When mediators act as trainers, they often offer classes designed to improve conflict management and to convert disputes into opportunities for understanding and change. However, during mediation sessions convened to deal with specific disputes, these same mediators rarely share or explain the strategies that they advocate in trainings.

Disputants, in contrast to trainees, usually agree to mediate voluntarily as a means of dealing with conflict or because they are required to mediate by a court or other authority. These mediation sessions, designed primarily to facilitate dialog aimed at increasing understanding and possibly leading to resolution of a specific conflict, can also provide an opportunity to acquire and practice general skills similar to those presented in training classes.

In this note, I will ask you to consider how and when you and other mediators might reveal and demystify some of our key concepts and tools. After introducing the concept of “transparent mediation” (hereinafter TM) and providing some examples of its use, I will request some feedback about how you have used these techniques in your own practice.

When parties in a dispute learn how to use and practice these tools, they can be empowered to apply them beyond the instant dispute that brought them to the table. A main goal of TM then is to raise awareness of mediation communication skills so that they are more likely to be used during the mediation session, and also taken away from the session and employed effectively in everyday life.

Making some of our strategies transparent is not a new idea. Most mediators at one time or another subtly or overtly make specific practices known to their clients. For example, a mediator might ask one party to reflect another party’s position or interest to demonstrate understanding. However, what I advocate here -- consciously making an effort to insert training principles into an actual mediation session --remains relatively rare. Moreover, the effectiveness of such transparent training during a mediation session, like most mediation procedures and strategies, has not, to my knowledge, been empirically tested.

Although the conscious practice of TM is not common and its efficacy has not been evaluated, the concept of transparency has not entirely escaped the attention of the field. Notably, almost 15 years ago, Michael Moffitt published a seminal article (Moffitt, 1997).
1997), “Casting Light on the Black Box of Mediation: Should Mediators Make Their Conduct More Transparent?”

Although Moffitt never directly answers the subtitled question, he points out that none of the major mediation models have addressed the potential utility of TM, he includes interesting instances of places in the mediation process where TM might be introduced appropriately and he provides illustrations of how revealing mediator strategy to parties can be more or less effective depending on the context.

In addition Moffitt distinguishes two kinds of transparency -- “process” when mediators decide to share what strategies or steps they will employ from “impact” transparency when mediators also explain why they choose to take these actions. He also conjectures (Moffitt, 1997 p.2) that TM is rarely employed because mediators fear that TM interventions are less effective than standard non-transparent ones. However, he also hypothesizes (p. 42-3) that mediators may be more comfortable using impact-transparent approaches aimed at specific behavior, e.g., not interrupting, than those targeting analysis or perceptions, e.g. how to think about the problem at hand. How easy or likely it is for mediators to introduce TM is not necessarily correlated with the potential utility of such interventions.

However, despite Moffitt’s clear presentation and analysis, there has been virtually no follow up research or writing on the topic in the decade following publication. This dearth of TM research and application may be related to a mediator belief that revealing what they are doing and why they are doing it can negatively impact effectiveness. However the relative absence of TM usage may also reflect a professional “posture” found in many fields. By posture, I mean that some mediators, like physicians, attorneys, computer technicians and others, may feel that sharing strategies and information with the public they serve will somehow dilute their perceived professional expertise and reputation. As mediators, we may be especially vulnerable to this concern, because unlike our fellow professionals in law, medicine and science, we use very few unfamiliar terms that in more technical fields may function as markers of superior knowledge to clients and the general public.

Some of the tools, tactics, principles and strategies that my colleagues and I have shared and demonstrated with participants during mediation sessions include active listening especially reflection, agenda building, reactive devaluation, reality checks/ BATNA, encouraging empathy, generating options, identifying interests, constructive emotional communication, and delaying quick reactions to other parties. Following are examples first of a sample TM opening statement, and then how these typical mediator strategies might be revealed and explained to disputants at appropriate points during a session.

**Opening Statement**, After presenting an introduction of the main elements of mediation, including values such as neutrality, confidentiality and self-determination, and outlining general goals of the process such as understanding each other’s points of view, facilitating dialog, generating options and seeking common ground, a sample TM opening might proceed like this: “As mediators we use certain techniques to facilitate
understanding and constructive dialog. Occasionally during this session I will point out some of the methods we use and that we may encourage you to try. For example we often practice a form of active listening where we will reflect back what each of you say to see if we have understood you before any new information or response is added to the dialog. After reflecting, we often check with each of you to make sure you feel accurately heard before continuing. This is a bit different from “normal” conversation where each party often reacts before checking to see if the other party feels understood.

In addition to pointing out active listening techniques, we may use and explain other mediation strategies such as building an agenda to insure that all relevant issues will be discussed, and brainstorming to generate options for resolution. Many of these techniques are likely already familiar to you; however emphasizing them may increase your awareness of their potential usefulness, and encourage you to use them effectively when you talk about the situation that brought you here. In addition, some of the strategies that we practice today may prove useful in other conflict situations.”

**Reflection.** After complaints by one or more clients that they are not being understood by the other: “It seems like you both are frustrated by how you are communicating with each other, especially that you don’t feel that your point of view is being understood. Is that right? (pause for response) Ok, have you by any chance noticed that during our time together here, I have often repeated or paraphrased what each of you has said and then checked with you to see if I understood what you had intended to say? (pause). Well, that is a process called active listening that mediators often utilize, and it is also a skill that you can use that may improve your communication. You may already be doing some active listening in your daily life, but it takes practice and awareness to use this skill routinely in conversations especially in the midst of a conflict.”

“To practice active listening, you would first reflect, repeat, or summarize what the other person has said and then check in to see if they agree that you have understood them BEFORE you react, state your own opinion, or give advice. It won’t be easy to reflect and check in before you express your point of view, especially if the other person wants to elaborate or correct your reflection. But, do you think this is something you would be willing to try here? (pause) It could even work for you in your day-to-day communication at home or at work.”

**Agenda Building.** After opening statements by mediator and parties: “Now before we begin talking about the issues that brought you to the table, let’s try to list all of the topics that any of you wish to discuss. That way we’ll be less likely to omit anything important to you and we can also talk about the order or priority of the items we will talk about. You may want to add additional topics after you start talking with each other.”

**Reactive Devaluation of Proposals.** When a proposal is rejected quickly with little discussion or with immediate opposition: “People who are involved in a conflict may negatively evaluate suggestions or offers made by someone perceived as an adversary. However, it is often advantageous to consider the content and value of the offer rather than who made it. Therefore I may occasionally ask you to consider the intrinsic value
of proposals or offers made by the other party, or to consider comparison with some outside objective standard in order to evaluate the offer and its value for you.”

**Reality Checks/BATNA.** When a proposal is made for which the implications may not have been thoroughly considered: “It’s important for mediating parties to make suggestions, and one of my jobs here is to encourage you to think about the possible results of such suggestions. So how would that work? (reality check). So how would that compare with other alternatives available to you? (BATNA = Best Alternative To a Negotiated Agreement)? Do you have any idea about how a court might decide/rule on that? (if litigation is threatened/proposed)? Would _____ be likely to approve your proposal? Could you check that out with _____ to see how they would view this?”

**Value of empathy, understanding, role reversal.** When parties talk over each other, show strong negative emotion, don’t reflect the emotion of the other etc.: “You both appear to feel very strongly about your points of view on this issue. As I mentioned before, mediation can be more effective when the participants can understand the feelings of each other before they advocate for their own interests. So I’m going to ask each of you to let the other know that you are aware of how THEY feel about this. It might help if you try to get into their head, even if you disagree with them, to try to see things from their perspective”

**Generating and evaluating options/brainstorming.** When starting to consider possible actions: “I’ve found it often useful to generate and consider a number of options before starting to evaluate them. Sometimes we call this brainstorming, which means that at this point in the process you can propose options or ideas that I will record, but please hold off criticizing or advocating for these options until we record all of the ones that you each suggest. Negatively evaluating options proposed by others may inhibit them from offering additional options.”

**Expressing interests instead of positions.** After several positional statements have been offered: “You have said that you want “X” and you have said that you want “Y”. In mediation, participants often find it more useful to figure out and disclose WHY they and other parties state, argue, request or demand a given position. If one of you adopts a position such as “close that window,” it could be useful to determine the underlying interest for that request. If the interest is keeping warm, additional clothing could satisfy the interest without closing the window. Usually dealing with interests instead of positions, can lead to more options for mutually satisfying agreements, solutions or remedies. So let me ask (both of) you to talk about the motives, needs or interests underlying what you have said you want.”

Moffitt (1997, p 34) provides similar examples of impact transparency in encouraging positional parties to shift to needs and interests: e.g. “I’d like to find a way for you to assert your needs and concerns in a way that is likely to advance the mediation…” and even more directly: “I’m hoping that you’ll change the way you’re thinking about your demands. Right now, you seem to be fixed on the idea that there is only one way you can be satisfied in this dispute …” (followed by probing with “why?”),
Delaying fast reactions. When participants appear to be reacting quickly without first reflecting, or taking time to consider a response: “During conflict, your first reaction to what another person says may not be the most useful for increasing understanding. Quick reactions can include excess emotion and may even trigger an unproductive escalation. So would you each be willing to try to pause or take a breath before responding. This may give you time to offer a more thoughtful response and lead to more effective communication that can also include emotional content.”

Constructive emotional communication and I-Statements: If parties make a number of accusations or “you” statements, especially if ranting or shouting escalates: “Although Freud and many others believe that venting or “letting off steam” reduces aggression and tension, researchers have consistently found that venting often increases anger and aggression (e.g. Bushman, Baumeister & Stack, 1999). In mediation we try to encourage constructive communication that includes emotional content. One goal of such emotional communication is to find a constructive means of expression so that you neither suppress your feelings nor rant excessively. Such moderate expression can better facilitate communication and understanding among you. One way to express feelings is to start with an I-statement in this format: I feel _____ (for example angry/sad/happy) when you ______ (describe a specific behavior like “when you woke me up too early yesterday morning”), because _______ (for example “I worked late last night and didn’t get enough sleep”).

The forgoing examples are drawn from my own practice and are by no means exhaustive. And I certainly do not explain every mediator move; for example, although I have occasionally “reframed” a party statement that appeared inflammatory by reflecting it in a more neutral or factual manner, I have never chosen to explain this tactic during a mediation session (see Moffitt 1997, p. 38-40 for a discussion of framing and reframing in this context). Obviously when these mini-trainings are injected in the process, and exactly how they are presented and practiced, will vary with the mediator. Tailoring TM to the mediator’s personal style and to the situation can be just as dependent on experience and practice as are other critical elements in a mediator’s toolbox.

In the example of a TM opening statement above, I included only one specific example – reflection. In some cases it could be useful to include more such examples. Even a short introduction to a tactic during an opening could be useful later, as a reminder, when a fuller explanation is employed at a relevant opportunity during the session proper. This is similar to a common practice among mediators who list ground rules such as “no interrupting” in their opening. A typical mediator intervention later when a party interrupts might be: “Remember when I asked you not to interrupt each other during your conversation and you agreed? Well, I know it’s difficult, but it might be easier to understand each other better by following that guideline. Ok?”

Just as prepping participants so that they can be reminded about a ground rule when it becomes relevant later, it is likely that mentioning strategies during the opening statement or a pre-session will allow them to be reintroduced more efficiently when they are
applicable. On the other hand a long list of many possible mediator strategies during an opening statement could be inefficient and time-consuming, especially since it is difficult to anticipate which strategies will prove to be useful later in facilitating participant dialog.

An alternative possibility to a lengthy or more inclusive opening is to separate the TM process into individual preparatory coaching sessions or pre-caucuses followed by a more standard joint session where issues are addressed and communication techniques are put into practice. One version of this possibility is to train or coach the parties jointly before beginning the mediation proper. One possible downside of pre-causing or a long opening statement is that parties who are ready to tell their stories and deal with the instant conflict may become less attentive or frustrated by a delay.

Such a training session, especially one that includes interactive skill exercises, may have an additional benefit of engaging disputants in a common task not directly related to the conflict that brought them to the table. The popular and widely tested social psychological “contact theory” (Allport, 1954) predicts that when parties work on a common problem, they often develop more positive attitudes towards each other.

Allport and others have proposed and demonstrated that properly managed contact between adversarial groups can lead to better interactions. Some necessary conditions for the contact hypothesis include equal status between groups or parties, common goals for the task at hand and an interdependent task structure that requires cooperation between groups to perform the task well. I have not yet applied these principles to typical mediations involving only two principal parties; however, pre-mediation training introduced as warm-up exercises in larger multi-party conflicts have worked quite well in New York City metro area community disputes facilitated by the Safe Horizon Mediation Program (after July 2011: “New York Peace Institute”). This method has also been used successfully in our work with Mediators Beyond Borders during an intervention between two potentially violent student groups at a West African University.

In some circumstances, TM interventions can be employed even when parties are in caucus or being coached individually. One such example from my practice involved the application of a ranking system in which two siblings independently chose and prioritized which items they preferred from a long list and photographs of art, jewelry and other valuables that had been bequeathed by their parents. The concept of reactive devaluation was explained to both parties so that they could better understand why it was in their mutual interest to indicate preferences privately. As a form of impact transparency, I predicted to each sibling that if they chose objects they desired privately and assuming that their preferences were at least somewhat different from each other, they were likely to obtain approximately 80% of their choices. It is beyond the scope of this note to explain specifically how this was done within categories (a simplified adaptation of the adjusted winner method was employed, see Brams & Taylor, 1996,2000); however each sibling indeed received more than 80% of their choices, and not incidentally a conflict that had burdened them both for years, not to mention attendant storage charges and other costs of conflict, was resolved.
Implementation of TM is not problem free; in fact there can be obvious costs associated with applications of this approach including the necessity for additional time to accomplish the training elements, and the danger of affecting the natural flow of the mediation process by the interjection of explanations, practice and coaching. Guidance or research on which level of TM is best, or even when it is effective to use TM strategies at all (Moffitt 1997, p.49) is not yet available. One goal, when mediators reveal their thought processes and strategies, is to maximize “training” value without sacrificing the effectiveness of dialog flow and other elements of facilitating the parties as they deal with the instant problem that brought them to the table. For some practitioners, the facilitative role of mediator may not mesh smoothly with the more directive role of trainer or teacher.

Most of our attempts to introduce communication concepts to parties have been accomplished during the natural flow of the mediation session and then only when explanations or demonstrations are judged as appropriate, useful, or relevant. Integrating potential learning into a session has advantages of immediate relevance and usage, but disadvantages of providing only a limited repertoire of strategies compared with a relatively complete training curriculum, and the possible disruption of natural momentum or dialog flow. An effective balance between preserving the natural and sometimes magical qualities of facilitated conversation and the added potential of injecting skill learning and practice into a session can vary with the parties, the presenting conflict situation, and mediator style. Like most elements of mediation, TM is not packaged with an instruction manual; therefore, achieving this balance is necessarily left to experiential trial and error learning.

One attempt at combining training with a form of conflict resolution has been proposed by Max and Elise Rivers (Rivers & Rivers, 2009). In the context of dealing with couples in conflict, the Rivers have evolved a practice that combines mediation of specific conflicts with teaching clients how to incorporate the skills of Nonviolent Communication or NVC (Rosenberg, 2003) into their everyday lives. Their multi-session process includes first mediating one or more existing conflicts where the mediator skills are “loaned,” followed by an educational phase where existing client skills are assessed and transparency is accelerated so that when NVC skills are employed, they are also described and explained to the clients. Finally, clients are invited to join a weekly NVC practice class. Although the Rivers process of healing relationships by mediating first and then teaching conflict resolution skills is similar to TM, it is only appropriate for clients who wish to attend multiple sessions where NVC (which uses skills that are similar, but not identical, to those employed in facilitative mediation) is practiced.

At first glance, the practice of TM may seem like an awkward or even unhappy marriage of training and mediation. However, encouraging parties in conflict to consider and practice communication skills that may be applied to the instant situation AND more generally after leaving the mediation table may be an opportunity with too much potential to pass up. For those of us who use effective mediator strategies to assist clients in understanding each other, finding common ground, resolving some disputes and
recognizing others as intractable, isn’t it time that we consider opening access to our tool box so that mediation participants can borrow and hone communication skills for both immediate and long term use?

**A REQUEST:** Your collegial responses to this note are requested either in the comment section below or by writing to me directly. I am especially interested in your accounts of how processes similar to TM have affected your practice, and/or being directed to relevant research. Eventually I hope to test empirically how elements of TM described above can affect outcome variables, such as client satisfaction, observed behavior during mediation sessions, and following up to determine whether or not mediation strategies and skills employed in mediation sessions are generalized to other life situations.

fn 1. Thanks for helpful comments on an earlier draft to Sarah Davies, Peggy Gifford, Brad Heckman, Nancy Kramer, Peter Miller, and Michael Moffitt. Earlier versions of the TM concept were presented at the June 2009 meetings of the Association for Conflict Resolution, Greater New York Chapter and the April 2010 ABA-ADR conference in collaboration with Elena Bayrock Sapora and Nivedita Gutta.

fn 2. That is certainly not to say that none of the models postulate long-term benefits for parties who have experienced the mediation process. Probably most famously, Bush & Folger (1994) have asserted extended benefits of participating in a conflict transformation process, most recently expressed as: “…public benefits that flow from parties experiencing empowerment and recognition shifts with a mediation process supporting these shifts…” (Folger, Bush & Della Noce 2010, p. 28). However consistent with the transformative model in which parties are their own change agents, nowhere is transparent explanation to parties advocated for mediator “moves” designed to support these shifts such as “checking-in”, and “reflection”. This may reflect the difference between experiencing a process and understanding what it is and how it works. Arguments for the efficacy and benefit of either strategy or for a both/and strategy exceed the boundaries of this note.

fn 3. Moffitt (1997 p. 18) provides an example of process-transparency when a mediator feels that a party has overestimated BATMA (Best Alternative to a Mediated Agreement) strength: “…explain to me how you calculated your chances on the following three issues …”, and he discusses the possible pros and cons of such an intervention (pp. 18-21).

**References:**


