In Search of a Theory of Practice: What Does Gestalt Have To Offer the Field of Mediation?

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ABSTRACT

The practice of alternative dispute resolution in general, and mediation in particular, is gaining currency and popularity within many segments of the American and international communities, probably as a result of dissatisfaction with court-based mediation.

This article discusses mediation with particular emphasis on transformative mediation which bears a resemblance to Gestalt applications to client work, but lacks a coherent theory of practice. The author also proposes ways in which Gestalt theories apply to and strengthen the practice of mediation.

Historically, many cultures have used mediation in some form to preserve the social relationships of parties to a conflict, and often to preserve the fabric of society (Chupp, 2003; Joyce, 2003). Mediation creates space for the disputants to address all the facets of a conflict—people’s values (past relationships, emotions, etc.) and the process (communication styles, norms, structures, etc.), not just the presenting problem or conflict (Beer, 1997).

In the early 20th century, U.S. courts first began applying mediation to labor/management disputes. About the same time, community groups were applying mediation to the resolution of neighborhood disputes and using it to re-empower citizens increasingly disenchanted with court-based dispute resolution (Joyce, 2003). Practitioners of community-based mediation recognized the need to preserve people’s relationships as well as to resolve the dispute. In other words, simply resolving the dispute was not enough. Another important value of mediation was that the power to resolve conflict remained with the disputants, in contrast to arbitration.

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and adjudication in which a third party decided the case and the disputants were bound by that ruling. Disputants' satisfaction was as dependent on process control as on outcomes. Not surprisingly, subsequent research supported this value as an asset (Bush, 1996).

In the U.S., mediation historically has been characterized by a multiple stage, linear process, the hallmark of which is mediator neutrality. While mediation has a rich philosophical and ideological tradition, there has been more focus in training on the tools and techniques rather than theory. Consequently, mediators tend to lack concrete theories of practice for the approaches to mediation that they employ. Mediation approaches evolved over time, and even today approaches often are referred to loosely as styles; for example, facilitative, evaluative, problem-solving, or transformative. Facilitative mediation is what the term implies—the mediator acts as facilitator of the conversation, but has little input with respect to content, whereas in evaluative mediation (favored by most attorneys), mediators act as expert evaluators of the disputants' "cases." They make predictions about the outcomes if the dispute were to go to trial, and they often drive a settlement based on their "expert" knowledge. The mediator using the problem-solving model focuses on solving the problem, so that while outcome is still in the hands of disputants, the mediator "owns" the process and is responsible for helping solve the problem. All three models assume that a settlement of the dispute is the objective. The styles they use reflect their values, ideology, and expertise. Transformative mediation, by contrast, is not settlement-focused. Mediators focus on "transforming" the conflict interaction and the disputants by supporting "empowerment" and "recognition." There will be more on transformative mediation later in this article.

Whatever the style, until recently, mediation training has presented a multiple-stage model culminating in "resolution." The focus has been on tools and techniques such as re-framing the disputants' declared "positions" as "needs" and "interests," rather than on a deeper all-encompassing theory of methodology that takes into account people's learning styles, human development theory, hypotheses about how people change, how resistance is overcome, or hierarchies of human needs.

Whatever the style, some mediators are better than others, or more comfortable with handling the messy emotions underlying conflicts. The other mediators see mediation as strictly transactional—a negotiation in which emotion is purposefully sidelined as unhealthy, distasteful, and/or distracting. These mediators focus on keeping emotion out of the equation to allow the disputants to focus on negotiating a settlement to the "problem."

"Resolution" has meant elimination of the "problem": neighborhood noise, malfunction of a consumer product, or breach of contract, to name a few examples. However, in the last fifteen to twenty years, because courts
and attorneys have increasingly turned to mediation as an alternative to the courts, the nature of the interaction to bring about conflict resolution, and preservation of the relationship, are being lost or sidelined. Alternative Dispute Resolution (ADR) is now big business for attorneys, and arbitration, which was popular in the 1980s, is being replaced by mediation as the ADR method of choice. Mediation is being institutionalized in courts all across the U.S. (Bush, 1999; Della Noce, 1998; Lande, 1997).

In the early 1990s, two professors, Robert Baruch Bush and Joseph Folger, set out to offer a critique of and an alternative to mediation as it was practiced. The alternative Bush and Folger proposed is transformative mediation (Bush and Folger, 1994, 2000). My sense is that their main objection was to mediation as practiced in the courts, but their solution threw the proverbial baby out with the bath water. They lumped all mediation practices into one big vat which they labeled as transactional. Needless to say, they have provoked and evoked (depending upon which side of the debate one sits) quite a stir. The evaluative attorney practitioners object to transformative mediation’s concern with feelings and lack of focus on outcomes, while community-based and family mediation practitioners object to being lumped in with attorneys as transactionalists. The latter group believes it has been supporting empowerment and disputant control over outcomes all along.

In this article, I will focus on this "new" approach to mediation because it mirrors the Gestalt approach, and because transformative—as defined by its originators—is problematic in that: 1) it replaces a focus on outcome or settlement, if you will, with the objective of the moral growth of disputants, and 2) it lacks a theory for the methodology it applies. I will suggest that Gestalt provides the theoretical framework that mediation in general, and transformative mediation in particular, lacks.

I will illustrate how the Cycle of Experience, Unit of Work, the Paradoxical Theory of Change, and "presence" can enhance the mediator’s work. This article is an invitation to apply Gestalt theory and method to mediation—a beginning, rather than a comprehensive application. I also believe that Gestalt insights into resistance can greatly enhance the effectiveness of mediators.

The application of Gestalt theory to the practice of mediation is particularly timely because mediation is gaining popularity across a broad spectrum of society and because there is a major drive to professionalize the field.

A Short History

There has been a thirty-year trend by the courts towards increased use of mediation for efficiency, cost expediency and reduction of the court docket, that has driven the use of the settlement-style of mediation.
The 1990s witnessed a marked acceleration in the use of alternatives to court-based dispute resolution by the community at large. Businesses made more use of mediation to avoid embarrassing publicity, recognizing that some kinds of disputes—employment, discrimination, and harassment, for example—were better served by mediation than by litigation. Courts all over the country have instituted mediation programs; some involve community volunteers, but in many, one must be an attorney in order to act as mediator. At the same time, some attorneys attracted to mediation's focus on non-adversarial, win-win values of dispute resolution have embraced "collaborative law" which emulates mediation's values, but keeps the control of dispute resolution in the hands of attorneys (Woods, 2002).

The result of accelerated court use of ADR is that the differences among mediation, arbitration, and adjudication have become fuzzy. Even attorneys who profess to share the collaborative values of mediation often inadvertently drive mediation sessions in an adversarial and adjudicative direction because they continue to behave in predictably lawyerly ways.

Other attorneys exploit mediation's traditional values, such as full and complete disclosure of information pertinent to the dispute, by cynically using mediation as a covert method of gaining information to use in court proceedings against their opponent. Finally, the American Arbitration Association defines mediation as "a less formal process than arbitration." In both these examples, attorney-mediators tend to be either directive or evaluative, and often both (Levin, 2001). In short, mediation in the hands of attorneys often is one step in a series of tactical moves in a complex litigation battle.

Transformative mediation is the latest trend in mediation, residing at the other end of the spectrum. Theoretically non-linear in its method, its advocates argue for a non-settlement orientation. Its central premise is that conflict is an opportunity for human growth.

In 1996, the U.S. Postal Service embraced transformative mediation and set it up as the official mechanism for responding to EEO complaints. The program is called REDRESS™ (Hallberlin, 1994). In fact, they viewed REDRESS™ as one of several initiatives designed to change the adversarial workplace culture of the Post Office. Thus far, the results appear promising (Hallberlin, 2000). Participant satisfaction rates are fairly high and EEOC claims have declined (Antes, 2001; Bingham, 2002; Natbatchi, 2001). One of the measures of satisfaction is process control—disputants having a say in the dispute resolution method. Bush and Folger report on their website that Raytheon will be setting up a dispute resolution program using the transformative approach (http://www.transformativemediation.org).

Transformative mediation has these characteristics: a narrow and prescribed role for the mediator, whose objective is to support opportunities for empowerment and recognition. It is based on a relational worldview in
which individual interest and compassion for others merges into "compassionate strength" (Bush and Folger, 1994, p. 230). Bush and Folger posit that it is the next stage in an evolution of Western society from organic (Greeks and Romans) to individualist (modern) to relational worldview ("integrating the capacity for self-interest and the capacity for responsiveness to others," Bush and Folger, 1994, p. 237-248). These are the principles that drive transformative mediation. Bush and Folger argue that transformative mediation works, not because of their particular methodology, but because of the moral growth imperative that they assign to it. It was an inflammatory claim and they subsequently backed away from the idea of transforming people's characters, saying that they were misunderstood: "Attempting to change or transform the parties would be as directive as attempting to construct settlements for them." Mediation has "potential transformative effects" (Bush and Folger, 1996, p. 277. The italics are theirs).

To paraphrase Bush and Folger further, a conflict represents a crisis in some human interaction—a crisis with a common and predictable character:

• It destabilizes the parties' experience of both self and other;
• The negative attitudes engendered by conflict create a vicious cycle;
• Disputes make parties more vulnerable and self-absorbed;
• Being caught in a negative interaction is the most significant impact of conflict [Bush and Folger, 2001].

They argue that despite these destabilizing impacts, people have the capacity to regain their footing and return to a restored sense of strength/confidence in self (empowerment shift) and openness/responsiveness to other (recognition shift). Supporting empowerment and recognition are the two hallmarks of the transformative practice of mediation. It should be noted that Bush is a rabbi and an attorney. Folger is a communications professor.

Bush and Folger believe that two primary models of mediation practice exist: transactional and transformative. They posit that "the transactional model is an essentially psychological/economic view of human conflict ..." in which "conflict represents a problem in satisfying the parties' incompatible needs and interests, [and] the mediator's goal is to generate an agreement that solves tangible problems ..." by using "effective persuasion to 'close the deal'" (Bush, 2001). By contrast, the transformative model takes an essentially social/communicative view of human conflict whereby conflict is a crisis in human interaction. Transformation of the interaction itself is what matters most to the parties (Bush, 2002). Further, they argue that any practice of mediation other than transformative is transactional and only transformative mediation can bring about empowerment and recognition. There can be no hybrids. This stance has earned
them additional criticism and controversy (Folger, 2002). There are other practitioners who have embraced transformative mediation and conduct research on it (for example, Della Noce, 2001, 2002; Pope, 1996; Antes, 2001, 2002; Bingham, 2001, 2002).

It is not the intent of this article to critique all aspects of transformative mediation; however, I find several of Bush and Folger's claims questionable, particularly because in their argument that most mediation practice is transactional, they ignore a strong tradition of concern for and valuing of the relationships of people and the preservation of those relationships through mediation (e.g., Beer, 1997; Schrock-Schrenk, 2000).

Gestalt and Transformative Mediation

It is clear to me that the techniques of transformative mediation borrow heavily from a rich tradition of psychology, communications research, group dynamics, facilitative mediation, and the peace work of many religious communities such as the Quakers and the Mennonites. This is evidenced in Bush and Folger's Ten Hallmarks of the Transformative Practice:

- "The opening statement says it all," describing the mediator's role and objectives in terms based on empowerment and recognition;
- "It's ultimately the parties' choice," leaving responsibility for outcomes with the parties;
- "The Parties know best," consciously refusing to be judgmental about the parties' views and decisions;
- "The parties have what it takes," taking an optimistic view of parties' competence and motives;
- "There are facts in the feelings," allowing and being responsive to parties' expressions of emotions;
- "Clarity emerges from confusion," allowing for and exploring the parties' uncertainties;
- "Discussing the past has value in the present," being responsive to the parties' statements about past events;
- "Conflict can be a long-term affair," viewing an intervention as one point within a larger sequence of conflict interaction;
- "Small steps count," feeling a sense of success when empowerment and recognition occur, even in small degrees. [Bush and Folger, 1996, p. 263-278.]

Gestalt-trained readers will likely recognize many of the above hallmarks. Bush and Folger have made a huge contribution to the field of mediation but transformative mediation falls short in essential ways. Bush and Folger do not tell us what informed them in creating these hallmarks. They do not provide a theoretical foundation to explain why transforma-
tive mediators do what they do. They also do not go far enough. For Bush and Folger, empowerment and recognition are all that are needed to "transform the conflict." It is my belief that empowerment and recognition simply enhance "contact." If we apply the Cycle of Experience, enhanced empowerment and recognition may expand the disputants' field but they do not necessarily support shared figure-formation, nor do they support the disputants in a healthy completion of the cycle (Zinker, 1977, Nevis, 1987).

**Definition of Terms**

Before I proceed, a definition of terms is in order. There is a clear difference between Gestalt psychology and Gestalt therapy. The former concerns itself with the phenomenology of perception and its function; in particular, the "proper focus of psychology is the experiential present moment" (Latner, 2000, p. 13). Kurt Goldstein, (1939), K. Koffka (1922, 1935), Wolfgang Kohler (1927, 1929, 1947), Max Wertheimer (1945), and Kurt Lewin (1935, 1951) developed theories of the human mind based on studies of perception and learning.

Gestalt therapy is an integration of the early Gestaltist's work with other theories. F.S. Perls and his wife, Laura, led the way by integrating the work of Freudian and Reichian psychoanalysis, field theory, phenomenology and other influences. In the last twenty-five to thirty years, the theories that make up Gestalt therapy have been expanded to non-therapeutic applications, particularly in the fields of organizational behavior and organizational development. The faculty of the Gestalt Institute of Cleveland's Organization and Systems training program have contributed to the integration and refinement of these concepts (Gestalt Integrative Concepts, OSD IV training manual, 2002). Thus, a further distinction is in order.

I replace the term "therapy" with "theory." By the singular term "theory" I mean to include all of the theories that have been integrated into an overarching Gestalt orientation or lens, by which and through which practitioners engage in client work. I will also use "Gestalt method" to refer to the integrated methodology which flows from Gestalt theory.

Concerning the term "contact," I will use Nevis' definition: "The uniting of a desired goal with the possible—to make contact of any kind is to learn something about the present state of affairs" (Nevis, 1997, pp. 28-29). For example, I may not want my marriage to end, but through repeated attempts to reconcile with my spouse, I learn (reach an awareness) that he is resolute in leaving. It would not be accurate for me to say, "I could not reach him." It could be said that I learned what was (im)possible. The mediator often has divorcing couples as clients in cases where one spouse has moved to end the marriage and the other is still rooted in sensation or awareness of not wanting the marriage to end.
Gestalt-trained intervenors act to enhance contact. Enhanced contact often counterbalances natural resistance. It is to be hoped that my denial about the end of my marriage will cease as a result of supported contact at the boundaries between my soon-to-be ex-husband and myself. Through enhanced contact, there is the possibility for me to learn to accept that what I want may not be what I will get, and to reach some level of acceptance (completion of this aspect of the experience). Gestalt practitioners model and teach behaviors that help people attend to and interact with each other in a highly involving way, thus raising awareness which can later support meaningful action (Nevis, 1997, Shub, 2003).

What is the intent of transformative mediators? To support empowerment and recognition. A Gestalt practitioner would say, Support the development of good “contact” between the disputing parties; for instance, enhanced ability to see another's point of view (if not agree with it); and to view one's opponent as a human being with feelings, values, and needs as valid as one's own. This is why transformative mediation is incomplete: supporting empowerment and recognition are not enough. To what end is empowerment and recognition supported? The Gestalt-trained mediator understands that completion of the cycle of experience is what is important. Random support of empowerment and recognition does not necessarily support completion of the cycle of experience.

Bush and Folger intuitively understand that something "good" occurs for disputants each time empowerment or recognition occurs, but they don't recognize empowerment and recognition as part of a coherent whole. Simple contact, while helpful, is not enough. Disputants can experience contact from various empowerment and recognition efforts, but the basic conflict remains intact. Gestalt theory suggests that a mediator would support empowerment and recognition in order to assist the disputants in taking action that is useful to them. Up to this point, they have been unable to do that. That is why they seek the assistance of a third party.

Units of Work

In mediation, units of work fall into two general categories: 1) each position taken by the disputants represents a potential unit of work, and 2) each mediator intervention is a unit of work. The Gestalt-trained mediator understands that instead of "following the disputants around looking for opportunities to support empowerment and recognition" (Bush, 1994), s/he should be scanning for opportunities to help the disputants to learn more about themselves and each other in relation to their conflict, a broader and more helpful objective than empowerment and recognition. Those units of work, "chunks of change," as Claire Stratford calls them (OSD 2000), if executed with clarity of intent, build and multiply into an
energy force that supports a shared figure within the two-person system of
the disputants. In other words, units of work support empowerment and
recognition. Contrast this with the transformative model which advocates
that the mediator take a "responsive" stance to the disputants and be con-
cerned with opportunities to support empowerment and recognition. For
the transformative mediator, empowerment and recognition are all that
are required for people to restore their capability to make decisions and
consider other perspectives (Antes, Saul, 1999). I will return later to com-
pare the "responsive" stance to the concept of Gestalt presence.

Cycle of Experience

The mediation itself can be understood in terms of the Cycle of
Experience. It represents the whole of the disputants' joint experience. The
dispute is an interrupted cycle of experience. If the transformative media-
tor understood this construct, s/he would recognize that it is probably not
enough to support empowerment and recognition. They are only two
aspects of the expanding awareness field. When that awareness reaches
"critical mass," disputants can take useful actions on their own behalf,
something they were incapable of doing while mired in the conflict. Mediators have as much impact on critical mass through the quality of
their efforts as they do through the quantity of their interventions.

Bush and Folger's landlord-tenant case study exemplifies these two con-
cepts (Bush and Folger, 1994). The tenant is ill, and misses work; conse-
quently, she falls behind in her rent (her experience). Her landlord does
not get his rent for several months (part of the same experience) but is not
privy to her illness; she is avoiding him although they used to be friend-
ly. Concurrently, the tenant is visited by the child welfare agency. She con-
cludes that the landlord has reported her in retaliation for not paying rent.
Finally, one day when the tenant hits him, the landlord concludes that
enough is enough and initiates eviction proceedings.

The mediator joins the disputants at a point in their cycle. It is the
mediator's job to help them bring their respective cycles into sync. Units
of work are intended to expand the ground and bring an emerging figure
into sharper focus. Units of work can be thought of as cycles within the
larger cycle, each with its own need for fulfillment and each strategically
conducted by the intervenor in support of the larger cycle. For instance,
in a caucus, the tenant says the landlord deserves what he is getting
because of the way he has treated her. The mediator asks her to say more:
what does she mean when she says that he "showed his colors?" The ten-
ant shares that she had gotten so sick that she became depressed and
could not get out of bed. The landlord came by and she told him that she
was having problems and could not talk. He left but continued to call
every couple of weeks. She concluded that because he kept calling, "he'd
showed his true colors, and that he's just out for himself and money like all landlords." The tenant said she felt a real friend would have "seen I was in trouble and waited. He knew I'd always paid him before. But when it came down to it, he was just interested in his money. He showed his true colors..." Bush and Folger's mediator responds, "So you felt, when the [landlord] kept trying to talk to you, that it was because he didn't trust you, and so you felt let down at a crucial time by somebody you considered your friend—is that it?" The tenant confirmed that was how she felt: "I saw he wasn't really the way he seemed, so I decided the hell with him from then on" (Bush and Folger, 1994, p. 157).

The mediator's interventions reveal that the disputant experiences the landlord's repeated efforts to talk with the tenant in phenomenologically different ways and they each draw very different meanings. He thinks he is being thoughtful and showing concern in trying to talk with her. She thinks it is proof that he does not trust her.

*Extensive work has been done by Gestalt-orientated practitioners on the various phases of the Cycle of Experience (Perls, et al., 1952; Polster & Polster, 1973; and Zinker, 1977, to name a few). This diagram borrows from E. Nevis, Organizational Consulting from a Gestalt Approach, 1987 and R. Maurer, Beyond the Wall of Resistance, 1996.
Bush and Folger use this exchange as an example of probing to elicit the party's view of self and other. As she talks, the tenant reveals how she sees her landlord, but also how she wants to be seen. She values their past conversations and his trust in her to pay her rent. She also wants him to recognize that she was going through a tough time, and that she needed to be left alone. She wants his continued trust because she feels she deserves it. The mediator replays the past events that shaped the tenant's view of her landlord, including things he had done with which she was quite pleased, bringing out empowerment and opportunities for recognition. Without the mediator's probing questions, these opportunities would not have been revealed.

When they leave the caucus and resume the mediation session, the conversation with the landlord continues, and more information is shared; the mediator "follows the parties around," assuming a responsive mode, scanning for opportunities to reiterate statements the disputants have made that will support empowerment and recognition, and so on. Finally, the parties think they have reached an agreement, and the landlord asks whether the tenant is sure she can afford the agreement they have worked out. She considers and decides not. The whole process breaks down and old positions are resumed. The mediator remains upbeat and reemphasizes the progress the parties have made, that they can continue to consider options outside the mediation and make choices on their own, but s/he has run out of intervention options and thus terminates the mediation.

American culture in general has a bias toward action over reflection, which tends to short circuit undergoing a healthy awareness of the Cycle of Experience, and can thus lead to poor, inadequate or unsatisfying action for one or all of the parties. That is what Bush and Folger have been witnessing in the field of mediation: a bias toward action when there is not enough groundwork to support the action being taken. Legal training and practice share this bias. Additionally, lawyers are in the business of advocacy, which makes it challenging for them to stay neutral, another reason Bush and Folger see the tendency toward directiveness on the part of mediators, increasingly more of whom have legal training.

According to Gestalt theory, it is new and/or raised awareness that enables disputants to empower themselves and allows each to "see" the other in a different light: recognition. However, awareness as the goal is not enough. The intent of supporting awareness is to stay present until something useful emerges. Only then can a cycle proceed toward completion. A mediator looking beyond empowerment and recognition might have been better prepared to intervene in the last minute's breakdown, or might have better supported the disputants so that there was no last-minute breakdown.
Paradoxical Theory of Change

Gestalt practitioners believe that change occurs when embraced by the individual, not when it is forced upon him or her, and often even then, change is difficult to achieve. Arnold R. Beisser’s *The Paradoxical Theory of Change* states that "change occurs when one becomes what he is, not when he tries to become what he is not" (Beisser, 1970, p. 77). In other words, "one must first fully experience what one is before recognizing all the alternatives of what may be." Then it is possible to achieve a shift in awareness, or attitude, about the dispute and/or the other person (Nevis, 1987, p. 61).

When people are supported to elaborate and clarify their experiences (as Bush and Folger’s mediator did with the tenant in caucus), they begin the process of re-integrating what may have been alienated parts of themselves. They are heard by the opposing party and by the mediator (bearing witness), and are given the time and space to become more fully vested in who they are; their experience is validated by themselves and others. Bush and Folger call this recognition. Paradoxically, recognition begets empowerment and vice versa. Gestalt intervenors do not seek to empower others because "they recognize only self-empowerment" (Karp and Sirias, 2001). Gestalt practitioners understand that disputants must experience empowerment for themselves, not have it handed to them, for only then will they achieve recognition of themselves (empowerment), and only then can they become less self-absorbed and turn their attention to the other person (recognition!). Further, Gestalt interventions seek elevated awareness, not personal change (Sonia Nevis, Gestalt Institute, Couples and Families Program, 2000).

Thus in Bush and Folger’s case study, the mediator supports the tenant in airing her suspicion and accompanying anger that the landlord reported her to social services. The mediator, rather than shrinking from that information or dismissing it as irrelevant or unhelpful, works with the anger, and supports both parties in addressing this new information. It was not the landlord who reported the tenant to social services. How does the landlord feel about being thought of this way? What impact does this new information have on the tenant? The landlord? To the extent that the mediator supports this dialog, the dyad expands its knowledge of itself—that is, it becomes more fully what it is.

Supporting the full expression of her anger and feelings of betrayal may paradoxically free the tenant from those feelings, and she then can choose to move to a new position—possibly to negotiate with the landlord from a capacity she did not possess when she walked into the room.
Bush and Folger have provided a nice start by illustrating the technique of transformative mediation, but they have not provided a theory for why it works. Further, in saying that disputants own both process and outcome, Bush and Folger do not acknowledge the critical role of the mediator. Transformative mediation has been characterized as loosey-goosey, with little or no structure and a seemingly passive role for the mediator: "following disputants around being responsive...." Bush and Folger tightly prescribe the mediator's role because they fear that mediator bias will creep in (Bush and Folger, 1994, p. 194). If my recent training (December, 2002) in transformative mediation is any indicator, they seem to limit the mediator's intervention options even more than they do in their book.

People seek help because their own efforts have failed. It is rather naïve for mediators to think they do not own a piece of the dynamic process of interaction. It is evident from research in chaos theory that the "passive" act of observation changes the behavior of the observed. We as mediators cannot not have an impact. It is important that we understand this. Successful mediation requires skillful practitioners who know that they have a role, are clear about what that role is, and can reflect on its impact. Mediators practicing transformative mediation do not "control the process" in terms of a strict adherence to a stage model of mediation, but they play a role in supporting the process of mutual understanding. In fact, they establish the conditions under which the parties can rediscover their own problem-solving abilities (Enright, 1970).

Again, Gestalt provides the theory and the model. Edwin Nevis would say that the effective intervenor is one who uses "high-contact interaction, and 'strong-presence'" (Nevis, 1987, p. xi). The intervenor is the learning model. S/he takes an active, albeit neutral, non-directive role in the mediation, models active listening, and seeks to heighten awareness of what is. The intervenor confronts clients when necessary by making neutral comments about the disputants' behaviors (observable data) germane to the dispute; s/he also supports the mobilization of energy and facilitates contact (recognition). Nevis articulates a comprehensive laundry list of skills required of the intervenor. Here are a few that I believe to be most relevant to mediation:

- The ability to separate data from interpretation, and to make non-judgmental observations;
- Clear awareness of one's own intentions, and ability to translate them into succinct, clear interventions;
- Present one's self as attractive but not distracting (Nevis, 1987).
For me, this means being sure of your own individuality while not dominating the mediation; controlling your needs; sharing your values and your experience in a useful way when it may be relevant or helpful to the discussion; and assisting clients in drawing meaning from the experience. Bush and Folger, by contrast, advocate a "certain degree of tentativeness in the use of responses" because "the transformative mediator realizes her "reflections or summaries may not be entirely accurate, and that they should therefore be represented in ways that allow and encourage correction by the parties" (Bush and Pope, 2002, p. 91).

Bush and Folger have not yet addressed the disputant/mediator dynamic in much depth, but other practitioners have. For example, Susan Fukushima has addressed transference and counter-transference in mediation (1999); Daniel Bowling and David Hoffman, two attorneys, have written on mediator presence (2000); and Andrea Bodtker and Jessica Jameson have written about mediation as mutual influence (1997).

While transformative mediation is present-focused, its practitioners have paid little attention thus far to the research on non-verbal communication. In addition, questions and paraphrasing are the predominant interventions. Gestalt theory suggests that the use of statements and observations rather than questions further supports heightened awareness. Questions often take people back in time, out of the room. Observations keep the clients focused on their immediate experience. Bush and Folger believe that statements supporting "common ground" such as "you both really care about your child" are directive and do little to bring parties together (Bush and Pope, 2002, p. 91). However, if the two disputants have indeed demonstrated care for their children during the mediation, this is concrete data worthy of sharing with them. It is only directive if the mediator uses it as a tactic to keep parties "on track" or to "move the discussion along" (Bush and Pope, 2002, p. 94). The Gestalt technique of making observation statements supports Bush and Folger's twin goals of empowerment and recognition if applied to support awareness.

A Gestalt intervenor is likely to believe that increasing awareness supports the change that the parties seek. S/he will make full use of the dynamic between the disputants to raise awareness. S/he might remind the disputants that despite their conflict, the other really does care about what's best for the child. Helping clients raise their own awareness builds ground and fattens the figure, allowing them to re-empower, or further empower themselves.

In summary, Gestalt theory provides the model and theory of practice for the methodology Bush and Folger characterize as transformative mediation. The Cycle of Experience describes human experience and the need for a fully formed figure. This construct guides the mediators towards areas in which the disputants might need support—specifically, raised aware-
ness and clean contact with the intent of clean closure about each figure that is formed.

Gestalt theory provides a model for the mediator’s presence: a caring, impartial third party supporting the disputants in the work they are doing, aware of his or her own presence and its potential for impact, able to provide something that the disputants may be missing, while careful not to usurp the disputants' own power. Gestalt also provides a framework for the mediator to be intentional: "I am not there to change the person or make judgments about what kind of change they need. I am there to support them in developing fuller awareness of what is, and taking useful action for themselves based on that awareness. They already know that what they have been doing is not working. My job is to assist them in discovering alternatives."

The Paradoxical Theory of Change provides a meaningful change model that supports individuals, couples, and organizations in achieving lasting and sustainable change. Mediators support each party to invest themselves completely in that moment, knowing that only then can they change. Units of work are the context in which interventions take place. Each intervention should be crisp and clean with clear intentionality.

Bush and Folger advocate trusting the process rather than being results-oriented, but they mistake settlement for results. Disputants seek mediation because the status quo is not working for them. Mediators do not know which future point is "best" for disputants, but mediators do know that the parties seek something different from their current status. Mediators are there to support that journey.

SUMMARY

The field of mediation in general, and practitioners of transformative mediation in particular, could benefit from the study of Gestalt approaches to client work. Fundamentally, Gestalt practitioners work with people as they are. They respect their clients' integrity and provide the presence that is missing when people get "stuck." Gestalt provides the theoretical basis for understanding how and why empowerment and recognition occur when clients are supported in expanding their common ground and investing themselves completely, if only for the moment, in what they are rather than rushing them into becoming something they are not. Gestalt provides intervenors with a conceptual roadmap to support clients in raising their own awareness, making meaning of their situation, and taking action that supports their needs.

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