

theory. See BUSH & FOLGER, *supra* note 2, at 54–65.

32. These kinds of effects have been documented by research in venues where transformative mediation is used, such as workplace conflict. See LISA BLOMGREN BINGHAM, *MEDIATION AT WORK: TRANSFORMING WORKPLACE CONFLICT AT THE UNITED STATES POSTAL SERVICE* (2003); see also James R. Antes et al., *Transforming Conflict Interactions in the Workplace: Documented Effects of the USPS REDRESS Program*, 18 *HOFSTRA LAB. & EMP. L.J.* 429 (2001).

33. In most discussions in the mediation field today, at least four “models” of practice are recognized, the facilitative, transformative, understanding based and evaluative models. See, e.g., Frank E.A. Sander, *DISP. RESOL. MAG.*, at 9 (Winter 2008); see LEONARD L. RISKIN ET AL., *DISPUTE RESOLUTION AND LAWYERS* 165, 288–307 (3d. ed. 2005); see also DWIGHT GOLANN, *MEDIATING LEGAL DISPUTES: EFFECTIVE STRATEGIES FOR LAWYERS AND MEDIATORS* 21–25 (1996); see also JAY FOLBERG, ANNE L. MILNE & PETER SALEM, *DIVORCE AND FAMILY MEDIATION: MODELS, TECHNIQUES, AND APPLICATIONS* 29–92 (2004); ALFINI ET AL., *supra* note 5, at 107; Robert A. Baruch Bush, *Staying In Orbit or Breaking Free: The Relationship of Mediation to the Courts Over Four Decades*, 84 *NOTRE DAME L. REV.* 75 (2008); Joseph Folger, *Harmony and Transformative Mediation Practice: Sustaining Ideological Differences In Purpose and Practice*, 84 *NOTRE DAME L. REV.* 823 (2008).

34. See Della Noce et al., *supra* note 17, at 21–23 (noting court-mediation in the Florida system); see also BINGHAM, *supra* note 32, at 13–15 (commenting on workplace mediation in the USPS REDRESS Program).

35. See Nancy Ver Steegh & Claire Dalton, *Report from the Wingspread Conference on Domestic Violence and Family Courts*, 46 *FAM. CT. REV.* 454, 455–66 (2008).

36. See Nigel Purchon, Gondar Design Science, available at www.purchon.com (last visited Aug. 10, 2009).

CHAPTER 14

Marital Mediation: Transforming Marital Conflict through Facilitated Dialogue Reclaiming Personal Strength and Marital Connectedness

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Introduction

Could it be true that what makes a marriage fulfilling and work well is directly dependent on a couple's ability to fight well? There is substantial evidence suggesting that. In other words, how a couple *does* conflict directly impacts the quality and longevity of their marriage. Years of marriage research has underscored the need for communication between couples, and important research has explored how couples' fighting styles are linked to marital satisfaction.¹ Couples who divorce often report that not facing or not engaging meaningfully with their marital conflicts is what drove them apart. This is why it makes sense for marriage experts to say couples need to communicate more. However, “communicating more” often entails dealing with the experience of conflict and learning to fight well.

Because many couples experience conflict as dangerous and harmful to relationships, it is not surprising that they often do not see or consider how certain styles of doing conflict might *preserve* a marriage. Rarely do newlywed couples report that they were looking forward to fighting well together or that they wanted to get married so that they could have constructive fights. If the ability to engage in *conflict* is ever openly expressed by couples, it is often a mere whisper. Many people assume that healthy, loving, emotionally balanced couples would rarely experience conflict between them, let alone pride themselves on how lovingly they engaged in their conflict struggle. It is rarely believed that engaging in conflict with each other would strengthen each person as well as strengthen a marriage probably because the *experience of conflict* itself is not pleasant for most people. Conflict often carries with it an assumption that it is bad, harmful or “not nice.” As a result, it is frequently not embraced but fought against, cajoled or ignored. But these widely held assumptions and societal attitudes, along with the lack of experience with unaided conflict, can lead to a breakdown of many marriages.

For those couples who do address conflicts openly, it often takes a negative toll on their relationships. But the fighting—or engaging with differences—does not have to be destructive, nor does it have to exact such a high tariff on marriages. It has the potential to be a very positive, intimate experience, one that leads to greater connection and loyalty. Many long-term married couples have learned that conflict can strengthen relationships when they engage it with strength of self and compassion for other. What can make relationships and marriages work over time is directly connected to a couple's ability to move through marital conflict and engage in it meaningfully, in a way that ultimately reconnects them. This is why transformative mediation—a forum that embraces conflict as human and inevitable and offers a constructive way to allow it to unfold—may be one of the best opportunities for couples to deal with conflict constructively. It allows couples to face difficult issues and engage in meaningful dialogue while they work through marital difficulties.

This chapter explores the utility of transformative practice for marital conflict. Conflict theory and marital research point to the possibility for transformative mediation to have a positive impact on conflict in intimate relationships. We suggest that couples choosing to work with a transformative mediator can honor their human experiences and work with each other rather than against each other, as they address their differences through constructive and compassionate interactions, regardless of the sharpness, ugliness or tenderness of what is being discussed or deliberated. Because transformative mediation is a decision making forum for addressing conflict in a productive way, one of the many possible outcomes of such an approach is that the process can strengthen each partner individually while *fortifying and preserving* the marriage, if the couple decides that this is what they want to do.

Conflict in Marital Relationships

Social science researchers have studied marital conflict to analyze the impact of marital distress, to understand the types of marital conflict, to predict the factors that lead to divorce, and to find ways to help marriages stay together. Over three decades of marital conflict research consistently indicates that how well a couple addresses conflict directly impacts the quality and longevity of their marriage. By studying marital interaction and observing thousands of marriages in crisis, researchers have concluded that marital success is directly related to how satisfied a couple is with the way they work out their differences. Some researchers have been able to accurately predict the successful life or inevitable death of many marriages. While it is true that couples seldom exclaim that the reason they want to marry is so they could avoid conflict, this research indicates that what makes relationships and marriages work well over time is directly connected to a couple's ability to constructively work out their disagreements.

Negative conflict interaction in marriage is known to have an impact on physical health and mental well-being.² Some studies show direct physiological changes that accompany negative spousal interactions. High levels of negative conflict behaviors such as hostility and aggressive avoidance have been associated with elevations in cardiovascular reactivity.³ Other negative effects include increased incidence of violence, significant immunosuppression, and mortality from diseases.⁴ In contrast, other research points to the potential positive impact of marriage on the health and well-being of the couple. Waite argues, for example, that the case for marriage is strong in producing more health, wealth, improved intimacy, and other benefits not enjoyed by those who live alone.⁵ The potential for long-term positive interaction with another person can promote long term health but when marital interaction is destructive or negative, the opposite tends to happen—such interaction can threaten the health of the individuals as well as the marriage itself.

Of course, marital conflict does not just affect the couple. For couples who are steeped in destructive conflict patterns, their children often suffer from depression, health problems, poor academic performance, difficulty forming friendships, drug and alcohol abuse, and conduct-related difficulties.⁶ Regardless of age, children who are caught in the parents' pain and anger during high-conflict interaction can experience detrimental and potentially long-term effects on their happiness and social development.⁷

Although it might be easy to conclude that it is better for struggling couples to divorce, a 2002 study by a team of leading family scholars researched the question: Does divorce make people happy? This study tested the popular assumption that a person stuck in a bad marriage has two choices: stay married and be miserable or get a divorce and become happier. After interviewing over 5,000 couples, these researchers found no substantial evidence that unhappily married adults who divorced were typically any happier than unhappily married people who stayed married.⁸ Even more dramatically, they also found that two-thirds of unhappily married spouses who stayed married reported that their marriages were happy five years later.⁹ Marital conflict is often episodic and situational and does not have to break a marriage, but that may depend on the couple's ability to constructively work through difficult conflict interaction.

What contributes to the quality of marital conflict interaction? It is not so much the conflict issues that are being addressed by the couple as it is *how* the couple engages in conflict about those issues. Although money and children are the two most frequent issues that couples fight about in first marriages, the consistent theme in marital research demonstrates that **what** couples argue about is not as important as **how** they argue.¹⁰ *How* couples argue may often be the critical factor that makes or breaks a marriage, even when couples want to stay married.

Even though the problems may change, research shows that parties draw from

similar habitual conflict processes. So whether the issue is about hanging the toilet paper, having a third child, or deciding where to live, the couples' conflict dance tends to happen again and again. Couples develop ways of relating—and whether these ways are skilled or unskilled, effective or terribly ineffective and destructive—they become the patterns and habits of the marriage. Such patterns have the potential to be positive in a marriage. As one marital researcher suggested, the good news is that successful behaviors build self-confidence and appreciation of one's partner.¹¹ But when patterns are unsuccessful they can shake confidence and undermine mutual appreciation within an intimate relationship.

Similarly, patterns of emotional responses in conflict interaction have relational repercussions over time. One of the earliest conflict theorists emphasized how conflict can either bind people together or divide relationships.¹² Partners in marriage need to pay particular attention to the cumulative impact of either positive or negative emotional experiences because marriage carries such broad emotional history. What bind couples together are positive and respectful interactions, especially during stressful communication. Observations of married couples reveal that the interaction patterns of unhappy couples are structured, rigid and predictable.¹³ Satisfied couples, on the other hand, build up a surplus (or "bank account") of positive sentiments for their partner and their marriage. Over time, this surplus functions as a social resource. Couples who have this banked supply of sentiments are less likely to trigger each other's negative emotions when faced with conflict. And if and when emotional responses do escalate on a particular topic, the couple is more likely to use this resource to reflect on their interactions and take personal responsibility, often leading to greater openness, reconnection and forgiveness.

Many marital researchers and educators demonstrate that these skills can be taught to couples of any race, culture or economic class and to couples at any stage of their relationship.¹⁴ The earlier the skills are learned, the greater the chances for long-term success. But couples who are already steeped in troubled patterns still have the ability to learn a different set of skills if there is the desire or the opportunity to do so.¹⁵

Two research groups in particular have explored the predictive factors and conflict patterns of those couples satisfactorily married and those couples heading for divorce.¹⁶ John Gottman and his colleagues at the University of Washington indicated that their research teams could predict, with more than 90% accuracy, whether a married couple would stay together or eventually divorce. Even more startling was that these researchers only needed fifteen minutes of observation of a couple's interaction to make such a prediction. In some studies, these researchers discovered that if only *three* minutes of a couple's communication was observed, they could still often predict which couple was likely to get divorced and which was

not.¹⁷ Gottman was clear that "a lasting marriage results from a couple's ability to resolve the conflicts that are inevitable in any relationship."¹⁸

In his book *Ten Lessons to Transform Your Marriage*, Gottman moved from marital conflict analysis and research to developing insights about how divorce could be prevented.¹⁹ Gottman and his associates suggest several key principles that are intended to be useful to couples as they think about their own conflict interaction patterns:

- Happily married couples behave like good friends. Their relationships rely heavily on respect, affection, and empathy.
- Spouses in happy, stable marriages made five positive remarks for every one negative remark when they were discussing conflict. In contrast, couples headed for divorce offered less than one positive remark for every single negative remark.
- Satisfied couples handle their conflicts in gentle, positive ways.
- Couples don't get gridlocked in their separate positions. Instead, they keep talking with each other about conflicts. They listen respectfully and they try to compromise on difficult issues.

Like Gottman and his associates, Markman and Stanley created a training program known as PREP—Prevention and Relationship Enhancement Program. PREP is a comprehensive divorce-prevention and marriage enhancing program which offers principles and skills in a curriculum designed to help partners say what they need to say, get to the heart of problems, and increase their connection with each other. These marital researchers and educational groups support the basic premise of a relational approach to conflict, which is the approach that underlies a transformative approach to mediation. The health of a marriage is not so much about problem-solving but rather about the way the couple interacts with each other over any issues that come between them.

The Problems with Couples' Trusted Sources

Ironically, the most trusted sources—friends, clergy, counselors—to whom couples often turn in times of difficulties, are often unintentional instigators of further marital strife for marital couples who are in destructive conflict patterns. The reason is that many people who are chosen by spouses as trusted sources often do not have sufficient professional or intuitive knowledge about conflict and how it can undermine people's ability to think clearly, alienating them from their own true selves and each other. Thus, those who intervene in a couple's conflict often only focus on manifestations of the conflict experience, rather than the conflict

interaction that couples are struggling with. Because the symptoms of destructive conflict interaction are often weakness, pain, and suffering, it is understandable why many trusted sources respond the way they do based on what they know best. It is the *conflict experience itself*, however, that is in most need of attention, not the more palpable symptoms. A well-intended fix of conflict symptoms for most marriages usually results in further damage to one or both of the spouses over time, often leading to the demise of the marriage. The couple's trusted sources are not acting in bad faith, nor do they have negative intentions. But without an ability to work with couples' challenging conflict interaction, the expertise of many trusted sources to whom couples turn falls short of strengthening the individual spouses or the relationship as a whole.

For example, when the trusted source is a confidant or best friend, he/she often sides with one member of the couple in a way that aligns with or even adds to the difficulties by adding their own negative views or their own difficult experiences with their spouse or ex-spouse. Although this type of support can feel comforting to one of the spouses, it can also create a distancing or a sense of ganging up against the other spouse. Over time, there is often a drive towards the safe haven that this friendship offers, with the troubled spouse spending more and more time with the friend as an escape, and sometimes doing so without a clear sense of how the friendship relationship is causing additional harm to the marriage. If the supported spouse does decide to try to work things out with their partner, he/she may experience guilt because he/she may feel that they are turning away from or betraying the friend who has supported negative views about the spouse. In such cases, the friendship is often cooled or even curtailed while the spouse tries to work things out with their partner.

Similarly, when the unhappy spouse chooses a family member as a confidant, the family member often adopts a stance that is not helpful to the person in working through conflict with their partner. Family members may take the view that the relationship was doomed from the outset, saying to the spouse: "I knew you should have never married him/her to begin with." Or, alternatively, they may suggest that "Everything is going to be OK; it will pass. Why don't you go out and do something nice for yourself?" The impacts of these suggestions are either to hasten the end of the relationship or to trivialize the marital conflict experience that the spouse is expressing. Neither of these stances helps or encourages the spouse to actually attempt to work through the conflict; rather they each encourage conflict avoidance in their own ways. This is not surprising because few family members are able or want to get involved with a marital couple's actual conflict interaction, even if they will be influenced by the outcome of the conflict the spouses are struggling through.

Another trusted source to whom an unhappily married spouse may turn is a

priest, rabbi or clergy member. Often these religious advisers listen with remorse and sadness, often with the explicit or implicit goal of keeping the couple together. Like the suggestions of family members described above, the religious response to conflict is often to create an expectation that the distraught partner stay in the marriage, praying for strength and divine influence, but without offering concrete assistance on how to work through difficult conflict interaction. Alternatively, advisers can simply proclaim that "There is nothing else I can do to save this marriage" followed with a message of "This marriage is over." The spouse can then end up in divorce proceedings or divorce mediation even though they themselves may be deeply unsure about whether or how they might work through their marital conflicts. The advice to end a marriage, from this type of trusted figure, can carry significant weight because it often comes at a time when a couple is least able on their own to work through their conflict or make clear decisions about what they want to do. When couples are in states of weakness and self-absorption, advice from religious advisers to "leave the relationship" can come as an escape but it can be a choice that is taken without the clarity and strength that comes through reasoned deliberation and connection with the person with whom they are in conflict.

The same bad timing and lack of understanding about the conflict experience often besets the therapist-client relationship when a spouse or couple seeks professional help. Many therapists are well trained in communication issues but have fewer specific skills related to conflict interaction or conflict transformation. Marriage counselors or therapists usually offer sound relationship counseling and some assistance with developing new communication skills. In many instances, however, the couples' interactions are so negative and destructive that the therapist is often not equipped to deal with both people together and their spiraling conflict interaction. What often happens instead is that the counseling sessions break down and one spouse begins working with the therapist individually. In providing an individually-focused response, a counselor often offers encouragement to the client to "trust her/himself." But given that the couple is in a state of great turmoil, this advice is difficult to enact in the context of the couple's interaction where the ability to think clearly or openly is most impaired and the self-absorption of each spouse may be at its greatest. If the therapist adopts a supportive, sympathetic stance for only one of the spouses this may empower that spouse in one sense, but it may do little to transform the conflict interaction of the couple.

One of the last sources that one of the couple may choose is an attorney who is trained in *divorce*. Responses by legal counsel come out of a worldview that marital conflict is adversarial, representing a contest of competing claims and rights, where the attorney provides expert advice on how to proceed. A divorce attorney cannot facilitate a highly collaborative process, much less help a couple address difficult struggles with their conflict interaction. The adversarial process has its own trajec-

tory and momentum once a spouse or couple initiates it. It can be difficult for a spouse to stop or slow this adversarial momentum, even if one or both spouses feel that they would want to interact differently about their issues, whether or not the marriage is going to continue.

The overall approach to supporting a spouse or couple by the trusted advisors described above is also characteristic of the approach taken by many mediators who do not work with transformative objectives. When an unhappily married spouse seeks out a family mediator, many mediators make an assumption that there will be a separation or divorce. The definition of the role is that of a divorce mediator, not a marital conflict mediator. Many mediators who work within other models of practice seek to assist the couple by controlling or ignoring the spouse's emotional expressiveness, focusing on tangible problems, and trying to "separate the people from the problem" so that solutions are more easily created, often with considerable influence by the mediator. The mediator's focus is on how the couple can reach a settlement—a divorce agreement without litigation. It is not on supporting the transformation of the parties' interaction.

In contrast, *transformative* family mediators understand that people and problems are interconnected and that this interconnection unfolds within parties' conflict interaction. They also are comfortable working with conflict interaction, and they know that shifts in the experience of conflict interaction support the parties in ways that many trusted advisors do not, as they move forward towards sustaining or ending their relationship.

A Relational Approach to Marital Conflict Interventions

Conflict propels us as human beings into relative states of weakness and self-absorption.²⁰ Because conflict destabilizes the experience of both self and other, married couples in conflict respond to conflict and interact in ways that are both more *vulnerable* and more *self-absorbed* than they did before the conflict arose. The interaction—the relating—between the couple, can quickly degenerate and assume a mutually destructive, alienating, and dehumanizing character. Many couples report that the most troubling, upsetting, or disturbing aspect of their conflicts and disputes with their spouses and ex-spouses is the way that they interact or fail to interact. The automatic personal reactivity to each other fuels a sense of alienation from oneself and from each other. Time and time again, the experiences couples have with their conflict supports the view that conflict is a relational experience, involving self and other, and that regardless of the disputed topic, the largest barrier to overcome in conflict resolution is the destructive interaction that the parties are engaged in. This assumption is at the core of a relational view of conflict and shapes the premises of a transformative approach to mediation.

In marital conflict, the negative experience of conflict is often exacerbated because couples have years of conflict interaction patterns, memories and hurts that are difficult to transcend. They also have been part of an ongoing relationship through which a large measure of their personal identity is defined and linked. Additionally, marital conflict is particularly complex because no one single issue can be isolated without impacting many other issues. The interrelationship of issues is what researcher Louis Coser referred to as "cross-stitching."²¹ It is a hallmark of intimate relationships in general and has a significant impact on marital conflict interaction.

In focusing on the basic human experience of conflict, Bush and Folger and those who practice within the transformative framework highlight the importance of using a non-linear approach to mediation.²² Similarly, Coser highlights the importance of using a non-linear approach to understand and work with marital conflict, and further suggests that problem solving is but a short term fix and does not reach at the depths of the complexity of marital conflict.

Transformative mediators view difficulties or disagreements as natural and inevitable, embrace the positive aspects of conflict, and assist couples in working with the difficulties by allowing the conflict to unfold so that decisions are made in a more deliberative and satisfying manner. The mantra of marital mediation from the transformative framework might be encompassed in the phrase: *It is not in the dispute, it is in the disputing.*²³

In marital mediation conducted within this framework, couples discover what their habits of disputing have been and choose to revise their process for the "normal and natural" conflicts that arise in a dynamic, healthy marriage. In marital mediation, couples develop guidelines and "practice" skills for fighting fair, even as they are working on the crisis issues. This approach is ideally suited for married couples who may be faced with any of a number of ongoing conflicts such as spending and debt, finances and savings, parenting of children, competing family traditions, in-laws, vacations, friends, values, religion, sex, neatness, division of labor, interfacing with the community, or various life events such as menopause, career change, retirement, empty nest, caring for an elderly parent, death of a parent, children returning home, job loss, moves, addictions, mental health issues, serious illness and disease, infidelity, death of a child, and growing apart.

A transformative mediator focuses on highlighting the opportunities for clarification, understanding, and decision making which present themselves during the interaction between the conflicting couple. Mediation from a transformative approach is a full-bodied and human approach to conflict which gives people a forum for the expression of emotion as well as the opportunity to think clearly, while not losing sight of the need to discuss, address and make decisions about the many dimensions of the conflict issues that divide them. Transformative mediators help couples rebound from conflict's alienating effects by highlighting the many oppor-

tunities for decision-making in the way they are interacting. These choice points are often missed in unassisted conflict interaction because of the weakened and self-absorbed experiences that conflict creates.

Although quality interaction can never be forced by a mediator, couples often yearn for the experience of being deeply understood and reconnected, which can be assisted by the presence of a transformative mediator highlighting the choice points for the couple. Because the mediator is neutral as to what the couple decides at any given moment, the mediator honors whatever choices each person makes, while staying proactive within a relational model of supporting the opportunities for speaking for oneself and being open to the perspective of the other. The value of a mediator is to assist the couple in lessening or removing the largest barriers to their productive conversation and decision-making: that is, supporting the way they interact. A couple's prior negative experiences of not being heard, not being given a chance to explain one's view, being criticized and devalued, being taken advantage of, not being respected, being uncertain, rigid or hostile, not being given information, being suspicious of the other's ability or motives, all have a greater chance of shifting to something more positive. This is because the proactive interventions of the mediator allow the conflict to unfold in meaningful ways with decisions made by the couple at many intervals along the way.

The mediator's attitude is never to force choices. Therefore, when positive shifts do occur in the couple's interaction during marital mediation, however small or gigantic, they are authentic. These shifts, frequently called empowerment and recognition shifts, begin to change the quality of the way the couple interacts or views oneself or the other. Cumulatively, these internal and external shifts produce conflict transformation, which is a change in the quality of the conflict experience itself. When spouses are strengthened in their interaction interpersonally and with each other, they are more likely to make decisions that are more clearly thought through and are more responsive to the other and to the perceived realities of their situation. Frequently, these decisions involve more compassionate choices for both people.

Furthermore, so as to not perpetuate a possible misunderstanding about marital mediation, it is not the mediator's goal to get couples to agree, nor to get couples to be nice to each other, nor to tell or imply that the couples should stay married. These are fine goals for the couple, but the mediator's goals are to facilitate the dialogue, to suspend judgment, and to enhance the opportunities for the couple's perspective taking and decision making.

For those couples who want to stay married and strengthen their marriage, working with a mediator provides many more authentic opportunities for the couple to decide for themselves whether and how they will stay together, how they will treat and be responsive to each other, and how they will face and work through their current or future difficulties.

How Mediation Can Strengthen Marriages

Marriages go through seasons. Most couples go through changes. In long term marriages, couples have negotiated "new" marriages along the way to enhance the marital bonds during the seasons of change that unfold in their lives. Beverly Hovmand of Baltimore Mediation often says that in forty two years, she has been married six times...to the same man, and now at age 65 and going strong, she anticipates the negotiation of yet a 7th marriage upon her husband's retirement. Recognizing and valuing these marital evolutions, and accepting the opportunities for opening up conflict that they provide, are what characterize many successful long-term marriages. On the other hand, when couples just assume that "we are drifting apart," "we are just not meant to be together," "it just too hard," "we just don't love each other anymore," these attitudes often stem from years of the couple not engaging constructively together in life's changes and challenges. To assume that what worked a few years ago or a few decades ago still works today is not necessarily true—couples face new challenges as the phases of their long-term relationship unfold.

There are countless times in many marriages when one or both people know there is something wrong or dissatisfying but the couple chooses to ignore the problem. They are often afraid of the turmoil that may be brought to the marriage by addressing it, or they just hope it will go away. Other couples find themselves falling into bad patterns of criticism, blaming and the negative conflict cycle of destructive personal reactivity to each other. In a sense these fears may be warranted. It might indeed be risky to open up or address marital conflict in a society where divorce is commonplace and can be a *fait accompli* upon the initiation of just one of the partners. Marital conflict can also be more frightening than divorce conflict because there is no promise of where the conflict will lead, no laws to guide the couple, no equitable court standards to fall back on, and the fear may be especially acute if the couple has no history of fighting well and working with conflict to overcome the barriers, or if the couple has a very adversarial history.

Certainly not all marriages are disasters nor are all marriages fairy tales without any conflict at all. Most marriages have experienced tension from time to time—the pull and drain of difficult situations and hard decisions, including conflicts between the spouses. Indeed, "we never fight" is not a sign of marital health. It's the *quality* of how the couple faces conflict together that marks the likelihood of a successful, long-term and fulfilling marriage.

For those couples who choose never to fight, they often miss the opportunity for greater intimacy and instead build up resentment over time. For those who fight destructively they often tear each other down, straining and severing their marital connectedness with the inevitable end result. When marriages do end, it

may take many years to rebuild one's sense of self and one's life, and to rebuild and reconstruct the lives of the couple's children, other family members, friends, co-workers and business partnerships.

As a general matter, it helps a married couple who want to continue to try to sustain their relationship if they agree on how they will *do* their disputing. Gottman highlights three styles of how married couples "fight." If the couple agrees on any one of these three "fighting styles," their relationship will likely work for both of them, and their marriage will be lasting. Gottman's three fighting styles for working things out can be summarized by the three types of marriages they tend to give rise to:

1. *Validating Marriage*: the couple sets aside specific and ample time to discuss problems, calmly work through issues by being willing to compromise often, providing tradeoffs for each spouse.
2. *Conflict Avoiding Marriage*: the couple sets clear and respected role divisions, deference is often given to the spouse who has the expertise in a particular role; the couple assumes there are few conflicts overall, the couple rarely acknowledges differences and they often agree to disagree rather than confronting conflict head on.
3. *Volatile Marriage*: conflicts erupt often, resulting in passionate exchanges by one or both, all issues are put out in the open, the couple engages regularly and makes regular tradeoffs as various issues arise in their relationship.

For the couple who does not have an agreed upon style of conflict engagement, or uses a style that does not work for both of them, transformative mediation can be useful in several important ways.

The marital mediator helps create a supportive space for a couple to have a difficult discussion in a way that allows the conflict to unfold rather than being suppressed, ignored or diminished. Listed below are a range of outcomes and contributions that couples can expect from a transformative mediation process as they work through their marital conflict:

- the opportunity to have a conversation that is supported by facilitation,
- the opportunity to make requests of each other for how to have a productive conversation or how best to engage in a dialogue about their issues,
- a forum for the coherent expression of emotion,
- the ability to give and receive information in a way that is heard differently by each other,
- enhanced opportunities for responding authentically rather than from hostility or not at all,
- opportunities to think more clearly through new information or the situation,

- a better or fuller understanding of the other person or of the situation the couple faces,
- physical and emotional relief from stressful and anxiety producing negative conflict interaction, and
- identification of key choices and the ability to question, get information about and clarify possible options, with decision-making opportunities for oneself or for the other highlighted throughout the process.

During the mediation process, a transformative mediator follows the threads and themes of the spouses' conversation. A mediator "sits in the fire" with couples and assists them with helping the conflict to unfold in ways that follow and support their expression of strong emotion rather than tamping it down, dismissing it, or ignoring it. The couple may have a history that they wish to draw upon in their conversations, or they may decide not to draw from their past. Without being hooked on any substantive outcome, the mediator highlights decision making opportunities that the couple may not have seen for themselves in heated conflict. The mediator is supportive in summarizing, reflecting, and clarifying complex issues ranging, for example, from how it is that one spouse would like the other spouse to listen to her or him, to what additional information a spouse may need from the other to more clearly make a substantive decision.

The mediator tracks the conversation topics for the couple. He or she provides ongoing reflections of each partner's views for further clarification and understanding. The mediator also offers periodic summaries of what the couple has discussed, drawing attention to the common themes and commonalities in viewpoint as well as highlighting the differences that they have expressed about all issues that the couple raises. These conversation amplifiers and enhancements come from a neutral mediator, who is not invested in whatever the parties decide to do or to say. This neutrality lends a supportive "presence" for both spouses, and proactively provides breathing space for the couple to slow down and consider all that has been shared and not shared. A skillful transformative mediator enhances the chances for fuller understanding and consideration of all points of view by helping to amplify what has been said in the mediation so that it can be considered, amended or retracted. Decisions, agreements, next steps, and clarity about the future are natural parts of the process and often contribute to a strengthened relationship—in whatever form that relationship ends up taking.

Whether what is discussed is good, bad or ugly – or tender, responsive or compassionate – the mediator stays focused on the quality of the deliberation while following through on opportunities for decision making that the spouses themselves raise. In many instances, a married couple struggling with their relationship may not have any other forum where such assisted engagement can occur in the way that it does in a transformative mediation process.

Therapy and Transformative Mediation

For decades in the mediation field's trainings, attorneys and therapists regularly have raised questions about the difference between basic mediation and therapy. From a transformative perspective, the reply is to highlight that a common outcome of therapy and mediation is a "therapeutic" impact—that is, the process helps bring back the zest for living as well as providing dimension and insight. Although mediation is not therapy, mediation can be therapeutic, restoring health and healing or clarity to the parties' interaction and the relationship that the interaction defines. One similarity is the therapeutic aim of "doing no harm," but rather doing good by providing open space for new forms of interaction that is uncluttered by the blaming, attacking, positioning stances that the marital parties often bring to a trusted source.

Another similarity is that mediators and therapists are concerned with communication patterns and relationship dynamics, assisting parties in clarifying the ever changing roles and responsibilities over the life of a marriage. Whether the couple decides to see a mediator or a therapist, the decision is voluntary and the presenting issues are often similar.

In addition to these similarities, we see several important differences between marital therapy and marital mediation that is conducted within the transformative framework. Mediators do not intervene to change the person or to analyze the person, but rather attempt to clarify opportunities for decision making and to support clarity and understanding. Mediators are accustomed to working with both parties together at the same time, while many therapists are primarily trained in individual work. While therapists tend to focus on psychological and relationship content, mediators work with the interaction of multiple parties in joint sessions. Marital therapy often seeks to overcome specific relationship dysfunctions, or to treat the pathology or anxiety of one of the partners. The mediator's goals are to facilitate quality dialogue and highlight decision making opportunities. The outcome goals of marital mediation process are guided by the clients' definition (not the professional's), and the goals arise out of the couple's dialogue itself. In some cases, a couple chooses mediation knowing they would generally avoid entering a therapy office for fear of being labeled with a mental illness or mental or emotional deficit. The stigma associated with getting help is often much less for couples as they enter the mediation office.

In mediation, the intervener allows the couple to decide whether to focus on past, present or future concerns. Couples often decide in mediation to look at present and future concerns and may decide not to address or explore topics or issues from their past. On the other hand, marital therapy often entails a comprehensive history or longitudinal assessment where the therapist not only identifies the cou-

ple's relational history, but proactively probes it searching for the origin of negative dynamics of each individual in the relationship. While the presenting issues may be similar, therapy is often more about individual, internal growth and introspection. Mediation, on the other hand, is focused on interpersonal conflict as presented and explored by the parties. The mediator does not formulate, frame or recommend solutions, but rather allows and supports the parties in their efforts to create options and outcomes. In therapy the intervener often formulates a diagnosis and guides the intervention.

Given this brief look at the similarities and differences of marital mediation and marital therapy, it is important to point out that the lines between these two processes have become increasingly blurred, as therapy has become more process-focused (rather than diagnostic) and as the transformative approach to mediation was articulated – an approach which embraces all dimensions of conflict interaction including emotions and relational dynamics. No longer is the boundary line so clear as some might have indicated in saying that "therapy . . . resolve[s] emotional problems [and] mediation . . . help[s] divorcing couple[s] [to] make decisions about the business aspects of their marriage."²⁴ One thing that many mediators and therapists agree on is that completely collapsing the fields together by using such terms as "therapeutic mediation" or "mediation therapy" can threaten the unique elements of these separate processes and can confuse clients for mediation or therapy.²⁵

The Promise of Marital Mediation

When couples in conflict look to the mediation profession for help, the only service that is readily available is divorce mediation. But clearly, divorce mediation is inadequate for addressing conflict related to issues that arise before the couple has decided to divorce. It is not aimed at addressing the "conflict experience" of most couples who encounter difficult times or alienation from each other during their marriage. As a conflict resolution community, we need to expand what we offer, widening our services to include not just divorce mediation but also marital mediation. We need to shift our focus from only assisting the termination of relationships to creating a hospitable space where the couples in conflict might learn to fight well and to decide whether and how they might continue their relationship with greater satisfaction.

In an essay entitled "How to Make Marriage Matter," Amitai Etzioni notes that marriage is treated so lightly in our society that it can be terminated by practically any one at any time, and with minimum cause.²⁶ In recent decades we have moved from assuming that marital bonds are permanently knotted to a culture described as "the divorce culture" where the marital knot is easily untied.²⁷ While

divorce mediation can rescue personal marital battles from the courts and provide a significant contribution to issues related to custody in particular, it is now time to expand what mediators offer, so that we support couples in conflict during their relationship not just when it is over.

As one important segment of society, the conflict resolution community needs to acknowledge that, professionally, it can too easily get caught up in the divorce culture. The growth of divorce mediation arose from a well-intentioned premise to take family conflict out of the courts and put the decision making in the hands of the couple themselves. Many community mediation centers and private practitioners have helped to make divorce possible. But we can also be in a business of providing a helpful process for people in relationships to experience relational growth. Offering marital mediation with an option of divorce mediation allows a spectrum of possibilities for the couple in crisis. Our expertise as conflict practitioners can be used to make marriages stronger, more resilient and alive, rather than mainly to assist when a marriage is already dead. The transformative framework gives us an approach to practice that suits this supportive purpose well.

A change in the conflict interaction, experienced in a transformative mediation, can increase a couple's future resiliency. We suggest that marital mediation can have "upstream effects" – positive effects that continue outside the mediation process, as a result of the mediation experience. These upstream effects of transformative mediation are likely to parallel those that have been found in workplace settings.²⁸ In the context of marital conflict, these upstream effects could include:

- Strengthening the couple's personal capacity for analysis and decision-making when divisive issues arise (the "empowerment" effect).
- Increasing the couple's willingness and ability to see and appreciate the other partner's perspective different from his/her own (the "recognition" effect).
- Enhancing couples' ability to pursue and perceive a wider range of choices in decision-making settings.
- Feeling increased control over current and future conflictual situations.
- Decreasing defensiveness when disagreements arise.
- Improving perceptions of how spouses relate to one another.
- Reducing stress and anxiety that results from destructive conflict interaction.

When empowerment and recognition shifts occur in spouses' difficult conflict interaction, as the transformative approach to practice prescribes, mediation can result not only in addressing couples' immediate problems, but also in creating significant changes in their personal capacities for self-determination and responsiveness to each other. A couple's decision-making, communication and compassion can be strengthened—both in the specific situation they find themselves and in fu-

ture day-to-day interactions with each other. This potential impact of transformative marital mediation is important and needed work for the conflict intervention profession and for the public at large.

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8. LINDA J. WAITE ET AL., DOES DIVORCE MAKE PEOPLE HAPPY? FINDINGS FROM A STUDY OF UNHAPPY MARRIAGES (2002).
9. *Id.* at 33.
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CHAPTER 15

Elder Mediation: Why a Relational Model Works

Winnie Backlund

Introduction: The Aging Population

We all experience the aging process. Depending on where we are in the life cycle, different experiences present themselves. Young children look forward to the next birthday with anticipation and excitement. They often talk about their age in half years. ("I am five and a half and will be six when I have my birthday.") Adolescents look forward to "adult" privileges such as obtaining a driver's license, having their own car, graduating from high school and becoming independent of parents. Young adults look forward with anticipation to starting a career, being in long-term relationships, owning their first house, and becoming parents. There are numerous life events that mark the transition from one stage to another.

Middle age is often considered that time in adulthood when careers are developed, the balance between work and family is a priority.¹ Later years in life are often marked by retirement, re-creating one's identity apart from their professional identity, and having more leisure time. The natural aging process brings with it some natural decline in physical ability and the potential for cognitive deterioration due to different forms of dementia.

Older adults are, and have been, the subject of stereotyping and discrimination known as ageism. It is a set of beliefs, attitudes, norms, and values used to justify age-based prejudice and discrimination. Ageism may be casual or systematic. The term was coined in 1969 by U.S. gerontologist Robert N. Butler to describe discrimination against seniors, and patterned on sexism and racism. Butler defined ageism as a combination of connected elements.² Among them were prejudicial attitudes towards older people, old age, and the aging process; discriminatory practices against older people; and institutional practices and policies that perpetuate stereotypes about older people.³ Examples of commonly held myths that contribute to ageism include: the old are inflexible and therefore stubborn, senile, forgetful, and confused; older people do not, will not, and cannot listen well; as people age, they become too emotionally fragile to handle the strong emotions that accompany conflict; older family members need to be protected from conflict by their adult children and other family members.