

It's Not an Either/Or Choice: Practitioners Should Remove the Conflict Between Mediation Models

BY TINA MONBERG

Albert Einstein once said: "Creating a new theory is not like destroying an old barn and erecting a skyscraper in its place. It is rather like climbing a mountain, gaining new and wider views, discovering unexpected connections between our starting point and its rich environment. But the point from which we started out still exists and can be seen, although it appears smaller and forms a tiny part of our broad view gained by the mastery of the obstacles on our adventurous way up."

The same thing has happened in the history of mediation. New theories have been made—but it has been a process like destroying the old house in order to build a new one. The problem arises when new mediation theories are defined in such a way that makes them incompatible with earlier theories. That means the theories will not benefit from each other and grow. Of course a theory needs to be distinguished from other theories—but it does not need to extinguish earlier theories.

GOING THROUGH STAGES

The first theory of mediation, the "stage" model, was built on the phrase: "The mediator has the process and the parties have the content." The stage model became the way to explain mediation. Mediation was the way to solve conflicts by guiding the parties through stages in order to reach a solution.

The amount of stages has been defined differently. Folberg and Taylor identify seven stages. Haynes described nine stages of a generic process. Kovach found nine stages as well. Irving and Benjamin described four stages in a family mediation. Moore has suggested 12 stages. (All are cited in "Designing Mediation Approaches to Training and Practice within a Transformative Framework," in a chapter by Dorothy Della Noce, published by the Institute for the Study of Conflict Transformation Inc., at Hofstra University School of Law in Hempstead,

The author is a lawyer, mediator and psychotherapist at the mediationcenter a/s, at www.mediationcenter.dk, in Hellerup, Denmark.

N.Y.; see www.transformativemediation.org.) And Harvard Law School teaches five stages at mediation workshops presented by Prof. Frank Sander, and attorneys Linda R. Singer and Michael K. Lewis of Washington, D.C.'s ADR Associates. [Editor's note: Sander is an Alternatives editorial board member, and Singer and Lewis regularly conduct training sessions on behalf of Alternatives' publisher, the CPR Institute for Dispute Resolution.]

Who is right and who is wrong?

This author has spent a lot of time finding the reason why it has to be a stage model and why it has to be five stages and not four, seven, nine or 12. The reason may be that the natural decision process has four stages, and the fifth stage has been added for parties' information exchange. See below.

The transformative mediation model provides a paradigm shift from the linear stage model to a transformed mediation process.

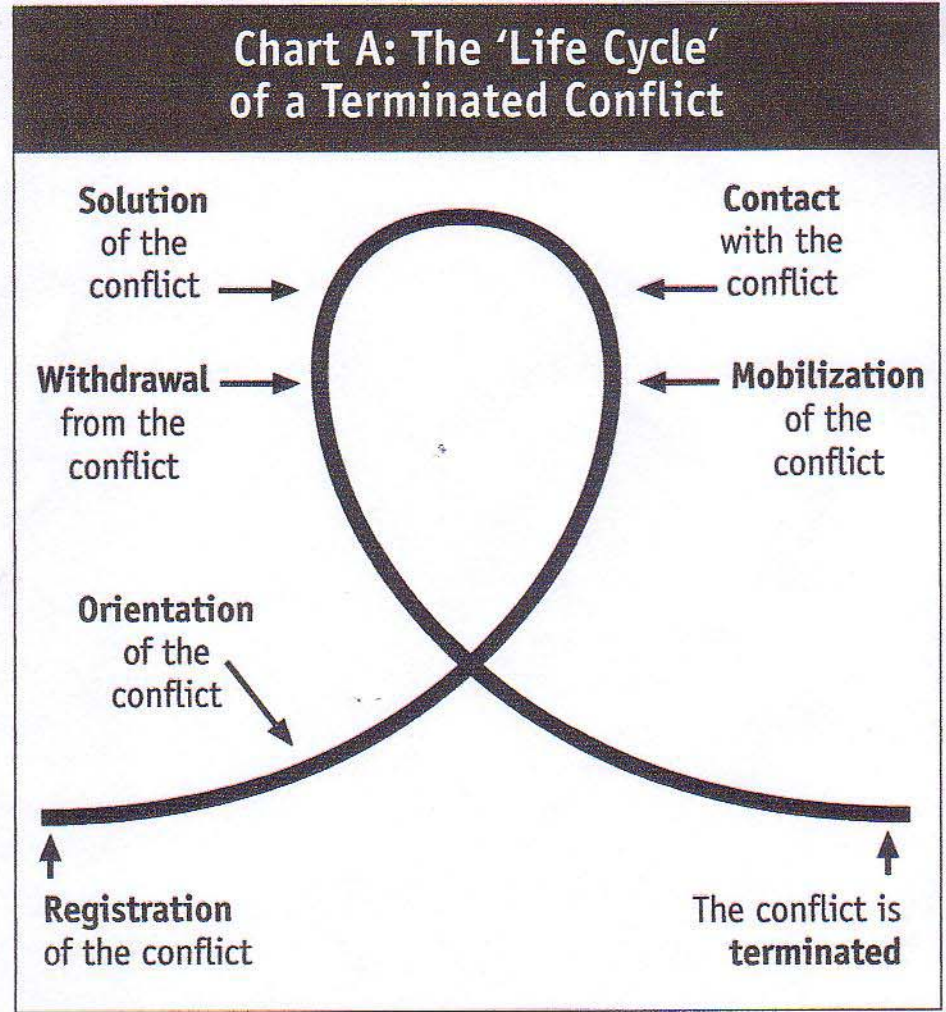
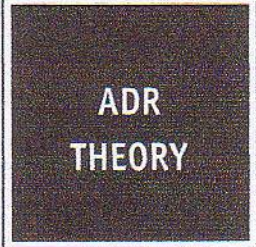
NO COMBINATIONS

Folger, Bush, Della Noce and others explain that mediation practiced as a transformative process cannot be combined with the problem-solving stages. They claim that the two theoretical frameworks are incompatible. See "Designing Mediation," supra, at pages 53 and 71. According to the theories a mediator is not able to operate with a micro-focus on interaction and a macro-focus on outcome at the same time or shift from one framework to another.

The stage model is abandoned when you work with the transformative process.

So, in other words, you have left the house you have already built in favor of another

(continued on following page)



Source: mediationcenter a/s

Either/Or: Remove the Conflict Between Mediation Models

(continued from previous page)

house you are going to build. You are not climbing the hill.

The gestalt therapist and psychologist Frederick S. Perls believed that a human being has a basic need to finish what he or she is doing.

Gestalt theory is based on the principle that all people have a need to finish what they are doing and that conflicts go through a cycle—see Chart A on the previous page,

“The Life Cycle of a Terminated Conflict.” The outcome is that humans will by their nature do their best to end a conflict in a way that they either reach an agreement or find another solution of the conflict.

NATURAL DECISION PROCESS

Clinical psychologist and Ph.D Heather Birkett Cattell showed that the human personality fundamentally stems from the pressure of innate drives seeking satisfaction. See

Heather Birkett Cattell, “The 16 PF—Personality in Depth,” at 40. The ego is a problem-solving structure that mediates between needs and environment. According to Cattell, the human ego operates according to four distinct sequences or stages to solve problems. Therefore, all humans have a decision process that is used automatically hundreds of times every day, without their thinking about it. Only when the process is stocked at one stage it will be recognized.

Chart B: Mediation in a Nutshell

	The Mediation Process in 5 Stages	The Natural Decision Process	The Aim of the 5 Stages	Problems at the 5 Stages
STAGE 1	The parties inform each other about the problem— 'Free storytelling.'		Open up for each other—Understand the other party's intention.	Defending positions—Discomfort occurs.
STAGE 2	Find unfulfilled needs, concerns and interests—Formulating the problem.	Recognition of the tensions of inner needs—Take responsibility and mobilize the will to resolve.	Go behind the demand—Help the parties find the needs and concerns.	Parties don't know their own feelings, and don't know what they want.
STAGE 3	Options and possibilities are developed by using lateral thinking— Brainstorming.	Generating options for satisfying needs—Find options for solutions.	Get the parties to understand that there are many ways to solve the problem and satisfy needs.	Difficulties in understanding and in finding options— Frustration.
STAGE 4	The agreement is built up—Choosing the best options.	Selection of the best options.	Support the parties in making the choice by looking at alternative possibilities.	Undetermined and unrealistic expectations.
STAGE 5	The agreement and an implementation plan are made.	Implementing the selected options, and taking action.	Support the parties in making a plan that can work.	Poor self discipline— Difficulties in implementing the plan.

Source: mediationcenter.a/s

The four stages of the natural decision process are:

1. Recognition of tension signifying existence and strength of inner need.
2. Generating options for satisfying the need.
3. Selection of the best option for satisfying the need while preserving safety and long-term well-being.
4. Implementation of the selected option.

In Chart B at left, "Mediation in a Nutshell," the natural decision process is compared with the five-stage mediation process. The first mediation stage is where the parties inform each other of what they experienced inside themselves. As we are not mind readers, we have to add this stage to the natural decision process—therefore the mediation stage model has to consist of five stages.

As a mediator, you empower the parties through the five stages and thereby fulfill their natural need for fulfilling the decision process, which they have not been able to go through alone. As a mediator you also empower the parties through this process, so when they leave the mediation both of them have both fulfilled their natural decision process and have ended their "gestalt."

WHY NOT USE BOTH PROCESSES?

If as Einstein would, we would like to climb the hill instead of building a new house, why not try to integrate and combine the transformative process with the stage process?

The combination could be possible. By giving recognition and empowerment to the

parties, thereby strengthening the self and increasing responsibility, the parties will automatically and by the natural decision process and the aim of ending the conflict, try to reach an end of the conflict and make an agreement. The focus of their movement will be toward gaining momentum, ending the gestalt, and will feature the natural decision process—in the form of the five-stage mediation model.

There are no contradictions between the two models.

The cycle of a conflict will include both the process and the content, as it is natural for human beings to ask and seek for the end, even though this end does not need to be an agreement.

If you do not use both models you risk that one person in the mediation process is so empowered that he or she will end the gestalt quickly, or bypass the natural decision process without the other party. The result is that the other party is still standing at another step in his or her decision process, and an agreement won't be produced without the other party.

• • •

Why make frames that prevent us from giving the recognition and the empowerment that will support the parties in ending their gestalt and fulfill their natural four-stage decision process? Why not keep the five-stage mediation model alive?

It is like discussing what came first the egg or the hen. You need both and one will support the other.

If you look at the mediation process through these glasses there is no conflict in going through the five-stage model, which recognizes and empowers the parties. A conflict can only exist in the room between two differences—if the differences do not exist there is no conflict.

All are right and no one is wrong. There is no paradox between a stage model and a transformative process. The combination provides a holistic model including the micro-focus on interaction and the macro-focus on outcome and at the same time admitting that the ultimate end-state for the party naturally will be the four-stage decision process and a process that will not leave them unfulfilled. 