

# Center for Restorative Justice & Peacemaking

An International Resource Center in Support of Restorative Justice Dialogue, Research and Training

University of Minnesota, School of Social Work

## What Is A Humanistic Approach to Mediation? An Overview

by Mark Umbreit and Ted Lewis

January 2015

To what extent can the human-element be subtracted from or added to a mediation process? That is the main question revolving around a humanistic approach to mediation and dialogue. By way of analogy, consider how a computer-generated voice could provide an audio bedtime story to a child who turns the pages of a picture book when prompted by a beep. Consider now what is added when a parent's voice resonates near the child's head, when the child can snuggle near the parent's body, and the parent can reply to questions or comments raised by the child. The latter scenario simply has more of the human-element in it.

There is little question as to whether mediation processes according to any approach can have good results. Compared to most litigative processes, a mediation that is strictly settlement-driven or technique-oriented can deliver positive outcomes, no less than an audio tape can deliver good story content and put a child to sleep with inspiring thoughts. The question at hand is whether a mediation process that allows for more of the human-element can have greater results. While more research is needed in this area, anecdotal evidence from post-mediation evaluations and conversations affirms that a humanistic approach does lead to more satisfying outcomes. Central to this evidence is the concept that when parties do more of their own work to solve an issue, they get more out of the process. This article will provide an overview of what this approach actually entails.

A humanistic approach to mediation is fully aligned with a transformative approach as set forth by Bush and Folger, and yet it also adds several new emphases. In *The Promise of Mediation* the authors even use the term "humanize", recognizing the inherent strengths within parties that help them gain greater confidence in themselves and greater empathy for the other party. Developed at the same time in the early 1990s, largely in the context of working with victims and offenders of severe crimes, humanistic mediation has emphasized three things that complement transformative mediation:

- the power of preparation meetings
- the power of mediator presence
- the power of party-to-party conversation

Throughout this article these features will be described more fully; it will be understood that they apply equally well to both dispute resolution and restorative justice realms.

A humanistic approach to mediation and dialogue adds the human-element on all levels of a mediation process: mediators tune into their own human issues and capacities, parties tune into their own deeper humanity and the humanity of the other party, and consequently, the process itself is humanized through deepening, uninterrupted conversation. A humanistic approach is one of being present with people whose very lives have been impacted by conflict or crime. It can also be called a “person-centered” approach to mediation, or perhaps a “heart-centered” approach. While word-content is important, this approach understands how the majority of human communication operates on a deeper level beneath and beyond word content. Non-verbal and emotive communications are majorly considered as having greater weight, and mediators learn how to ‘read’ these subtexts in order to guide people toward full resolution.

In our culture we all have a default impulse to fix problems as soon as we learn of problems, and this can apply all the same to fixing problems for other people. In a humanistic approach, mediators truly pull back from this normative role. Instead, they create a safe, if not sacred space for parties to converse as deeply as they choose to converse, and out of this conversation parties do their own fixing and mending. This can be a humbling process for mediators for a couple reasons. On one level the mediator has to consciously pull back into a non-directive posture with the parties and assure them that this is truly their process. On another level, it is humbling to bear witness to the depth that parties can go when they have the right opportunity to do so. Here we see how this approach is the ultimate strength-based approach to mediation and how it honors the principle of party self-determination to the highest degree.

This party-empowerment feature highlights a paradox within a humanistic approach: due to their own inherent strengths, parties need mediators far less than most mediators perceive themselves to be needed, and yet, paradoxically, mediators are absolutely needed to be present in order to ensure safe, constructive dialogue. This is where the practice of pre-mediation preparation can make a significant difference. When each party has the chance to build trust and rapport with a mediator before joint dialogue and gain more assurances in themselves and in the process, it leads them into a mediation where both parties can truly have direct, uninterrupted conversation. In short, the deeper the conversation, the deeper the resolution. By being less directive in this joint dialogue, mediators are not passively involved. Their presence (which will be described more below) allows the parties to bring the conversation to where it needs to go. At any point, mediators are able to jump in, like a life-guard, to redirect the conversation in a good direction. But for the most part, as with the swimming pool analogy, they are not jumping in.

A minimal intervention style of mediation requires that a mediator progresses from active listening to deep listening. Active listening skills, as learned in a mediation training, can be useful but these skills can also get in the way of deeper conversation between parties. It helps to consider how active listening skills are viewed from the client’s perspective. Do they experience them as an expression of a warm-hearted connection, or, conversely, do they experience them as an expression of a cold, mechanistic response? When the latter is the case, parties can retract from deeper sharing and lose track of the natural flow of conversation. The most important

aspect of party conversation is the flow-factor. Like water running down a stream bed, the flow of telling stories or expressing emotions needs to proceed without interruption, without paraphrasing, without problem-solving. In this light, mediators develop a mindfulness-based presence where deep listening allows them to silence their own ego which would otherwise prefer to intervene. By virtue of their calm and quiet presence, mediators help to create a safe space for the healing power of spoken stories and vented feelings to flow without interruption.

By honoring moments of silence, a mediator is honoring the capacity of the listening party to make the next response. All too often, mediators sense that their first response to something a party said is important enough to come next in line in the flow of conversation. But when this 'client sharing > mediator response' pattern is repeated, it actually impedes the natural flow of dialogue. Specifically, it blocks the way for the other party to make a more profound response to what they have heard from the first party. A humanistic approach recognizes that communication is more than the two elements of speaking and hearing. It recognizes the power of a third element in good communication: the element of being heard. This is a distinct element that is critical in the deepening flow of mediation conversation, and when mediators tune into the power of 'being heard' they will nurture the practices of silence and restraint that fit with a non-directive style.

In order for mediators to be a positive presence to the parties, that is, to be present in a calm, compassionate manner to the extent that one's presence calls forth the best strengths within the parties, mediators can cultivate this capacity in the same way that accomplished athletes or musicians can reach higher levels of performance. Some of these aids have to do with what a mediator can do outside the mediation setting and some have to do with what they do (or don't do) during a mediation. A good place to start is by rewinding one's own experience back to the first role plays done within a mediation training. Typically, a nervousness goes with wanting to do everything just right. There are check-lists to follow, steps and stages to get in order, and response-techniques to practice. In brief, you want to get it right and you sense that if you don't get it right it will affect the quality of the mediation. In this role playing context, it actually helps to know that it is completely fine to mess up. Imagine now a trainer that gives you this freedom to not get it right, and to redirect your attention to the emotional energies communicated by the parties. Imagine being with the parties and conveying a mood-sense that they will be able to work through their issues, hard as it is, and come out at a better place. Imagine letting them having eye-to-eye communication, and that when you do intervene, it is primarily to help them get back on the track of a direct conversation with each other. This all gets to the way a humanistic or humanizing approach to mediation focuses on the real heart of the conflict and the heart of the resolution. Yes, the check-list items and steps and skills all have a place, but these things are not what makes a mediation successful, let alone, satisfying to the parties.

A summary statement of all of this can be as follows: Parties need a mediator's presence far more than a mediator's intervention. Good mediator presence is strengthened by being calm and centered before the start of a mediation, learning how to clear out the extra stuff and distractions within one's head, becoming mindful (which is the same as becoming heartfelt) toward party communications beneath the words, and focusing on the strengths and resiliency that parties carry within themselves. During a mediation, such mediators are flexible with the process, knowing that there is never a one-size-fits-all model for mediation, they are comfortable with silence and can wait for parties to think and make the next response, and finally, mediators invite

the fullest of dialogue to resolve past matters and emotions before parties progress toward resolving future matters. When asking questions, the invitational flavor of the question reinforces that the response to the question is never *for* the mediator but for the party speaker and for the party listener.

When a humanistic, dialogue-driven process unfolds, parties typically experience things that they did not expect beforehand. They may say new things that they had not planned to say. They may connect more deeply with the humanity of the other party, gaining an unexpected sense of empathy for what the other person experienced. They may even change their earlier expectations for practical resolution or reparation. All of this is because the fullness of the parties' humanity -- the honesty, the openness, the heartfelnness, etc. -- was given space to inform the conversation, allowing for the quality of relational interaction to be changed for the better. Again, this is what transformative mediation is geared to do: to transform the quality of the conflict interaction.

This humanizing potential for both the parties and the process is aided in part by a mediator's own capacity to engage the human-elements on multiple levels. Mediators touch their own positive capacities to be centered and present as an authentic 'presence', and they also touch the parties through building positive rapport and trust. Paradoxically, the more mediators get out of the way during a mediated dialogue, the more the parties are able to freely discuss matters with sufficient depth and reach degrees of resolution that can even be independent or prior to settlement agreements. Nevertheless, a mediator's humanizing presence has been shown to have a profound effect on positive outcomes, no less than the profound effect of a parent's bodily presence when a bedtime story is read to a child.

### **Outlining the Main Components of a Humanistic Approach**

All social service practices are undergirded by values. From the description of a humanistic approach above, it is clear that these values draw from a deep reservoir of human strength and goodwill that essentially point to a set of beliefs about human nature, conflict, and the search for healing. Such beliefs include:

- a belief in the connectedness of all things and of our common humanity
- a belief in the desire of most people to live peacefully with each other
- a belief in the healing power of stories and the safe expression of feelings
- a belief in the capacity of all people to draw on their own inner reservoirs of strength to overcome adversity, to grow, and to help others in similar circumstances

Common to all of these beliefs is the notion of a life energy source (what ancient Chinese called 'chi' or 'life-force') that can overcome negative energy sources that build from conflict and crime. While mediators can be aware of the energy dynamics within and between the parties they work with, mediators can also be aware of their own inner energy dynamics, setting aside distracting elements, and drawing upon the strength of a positive life-force to assist resolution processes. This speaks to a belief in the importance of a mediator's presence and connectedness as described above. This value/belief framework resonates well with most non-Western indigenous perspectives about human nature and social life. Understandably, the fields of

restorative justice and mediation have benefitted greatly from the wisdom and practices from these community-based traditions.

As certain values and beliefs are emphasized, it stands to reason that certain practices informed by such values and beliefs will be emphasized. What follows now is an outline of practices, most of which was referenced above, that foster good work within a humanistic approach to mediation and dialogue. A starting point for such an outline can return to the three emphasis areas mentioned above where humanistic mediation adds more to a transformative approach to mediation:

- the power of preparation meetings
- the power of mediator presence
- the power of party-to-party conversation

These areas essentially foster greater depth in a resolution process: depth in a party's trust in the mediator and in the process, depth in a mediator's presence, and depth in the communication between parties during a mediation. Another way this can be framed is that in humanistic mediation, there are possibilities or potentialities waiting to be enlivened within a resolution process that can be called forth to foster depth. These potentialities are all tied to the human element that humanizes both the process and parties, and speaks to the inherent strengths within people that aid good communication and resolution. The follow summary is structured around:

- Potentialities within Communication Processes
- Potentialities within Mediators
- Potentialities within Parties

Each of these areas can be further divided into nine practice components as follows.

**RE: Potentialities within Communication Processes:**

1. Pre-mediation Preparation Sessions -- Vital time to listen, provide information, build rapport, clarify expectations, prepare for mediation, and offer communication coaching.
2. Mediation Session Dialogue -- Due to good preparation, the non-directive mediator invites direct, party-to-party dialogue and ensures sufficient depth of conversation.
3. Post-mediation Follow-up Sessions -- The offering of follow-up sessions provides a wider safety net for parties to experience the fullest healing and accountability possible.

**RE: Potentialities within Mediators:**

4. Mediator Centeredness. Clearing the mind of clutter and personal 'stuff' allows mediators to focus well on the task of peacemaking.
5. Connecting with the Parties. Building rapport and trust at the beginning builds up a bank account of trust that parties can draw upon later.
6. Deep Listening from the Heart. As mediators use their hearts to listen 'beneath' the words they hear, they develop greater capacities to respond from the heart.

**RE: Potentialities within Parties:**

7. Eliciting Parties' Strengths. Starting in preparation sessions, mediators tune into the innate strengths that each individual can tap into at their own pace and recognition.
8. Face-to-face Seating. While taking cultural and power-dynamic considerations in mind, appropriate seating can promote authentic heart-to-heart sharing. In most cases

eye-to-eye communication is vital.

9. **The Power of Silence.** Mediators recognize how undisturbed silence can elicit inner thinking on the part of parties who have the space to respond as they wish.

**1. Pre-mediation Preparation Sessions.** Routine use of separate pre-mediation sessions with parties is the standard practice of a humanistic approach, and should occur at least a week or more before the mediation session. In complex cases, additional prep-sessions may be needed. Collection of information, assessment of the conflict or crime, description of the mediation program, and clarification of expectations are important tasks to complete. The main goal, however, is that of establishing trust and rapport with the involved parties. The development of trust and rapport enhances any dialogue process, but is particularly beneficial in intense interpersonal conflicts. For this reason, the mediator needs to get into a listening mode as quickly as possible during the initial meeting, inviting the involved parties to tell their stories and to share their true feelings. Overall, preparing parties for mediation is a way to set them at ease so that they can truly open up during the joint dialogue and engage in direct communication with the other party.

**2. Mediation Session Dialogue.** From a humanistic perspective, tapping into the full power of a mediation framework necessarily reframes the mediator's role. Instead of actively and efficiently guiding the parties toward a settlement, the mediator assists the parties to enter a dialogue with each other, to experience each other as fellow human beings, to understand and appreciate what the other needs most, and to create mutually chosen solutions. In some cases the resolution is more in the dialogue than it is in the agreement. Once the parties are engaged in face-to-face conversation, the mediator intentionally gets out of the way. Appropriate places for mediator intervention are points where a mediator can invite greater depth of conversation (to slow down forward motion), or to benchmark the forward progress so that the process reaches a timely end. When mediators set a proper tone at the start of a meeting, explaining how the conversation belongs to the parties, it helps everyone to *lean into* a non-directive experience of mediation. This is by no means a passive form of mediation. With acute awareness, the non-directive mediator can intervene at any moment to assist the parties.

**3. Post-mediation Follow-up Sessions.** Follow-up joint sessions between the parties in conflict are encouraged in a humanistic approach to mediation and dialogue. Because of the nature of conflict and human behavior, problems are often far too complex to resolve in only one session, particularly when the conflict involves an important relationship. But even when a full agreement has been reached, a follow-up session affirms the relational dimension of the parties and also provides a timeframe for accountability and ongoing healing. Such meetings can be built into written agreements.

**4. Mediator Centeredness.** A humanistic approach to mediation and dialogue emphasizes the importance of mediators clearing away the clutter in their minds as well as possible biases about the parties so that they can focus on the needs of the involved parties. Prior to initiating contact with people in conflict, mediators are encouraged to take a few moments of silence, through reflection, meditation or prayer, to reflect on the deeper meaning of his or her peacemaking role and the needs of the people in conflict. As this centered presence of the mediator is later felt by the parties, it serves to create a more safe, if not sacred space in which the dialogue can allow for

genuine healing. Centeredness is also groundedness, serving to keep the mediator focused well on the present moment and on serving the parties.

**5. Connecting with the Parties.** While remaining impartial, mediators truly need to establish a human connection with both parties with an attitude of unconditional positive regard. The art of mediation is no different than the art of good nursing or teaching or therapy: when authentic connection is made with those being served, they are able to rise higher in the process. By establishing warm rapport and trust, first in preparation meetings and then at the outset of joint meetings, mediators help parties to build up a bank account of trust to offset the debit of trust they began with. In the mediation session, parties can draw on this account as they gradually rebuild their trust with the other party. This human connection, accompanied by an honest congruence or integrity, is fundamental to any change process. Just as mediator centeredness deepens a mediator's presence, likewise their caring-based connectedness to the parties informs the quality of their presence.

**6. Deep Listening from the Heart.** Distinct from active listening techniques which specialize in learned responses to what parties say, deep listening, on the part of the mediator, involves a way of listening from the heart to everything that is being communicated, verbal and nonverbal. Deep listening does not necessarily lead to a response, but it does lead to an awareness, often an awareness of what another person is really saying or trying to say. This orientation fits well with a non-directive style of mediation in that it gives more space for the parties to make responses to what the other has said. In fact, deep listening can have a contagious effect on others, inviting them into deeper zones of listening and understanding which would otherwise not occur for them.

**7. Eliciting Parties' Strengths.** Intense conflicts typically yield intense emotions which, in turn, decrease people's capacities to communicate their needs and listen well. All of this masks over the true strengths that lie within each person. Mediators tune into the unique strengths of each party, first in preparation meetings and then in joint meetings, and encourage those strengths to be expressed. For example, if a participant struggles with answering broad, abstract questions, but excels at answering concrete-oriented questions, a mediator taps into that strength by focusing on the latter sort of questions. Mediators can also provide 'communication coaching' that helps parties to speak and listen in ways that are higher than their default way of communication in normal life. This may involve the expression of painful, unmet needs that begin with I-statements.

**8. Face to Face Seating.** Seating arrangements during a mediation session do make a difference. In order to maximize direct dialogue between the parties, a routine use of seating parties across from each other is central to the process. The main reason is that heart-to-heart conversation requires comfortable eye-to-eye positioning. If a table is required, the mediator makes sure that the parties are never sitting next to each other, but across from each other with easy sight access to the mediator(s). Whenever cultural factors suggest a discomfort with a suggested arrangement, always check in for party preferences. As more people may be part of the process, circle arrangements, and even double-circles, are essential to maximize good hearing and eye-contact for all involved.

**9. The Power of Silence.** While silence can be viewed as an awkward discomfort for many in the West, moments of silence in conflict resolution dialogue processes are inherent to a non-directive, humanistic style of mediation. Recognizing, using and feeling comfortable with the power of silence is essential. By honoring silence, patiently resisting the urge to interrupt the silence with mediator-driven guidance or questioning, several new things come into play: the parties have open space to think more thoughts and to initiate a heart-felt response, and the mediator also has more time to reflect on the present moment, as silence is always a sign of deeper dynamics. This is where mediators ultimately ‘lead’ more with their hearts than with their heads.

In summary, all nine practice components of a humanistic approach to mediation and dialogue are geared to draw out the best humanizing potentialities that are inherent within a transformative communication process, within the mediators, and within the parties themselves. These practices ensure depth of conversation, depth of mediator presence, and depth of connection between the parties. In turn, this ‘deepening triad’ leads to deeper and richer outcomes that satisfy people in conflict or people affected by crime. Deep conflict or deep harm requires a proportional depth to bring people to genuine resolution.

## **Conclusion**

The dominant model of settlement-driven mediation in Western culture is clearly beneficial to many people affected by conflict or crime, and superior to the adversarial legal process and court system in most cases. Using a different model -- one that embraces the importance of spirituality, compassionate strength and our common humanity -- holds even far greater potential. As a complement to the transformative power of conflict resolution, a humanistic approach to mediation and dialogue can even lay the foundation for a greater sense of community and social harmony. It is true that models requiring more intuitive capacities and mindfulness among mediators are not as easy to train for and implement; for that reason, there is no sign that mechanistic, efficiency-based models of mediation are going to decline any time soon. Nevertheless, the promise of transformative and humanistic approaches to mediation is that small successes within mediation sessions can be catalysts for large successes in society. This larger vision helps to promote models of mediation that humanize both processes and parties to the fullest extent possible.

It may appear that the humanistic approach to mediation is primarily suited for restorative justice cases involving victims and offenders of crime, and even primarily for cases of severe and violent crime. Indeed, this was the primary realm of practitioner work that served to identify and refine most of the practice components outlined above. Nevertheless, because the main humanizing emphases harmonize so well with transformative mediation used primarily for parties in dispute, it can be said that the humanistic approach to mediation applies equally to all ADR dialogue models that allow for direct conversation between parties. While the transformative approach transforms the quality of the conflict interaction between parties, the humanistic approach likewise transforms this relational interaction, promising both inner peace to parties and relational peace between parties.

In closing, we have seen how the tapping into the human-element of communication processes, mediators, and parties is the ultimate strength-based model for resolving either conflicts or crimes. A humanistic approach empowers parties through the paradoxical practice of mediators getting out of the way and allowing for the uninterrupted flow of conversation between parties who have been well-prepared before joint dialogue. This non-directive style is not passive, but one of profound presence and deep listening, where the mediator is able to intervene at any point to support either deeper movement or forward movement of conversation. By believing in the inherent human strengths in each party (or by extension, within the community), the mediator elicits, sometimes by positive contagion, the best speaking and listening capacities within the parties so that they can be empowered to take greater charge of their own healing and restoration. In short, as a mediator becomes more mindful of their own authentic human presence with people in conflict, those people are often lifted to a higher level of authentic sharing which fosters greater resolution and satisfaction for all involved. In the end, this is the highest form of party empowerment and self-determination in the world of mediation.