaches to Training and Practice within a Transformative Framework” (Folger and Bush 2001). The first international conference on transformative mediation took place in November 2004 and the second edition of *The Promise of Mediation* was released in early 2005.

Applied Theory: The Purple House Conversations

“Bush and Folger’s book,” wrote Carrie Menkel-Meadow (1995: 236), “though an interesting effort, exposes the difficulties of articulating what ‘transformative mediation’ should be.” In the second edition of the book, Bush and Folger have attempted to respond to what they see as widespread misunderstanding of the transformative approach, calling one chapter “Myths and Misconceptions about Transformative Mediation” (Bush and Folger 2004: 216). In the second edition, they also include a transcript of a transformative mediation session that had been filmed and released on video as *The Purple House Conversations* in 2003.²

The video was produced by Sally Ganong Pope, a leading figure within the transformative mediation movement, for the Institute for the Study of Conflict Transformation. On the video, the mediation is broken down into six segments. Each segment is followed by a filmed conversation between Bush and Pope, in which they discuss the decisions made by Bush as mediator and attempt to show how his decisions connect to transformative mediation theory. (The video runs two hours and forty-five minutes; the conversational segments take up one-and-a-half hours.) The full transcript of the mediation is presented in the second edition of the book in two chapters as well as six segments, each followed by commentaries by the authors.

The title of these two transcript and commentary chapters, “Putting Theory into Practice,” makes Bush and Folger’s (2004: 216) goal quite plain: they seek to close the gap between theory and practice, a gap that “left sufficient room for a number of significant misunderstandings and myths to circulate about the nature, purpose, and uses of transformative mediation,”

misunderstandings that “undermined useful discussions of the strengths and limitations of this approach to practice (2005: 216).” “In short,” they write, “it turns out that a picture is indeed worth a thousand words when it comes to getting a real grasp of what transformative mediation entails in practice” (131).

Indeed, I think Bush and Folger achieve their goal — the video and the transcript do enable viewers and readers to gain a real and profound understanding of both the theory and practice of transformative mediation. In this essay, I will review how these challenges are met.

The Purple House Conversations is a simulation based on a real mediation, with professional actresses playing the parts of the real disputants. The performers were given only the basic facts prior to the simulation, which was unrehearsed. The mediator did not know in advance what the parties would say or do. The video depicts a “difficult contract dispute” between Elizabeth, an African American in her forties who has recently purchased and moved into a home in an upscale community, and the development’s homeowner association (Bush and Folger 2005: 4). The association is represented by Julie, the chair of the architectural control committee, a white woman in her forties, and an eight-year resident of the development. Elizabeth is accompanied to the mediation by her daughter Bernice, a young art student. The conflict arose when Elizabeth and Bernice repainted the house, choosing a color (purple) that the architectural control committee found unacceptable, claiming that it violates a covenant in the development’s standard homeowner contract.

Openings

The values of the transformative approach are embedded and made manifest by the way in which Bush begins the session.³ After everyone is introduced, he asks the parties if they want him to say a few words on “what it means to come to a mediation” or if the fact that they spoke about it on the phone before the meeting is enough. “What’s your view on that?” he asks, underscoring the mediator’s obligation in transformative mediation to empower the parties (Bush and Folger 2005: 134). By opening with that question, which is unusual because many mediators simply begin with an opening statement, Bush declares that in *this* process it is for the parties to make the choices, encouraging them to start right then. It is an “opening conversation” rather than an “opening statement,” emphasizing the importance of interaction, leaving the choice to the parties, just as it will be their choice to shape the mediation process. Because the third party does not pose any external constraints, he empowers the parties and encourages them to use their own judgment. This is “what it means to come to a mediation” according to the transformative approach.

Bush repeats this move straight away: instead of imposing guidelines, he asks the parties if they would like to suggest guidelines for the mediation. In the case of the purple house, they do not, but his point is made: you are the key players and this is your show.

When asked by the parties to elaborate on the process, Bush chooses to describe the process as a “conversation between all of you about the concerns that you have” (Bush and Folger 2005: 134). He draws an imaginary line from one party to the other and back, indicating that the conversation’s space does not pass through the mediator. He is there to facilitate, in the strictest sense of the word. “My role,” Bush continues, “is to be helpful to you in having the most productive conversation you could have . . . ” (134). He seems to be saying that the focus, perhaps even the goal, is the parties’ productive conversation.

What does “productive conversation” mean? Can empowerment of the parties be a goal, an end in itself? Empowerment, as mentioned, may enable the parties to recognize each other. “[A]nd also part of what can happen in the conversation is for you to . . . review and assess how you see one another and how you see one another’s situation and positions” (Bush and Folger 2005: 134).

However, are empowerment and recognition enough to nurture productive conversations? Do these conditions respond to Julie’s restless cry “I want it resolved. That’s what I want”?

In an effort to respond to some of the misconceptions of the first book that they believed their critics held, Bush and Folger (2004: 217) addressed the misconception that “[t]ransformative mediation facilitates communication, but parties’ disputes tend not to get resolved.” They assert that the goal of the transformative mediator is to support the possible transformation of the parties’ conflict interaction by fostering empowerment and recognition. The focus of the mediation should be on the parties’ *own* self-knowledge and self-determination, and the mediator’s role is, according to that approach, to support them in that, “rather than to shape any particular settlement, impose common ground, or encourage unsupported closure of issues” (217). That does not mean, however, that resolutions and agreements will not be achieved. On the contrary — the authors state that research conducted on the U.S. Postal Service (the Resolve Employment Disputes Reach Equitable Solutions Swiftly [REDRESS] program), where the transformative model has been implemented, shows that the closure rates for transformative mediation sessions were higher than usual rates (Nabatchi and Bingham 2001).⁴ Of the 20,000 cases that were mediated in the first two years of the program, for example, 80 percent of the cases closed (Hallberlin 2001). The high rates of closure found in this program suggest that transformative mediation provides parties with a process that addresses key concerns, whether or not the cases settle in a more traditional sense (Bush and Folger 2005: 218). Finding ways to get to closure can

be especially important when a continuing relationship is at stake, as is the case in a large percentage of the U.S.P.S. REDRESS cases.

But resolution is not the only possible positive outcome of a mediation session, the authors claim, because the mediation is only one event in a larger sequence of conflict interactions. Therefore, "in many cases, not all the work the parties need to accomplish can be done during the intervention," so "small steps count" and empowering the parties includes empowering them to take the process as far as they wish (Bush and Folger 2005: 275). "Outcomes that are reached as a result of party shifts toward greater clarity, confidence, openness, and understanding," Bush and Folger argue, "are likely to have more meaning and significance for parties than outcomes generated by mediator directiveness, however well-meant" (71). Shifts toward empowerment and recognition are steps — sometimes small ones, sometimes larger ones — that count, and that is why Bush responds to Julie's cry ("I want it resolved, that's what I want") by saying "OK, OK, and clearly that's one . . . place that those decisions [that they face] can lead to, Julie, based upon what decisions you make along the way" (135).

The parties will also decide if this style of mediation suits them. Bush ends this part of the conversation by saying, "that's sort of a general way of describing the mediation process, at least as I practice it," and then asks, "so does it seem like it might be helpful to you to proceed as we spoke about before?" (Bush and Folger 2004: 135). The parties may choose to go to another mediator with a different orientation and understanding of what it means to come to a mediation.⁵

The mediator then leaves the stage to the parties. Even when the parties' presentation of the case turns into a high-volume quarrel, Bush chooses to remain silent and to let the parties control the conversation. Addressing Julie directly, Elizabeth goes beyond the legal issue ("we are well within our rights" [2005: 138] to choose whatever color they want for their house) to what she thinks is the true reason for Julie's "personal vendetta": "You are a racist," she announces, "That's what it is really all about" (2005: 138, 147).

When Bush does intervene, he usually does so by "mirroring," or summarizing the points made by each party, highlighting the differences and, in the process, giving legitimacy to those differences, and then returns the conversation to the control of the parties. Bush does not determine which issues need to be dealt with or even bring up a specific issue. When Elizabeth asks, "Where do we go from here?" Bush brings that question back to the parties: "Well, that's sort of what I was going to ask you . . . I don't know. What do you think?" (Bush and Folger 2004: 152). One of the parties (Julie) decides to take it from there. But will this always work? Are these parties more inclined than most to participate in this way? What if the parties will not meet the challenge of empowerment so easily and demand

that the mediator play a more active role? What would a transformative mediator do under those circumstances?

Later in the mediation, when Bush repeats, “it’s all up to you,” Elizabeth says, “You tell us. You are the mediator. . . . What do you do when you meet a point like this?” (Bush and Folger 2005: 160). At this point Bush decides that it is time to challenge the parties and move to the next phase. He asks them if they have something to say to the other party that might change the way the other party sees things: “A suggestion I can make — is there anything that either of you wants to say, or could say to the other, that you think maybe they haven’t thought of, that might change their view of the situation?” (161). This challenge requires the parties to show recognition in order for the conversation to be productive. Although he does intervene, Bush does so to encourage a direct conversation, not giving up on the potential to engage in a dialogue. Once again, Julie takes the initiative by addressing Elizabeth, but the earlier question still applies: what would the mediator do if the parties were less willing to cooperate with his suggestions?

Julie admits that there is nothing in the covenant that explicitly forbids particular colors and that the objection to purple is based on the committee’s interpretation. The conflict keeps unfolding as Elizabeth raises another issue at that point, noting that there is no racial diversity on the board or the committee.

The Relationality of Transformative Mediation

When it comes to the mediator-party’s relational aspect something is missing from the transformative approach. The transformative emphasis is on the relatedness between “the one” and “the other” in its view of human tendencies (self-interestedness and connectedness), worldviews (individualistic and organic or harmonistic), as well as in its view of parties in mediation (Party A and Party B), who are to some degree separated (from each other) and to some degree connected. It is this tension they want to bring out in the room, but “the one” and “the other” — when it comes to human relations — always remain Party A and Party B, while the mediator-parties relationality, it seems, is left aside.

“Unlike the two worldviews described before [individualist and organic],” Bush and Folger (2004: 244) write, “the relational worldview cannot be linked to a familiar philosophy. Because it represents an outlook that is just emerging, it has no widely recognized character or ‘name’ as yet.” Additional exploration of the philosophical foundations of the relational worldview may shed light on the phenomenon of mediator-party relationality.

Bush and Folger argue that a “relational worldview” is indeed emerging in various fields. In clinical psychology, for example, a relational school that places new emphasis on the relationship between the clinician and the patient has emerged. But literature in relational psychology challenges

furthermore the individualistic premises that Bush and Folger also criticize.⁶

Stephen Mitchell (1993), a leading theoretician of relational psychology, describes some of its principles as developed by psychoanalyst Jessica Benjamin:

Because the experience of the self as subject can be arrived at only through recognition by another (who is experienced as a subject in his or her own right), the development of subjectivity is inextricably bound up with the appreciation of the objectivity of others. Thus . . . intrapsychic and interpersonal processes are intertwined, and the enrichment of the analysand's subjectivity is arrived at through the establishment of a "shared reality" (34).

According to the relational worldview as described in these writings, the separate self can no longer be regarded separately from what Mitchell calls the "web of interlocks" (Mitchell 1993) within which he or she takes part. Therefore, dismissing any interpersonal interaction within the mediation room — including the interaction between the mediator and the parties — as disconnected from the parties' intrapersonal empowerment could be seen as a withdrawal to *nonrelational* foundations.

"The leading revolutionary voices in theorizing about what the patient needs are sometimes understood as advocating a shift in understanding the therapeutic action of psychoanalysis from an emphasis on insight as curative to an emphasis on the analytic relationship as curative" (Mitchell 1993: 39) (Of course, the emphasis in transformative mediation is not on "curative" but "transformative" action.)

Transformative mediation and relational psychoanalysis thus have this in common: their focus is on the interaction itself and its effect on people's experience of their relational nature. Although the psychological setting is completely different, it is important to understand that the analytical relation between clinician and patient is central to the healing process. "The patient's dynamic and life history do not have an independent reality that can be uncovered or grasped from the outside — they exist in a state of complex potentiality and are actually cocreated by the observer's participation. This is a profoundly different view of the analytic process," writes Mitchell (1993: 59).⁷

When these concepts are applied to mediation, however, I conclude that a mediator with a relational orientation should consider the mediator-party relationship in a new and revolutionary way as well. "In saying that disputants own both process and outcome," writes Lisa Parola Gaynier (2003: 193), "Bush and Folger do not acknowledge the critical role of the mediator. . . . It is rather naïve for mediators to think they do not own a piece of the dynamic process of interaction."

Thus, one could argue that Bush and Folger's emphasis on the parties' autonomy, self-determination, and personal perspective-taking actually reflects the kind of individualistic worldview that Bush and Folger seek to transform. Menkel-Meadow's (1995: 237) questions — "Why is individual growth process privileged over other processes? In mediation, isn't relationship process as important as individual process?" — are left unanswered. Even if each party incorporates the other party's perspective, it seems that, at the end of the day, it is each party's own perspective-taking that is highly regarded, even when the parties ask the mediator for something else.⁸

To my ears, the phrase "this is your choice" is stated too often in the purple house conversations, both in the mediation as well as in the commentaries. Bush emphasizes again and again his separateness from the situation. I wonder why Bush chooses to celebrate the separateness of the mediator and the parties, casting aside the relational tension that, according to the relational worldview that he and Joseph Folger articulate in the book, characterizes every human interaction. Why is the party-mediator relationship excluded? Why is the mediator-party relationship not used in order to help parties realize in the mediation room what relational premises are all about?

A possible answer may derive from the context in which *The Promise of Mediation* was formulated: as a response and a reaction to those models of mediation in which the mediator takes a dominant ("evaluative" or "directive") role, a role to which Bush and Folger object. The transformative approach may thus be viewed as an antithesis, distancing and separating itself from "the problem-solving orientation." By taking a dialectically opposing stance, Bush and Folger manifest not only their separateness from the approach that they criticize but their connectedness to it. Their approach, which stresses mediator-parties' separateness, may have an effect on the formation of party-party relationality in latter stages, amplifying — at the end of the day — well-entrenched values of individuality.

From Weakness to Strength, from Self-Absorption to Where?

One could argue that the purple house case is a relatively simple one, and that is why the mediator's methods were adequate. But in a more complex or difficult case, some mediators might argue, the mediator would need to do more. Proponents of the transformative approach would answer that very often that is just what disputants need, but most mediators simply do not "get it" and choose to take a more active role.

Even for that possibly-not-too-complicated case, a question should be asked: that is just what disputants need for what? One answer may be: for solving the problem. From a transformative approach's point of view — it is an unfortunate answer. It seems that the mediator's deliberate choice neither to frame the issues nor to suggest that the parties focus on some of

the major issues that came up ultimately enabled the parties to avoid dealing with some major issues and concerns, which are, in fact, expressed throughout the mediation. In the video, Elizabeth stands firm — confident that the law is on her side — on her right to keep the color of the house as she wants it, showing no recognition whatsoever for the concerns expressed by Julie. Julie's question (2005: 158) — “Did it ever occur to you that the color of the house and not the color of your skin is the issue? Did it?” — is never seriously considered by Elizabeth, who holds firmly to her presupposition that Julie is motivated by racism.

Presumably, it is a successful mediation: by the end, the parties are smiling, shaking hands, thanking the mediator, and deciding to work together in the future. It was indeed a success according to the premises of the transformative approach because the temporary agreement that they were about to form regarding the declared matter in dispute (at the end of segment five, where most mediators would conclude the mediation) is not considered the end of the process. By that point, the parties have agreed to take the issue to the board and that Julie and Bernice, Elizabeth's daughter, will together prepare a presentation. Elizabeth reserves the right to take the issue to court if the board decides that she must change the color of her house and refuses to consider repainting. In fact, Bush kept “following the parties around” patiently, as advised in the book, allowing them to delve into other, more fundamental issues such as the representation of minorities on the board and on the committee. In the last part of the mediation, they agree to work together on addressing the issue of diversity in their community. “It ain't over till it's over,” according to transformative theory, and even when the conflict seems resolved, new layers may be revealed and other issues may arise.

Did the purple house mediation succeed in changing parties' conflict interaction? Unlike more traditional approaches to mediation, where conflict is seen as a problem that must be removed, the transformative approach views conflict as an opportunity for moral growth.⁹ As such, the mediator should emphasize conflicts that arise within the mediation session, and not avoid them, allowing the parties to see the situation in its full complexity. (Bush does this several times throughout the mediation by summarizing some areas of strong disagreement.)

In the purple house mediation, however, it seems that this challenge to transform people's *conflict* interaction is not fully met. Elizabeth never reconsiders her original views of the conflict, although challenged to do so by Julie several times; nor does she respond relationally to the situation. Elizabeth will not incorporate — even for a slight moment — the possibility that Julie has a view worth considering, a view in conflict with her own: Elizabeth's conviction that Julie is a racist and Julie's insistence that Elizabeth is using that accusation to avoid the problem create a major conflict that is not resolved. In fact, there is a sense of avoidance in the air.

Instead, Bush chooses to praise the clear and strong but nonrecognizing and separate voice of Elizabeth as an empowered, transformed, self-deliberated voice.

It may be that this is as much recognition as Elizabeth is capable of and that Bush recognizes and respects this. Jeffrey Seul, in a critique following the first edition, argued that, from a developmental-psychology point of view, the transformative approach lacks the means to assist parties to reach the higher stages of human development and fulfill the authors' vision of recognition. "Development beyond the institutional stage," he wrote, referring to a middle developmental stage, "requires more than reciprocal appreciation of 'your perspective' and 'my perspective'." In fact, the very notion that one has a single, stable perspective or unitary collection of interests must be surrendered as one develops beyond the institutional stage" (1994: 166).¹⁰

Perhaps Elizabeth's refusal throughout the session to show recognition and consider explanations other than racism for Julie's opposition supports Seul's claim. Again, a further exploration of relational underpinnings seems to be missing. As an advocate of relational values, I see a close connection between the mediator's choices of action and the implications of those actions on the parties' dynamic. The gun that appears in the first act, said Chekhov, must go off in the last act. The attitude that a mediator displays in the first segment may tip us off to what will take place in the last. Thus, the opening statement of *The Purple House Conversations* presents a "client-centered" mode of mediation. "It is all up to you," "It is your choice," "It's in your hands," "Only you know what's right," says Bush at the beginning and throughout the mediation. Elizabeth apparently accepts Bush's suggestion and goes along with these notions, transferring them from the mediator-party realm to that of the party-party interaction, making it her view and her story of what it means to come to a mediation.¹¹ But the question remains: is an overly empowered ("it's all your choice") party, who practices this self-determination and self-assertion, in separation from the recognizing and responsive tendency, helped to make the paradigmatic shift to a more complex and constructive (relational) conflict interaction?

David Matz has argued that, once a mediator sets aside the fear of dominating the parties or pushing them toward agreement, exerting pressure can be beneficial. Parties, claim Matz, "come to a mediator because they are stuck" and applying pressure in order "to get a party to see some things differently, to consider different choices," can be an important function for mediators (1994: 360). It seems that, when Elizabeth consistently refuses to consider Julie's perspectives, a more interactive approach may be called for. From a relational standpoint, the mediator seems somehow to be missing; that does not suggest that she should become directive or evaluative. Combining relational emphases with an effort to balance "mediator

pressure and party autonomy” poses new challenges for further development of mediator’s skills and techniques.

Striving to Fulfill the Promise

I do not intend in this article to grade the transformative approach or its applicability. Rather, I am interested here in the challenges that the video and its commentaries pose, to depict a practice that does not deny its theoretical foundations and to demonstrate in great detail how the theory and the practice relate to each other.

This effort adds enormous value to the mediation field. It challenges practitioners to pay attention to their underlying guiding principles (worldviews, stories, orientations) and reflect on their practice. It also challenges theoreticians both to think harder about how theory can be put into practice and, conversely, to consider more seriously the theoretical foundations of any given style of practice. It challenges mediation and negotiation instructors and curriculum designers to connect the skills and techniques they teach with their own and their students’ worldviews, mindsets, and orientations. Finally, it encourages the students to do the same and learn to make informed choices in relation to their foundations.

The video responds profoundly to what Robert Mnookin (2005) calls “the myth that negotiation cannot be taught,” showing not only that negotiation and mediation can be taught, but also that while it is taught it can be connected to broader framework. A negotiation or mediation approach is always part of a worldview — a “philosophical map” as Leonard Riskin (1982) calls it — as well as part of a story we tell of what it means to come to a mediation or negotiation.

I suggest that these thought-provoking video, text, and commentaries can become important tools not only for presenting and analyzing the transformative approach to mediation (though they do help a great deal in that way), but also showing how a mediator’s approach and orientation arise from his or her worldview, mindset, or framework, which is put into practice throughout the mediation. “Many trainings stem from very different premises and result in a very different form of practice,” write Folger and Bush in the introduction of their 2001 book *Designing Mediation* (Folger and Bush 2001: 1). Awareness of the different premises and their effect on both trainings and practice is important, and “this shift has begun to take place,” write the authors in the introduction to the second edition of *The Promise of Mediation*. “There is greater and more critical attention today to the value implications of particular forms of mediation practice, and there is greater acknowledgement that there are indeed distinct ‘models’ of practice being used” (Bush and Folger 2004: 2). The second edition takes an additional step in demonstrating the link between theoretical premises and practice, partly thanks to the “Purple House” mediation.

This video is a supplementary tool suitable for use in courses on the transformative approach or in other advanced courses in which students are exposed in depth to different styles of mediation.¹² In such courses or other advanced settings, it may serve as a case study to be analyzed thoroughly, microfocusing on each and every moment. In some basic courses, segments may be used to present specific moments in a mediation (e.g., the “opening statement”).

In two separate seminars that I conducted with Professor Frank Sander at Harvard Law School, audiences told us that they found the video thought-provoking and intriguing. We first asked participants to read Bush and Folger’s paper “The Ten Hallmarks” in advance and introduced the video by describing the basic theoretical underpinnings of the transformative approach. We encouraged them to consider the inner logic of the transformative worldview and its underpinnings in order to see the connection between theory and practice in action and how Bush’s choices throughout the mediation are consistent with the different theoretical foundations (worldview, story, and approach).

In response to some of the arguments raised by the participants, we tried primarily to connect the practice to the theory when possible and highlighted the underlying rationale of the transformative framework. However, we encouraged participants to consider whether our answers fully satisfied them. Because the participants are experienced mediators, we welcomed confusion, trusting that clarity would emerge. We believe that they were encouraged to search for the similarities and divergences between their own practices and the transformative approach. In that regard, we disagree with Bush and Folger’s contention that “combining models is not possible” (2005: 228).¹³

Demonstrations like the purple house mediation can help further delineate the different styles of mediation, showing the relationality (the tension incorporating both separateness and connectedness) of theory and practice, but also the relationality among the various frameworks, separated and connected, thus enriching the discourse within the field and presenting a fuller sense of what mediation is — or, rather, what mediation is not, dismissing the possibility of a monolithic answer. Overcoming vagueness about the differences in the philosophical foundations and governing values of the various mediation approaches is critical. Distinguishing between the various orientations, stories, and worldviews, and acknowledging areas of strong disagreement is important. Doing this can help, on the theoretical level, to both further develop the theoretical frameworks of each of the orientations, as well as to develop new ways to put theory into practice, based on a clearer and more precise translation of general theories into specific practices. On the practical level, it will help practitioners to develop awareness of their *own* worldviews and stories and to make more deliberate and knowledgeable choices

throughout the mediation process, as well as to generate creative responses based on these understandings.

Many mediation teachers and trainers will thus find *The Promise of Mediation* at large and the purple house video and commentaries of great value as a learning tool. Transforming conflict's interaction while developing a relational sense of self is, I believe, a worthy goal. The transformative approach does great service to the field by reminding us that the promise embedded within the mediation process embodies profound humanistic values that need systematic elaboration and will benefit from further exploration, especially as the field institutionalizes and grows.

The Promise of Mediation and *The Purple House Conversations* are thought-provoking and intriguing, especially because the tendency of many mediators is to be directive and evaluative, feeling as they do an obligation to solve the parties' problems. This heavy burden keeps inexperienced mediators — and sometimes also those with much experience — focused on “supplying the goods,” which are perceived in terms of outcome and rarely in terms of process. Mediation has the potential both to help disputants take steps toward outcomes, and to focus on the process, where mediators' main proficiency lies.

NOTES

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1. “Recognition is achieved,” they write in the first edition, “when, given some degree of empowerment, disputing parties experience an extended willingness to acknowledge and be responsive to other parties' situations and common human qualities” (Bush and Folger 1994: 84). However, in the second edition they elaborate, describing the positive constructive interaction in regard to empowerment and recognition as a spiral: “The stronger I become, the more open I am to you. The more open I am to you, the stronger you feel, the more open you become to me, and the stronger I feel” (Bush and Folger 2004: 56). It is not a linear process in which empowerment is the earlier stage and recognition the later, as “the more open I become to you, the stronger I feel in myself, simply because I'm more open; that is, openness not only requires but creates a sense of strength, of magnanimity” (Bush and Folger 2004: 56).

2. The name in the book is *The Purple House Mediation*, while the video is called *The Purple House Conversations*.

3. “The opening statement says it all,” state Bush and Folger (1996: 3) of the first of ten hallmarks for the mediator. As a mediation instructor, I am extra cautious not to come up with my own opening statement throughout the course, allowing the participants in the course to construct their own opening statement. It is more than just a technical task, for the words used by each learner to describe the mediation process and its goals express one's perspective and understanding of what mediation is all about.

4. “By focusing firmly on the parties' own deliberation, decision making, and perspective taking, transformative mediators encourage genuine, voluntary, fully informed settlement to emerge as and when the parties deem them appropriate” (Bush and Folger 1996: 3). Bush and Folger end their answer to the criticism that the transformative approach does not solve disputes by claiming that conflicts within the transformative framework do get resolved, “but they get resolved by the parties rather than by the mediator” (218).

5. “One key aspect of serving clients [. . .] is transparency about the model of practice being used. Clients are entitled to be informed, in language they can understand, about the kinds of practices employed by the professional who is serving them. When they are given this information,

they are better able to decide whether the approach taken by a particular mediator will work to meet the needs they hold paramount . . .” (Bush and Folger 2005: 263).

6. The discussion of relational psychology literature does not contradict the claim that mediation should be distinguished from therapy, as the emphasis here will be on the philosophical aspect as further developed in the relational psychology literature, more than it is in the mediation literature.

7. The philosophical premises of relational psychologic theory go further to question the “self” altogether. “In self psychology, it is not possible to connect with others in a way that is vital and alive without first being centered in and deeply connected with one’s own distinctive subjectivity. In this approach to the self, the analytic process is not viewed as unraveling. It is as if there is one thread or one voice within the textured complexity of the patient’s experience that represents the patient’s true subjectivity. The analyst in her ‘empathic attitude’ finds and mirrors that core subjectivity and this confirmation constitutes the key therapeutic action of the analytic process” (Mitchell 1993: 108). This questioning has strong applications to the relational practice of mediation.

8. The transformative orientation, claims Menkel-Meadow (1995), is not less directive than those criticized by it: “Though I support the basic precepts of building party competence (empowerment) and mutual understanding across differences (recognition and empathy), Bush and Folger’s descriptions of these processes reveal that their model is no less manipulative or content-based than the problem-solving model they critique. Their claim for ‘process neutrality’ seems potentially . . . dangerous” (236). In chapter six, Bush and Folger clarify that, like any other form of mediation, the transformative approach imposes a set of values on the parties, but the issue of the mediator’s directive effect by his actions and reactions is not addressed. Robert Kegan (1994), criticizing Carl Rogers’s “Client-Centered” therapy wrote: “Carl Rogers’s Client-Centered or ‘non-directive’ therapy has had an enormous influence on the training and practice of three generations of counselors and therapists. His passionate commitment in ‘joining,’ ‘receiving,’ ‘welcoming,’ or ‘accompanying’ clients’ own gradual processes of discovering and claiming their meanings lead to a clinical operationalizing of existential psychology and philosophy. But, in light of our exploration of the hidden curriculum of modern life, it is interesting to ask whether Rogers didn’t really have a *particular* constellation of meaning he was most especially eager to ‘welcome,’ and whether, in this respect, his method was really as nondirective as he supposed . . . His own ways of generalizing the goals of therapy suggest that among the variety of constellations of meaning subject-object psychology depicts, Rogers had an unwitting favorite. The client, Rogers hoped, would come ‘to perceive his standards as being based upon his own experience, rather than upon the attitudes or desires of other’ ” (244–245).

9. “Rethinking the problem-solving orientation starts by questioning the premise that conflicts need to be viewed as problems in the first place. A different premise would suggest that disputes could be viewed *not* as problems at all but as opportunities for moral growth and transformation. This different view is the *transformative orientation* to conflict” (Bush and Folger 1994: 81).

10. Kegan (1994: 246) following his criticism of Rogers’s “client-centered psychology,” questions in *In Over Our Heads* whether Rogers’s patient, Gloria, reached the higher developmental stages, the more relational ones, stating that “the worry here is that in the very moment of declaring his intentions to support her meaning-making, he may indeed be refusing to support her meaning-making by refusing the role she assigns him.”

11. In the commentaries following segment four in the video, Bush describes a shift he sees in Elizabeth by saying “Elizabeth speaks up for herself with strength and clarity.” Following the fifth segment of the mediation, he says: “In this segment of tape one can really see in Elizabeth’s language the extent to which she has become very strong and clear on *how* to say what she wants to say.” Once again, the emphasis is on the separate self and the empowerment shift Elizabeth is going through, although the mediation is reaching its final moments. “Clear, powerful and articulate expression indicates strength,” reads the caption Bush and Pope choose to show on the screen at the end of segment five. Even in the concluding discussion between Bush and Pope, following the last segment, Bush celebrates the transformation by saying that “Elizabeth reaches a stage or level of articulation or I would even say eloquence in this segment which is really striking in the way she describes what it is that she is concerned about. . . . She has become so clear and so powerful in her ability to express what she is saying that it is stunning in a way.” That description of Elizabeth’s “stage or level of articulation” does not indicate a high, relational, developmental stage as described by Kegan and Seul.

12. "We acknowledge the different premises and practices of the other, and we take the view that both of these approaches have value in the world we currently live in; both can be beneficial to clients seeking different kinds of help," conclude Bush and Folger (2005: 266) in a pluralistic yet polarizing tone. A different categorization and mapping may include other frameworks (e.g., "narrative mediation," which holds a philosophically-based worldview as foundations to its style of practice as well).

13. "When models of mediation rest on very different underlying values and premises," write Bush and Folger (2005: 228), "their objectives cannot be sought simultaneously, and shift between them leads to confusing and inconsistent practices."

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