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SUPPORTING FAMILY STRENGTH: THE USE OF TRANSFORMATIVE MEDIATION IN A PINS MEDIATION CLINIC

Robert A. Baruch Bush, Lisa Hershman, Robert Thaler, and Christena Vitkovich

This article describes, and explains the rationales for, the establishment of an innovative program in which a law school and two social services agencies are collaborating in a mediation clinic that uses the transformative model of mediation to serve clients in cases that seem ideally suited to benefit from this approach to practice—so-called “PINS” (persons in need of supervision) cases involving conflict within families, between parents and their adolescent children. The article first describes the evolution of the PINS system and the changing views of its purpose, especially in New York State. It then offers a brief introduction to the unique features of the transformative approach to mediation and explains why that approach in particular is likely to mesh with current understandings of the needs of the families involved in these cases. Finally, the article describes the innovative “Family Solutions Program” and how it uses transformative mediation to help these families and suggests that experience of this program shows how use of the transformative model, in particular, could be valuable not only for clinical education but also for effective volunteer training and supervision in mediation programs generally.

Keywords: *transformative; mediator; mediation; PINS; clinical; education; training; innovation; supervision; status offender; status offenses*

I. INTRODUCTION

The emergence of mediation as a primary dispute resolution process in numerous contexts has led many law schools to include instruction about mediation in their curricula, including the establishment of clinical programs designed to enhance students’ future lawyering skills and serve needy clients. However, the kind of mediation skills taught in law school mediation clinics have generally been those associated with the form of practice known as facilitative mediation. This article describes and explains the rationales for the establishment of a pioneering program in which a law school and two social services agencies are collaborating in a mediation clinic that uses the transformative model of mediation to serve clients in cases that seem ideally suited to benefit from this approach to practice—cases involving conflict within families, primarily between parents and their adolescent children. These cases involve noncriminal misbehaviors generally classified as “status offenses.” In New York, status offenders are known as “persons in need of supervision” (PINS).

Part II of this article sets the context for discussion, by describing the evolution of the PINS system and the changing views of its purpose, as the system developed over five

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decades, especially in New York State. Part III offers a brief introduction to the unique features of the transformative approach to mediation and explains why that approach in particular is likely to mesh with current understandings of the needs of the families involved in PINS cases. Part IV describes the innovative “Family Solutions Program” and how it uses transformative mediation to help PINS families. Part V uses the experience of this program to suggest how the use of the transformative model, in particular, could be valuable not only for clinical education but also for effective volunteer training and supervision in mediation programs generally.

II. THE PINS CONCEPT IN THEORY AND PRACTICE: THE NEW YORK EXPERIENCE

A. BACKGROUND: STATUS OFFENDERS

In the early 1960s, many states began to recognize status offenders as a distinct class of youthful offenders. These children came before the court to face allegations of noncriminal misbehavior—ranging from truancy, to breaking curfew, to acting out, to sexual misconduct. They were disobedient, but not delinquent. These children were thought to need help in the form of treatment, counseling, and discipline. Their offense lay not in any criminal conduct but in their failure to conform their behavior to their status as children, in their families, schools, etc. However, despite good intentions, the laws and policies surrounding this population have proven to be as troubled and troubling as the children they serve. This part will focus on the shifting rationales behind changes in New York’s approach to status offenses by tracing the evolution of the PINS law, beginning with its early roots in the paternalistic philosophy of the nation’s juvenile court movement. It will go on to foretell the eventual adoption of a statewide policy of judicial nonintervention in status offense cases, highlighting efforts in Nassau County to enact a new approach to PINS intervention.

B. INHERITING A DETERRENCE RATIONALE

The earliest incarnation of New York’s PINS law, in 1962, sought to promote the right of families to care for their children without family court intervention.¹ However, relying on the doctrine of *parens patriae* (“the parenthood of the state”), it was still assumed that the family court would intervene in situations where “parents default in effectively performing their custodial function.”² When the court found it necessary to intervene, it was to do so in a manner that, in theory, would merge legal functions with social service; with the judge assuming the role of the “wise and kind” father, the doctrine of *parens patriae*, children were to be treated and rehabilitated.³

Regrettably, theory did not bear out in practice. By the nineteenth century, the doctrine of *parens patriae* came to be associated with the child-saving movement⁴ and, with it, “coercive prediction,” which involved the identification of “probable delinquents” and their removal from their families.⁵ Thus, the creation of status offense laws did not usher in a period of change from the earlier punitive treatment of juveniles. Instead, the earliest status offender laws, including New York’s PINS law, were based on what sociologists Cheryl L. Maxson and Malcolm W. Klein have called a “deterrence rationale.”⁶ Under this rationale, status offenders were seen as quasi-criminal. Their offenses were viewed as predictive of more serious lawbreaking. Therefore, these situations were best handled by the juvenile

justice system where the judge had the tools necessary to hold the child accountable for his or her wrongdoing. Any negative labels attributed to the child by association with the juvenile court system would serve as a deterrent to that child and his or her peer group.

Despite this early focus on deterrence, the classification of status offenders as a distinct group of child offenders can be seen as the first significant step in a long march to remove these children from the purview of the juvenile court entirely. Ironically, the fact that courts continued to treat status offenders as pre-delinquents led to the next significant step in this progression.

C. STEPS TOWARD A THEORY OF TREATMENT

At the same time that status offense laws were being established, juvenile rights advocates were working to expose the misguided ways of the nation's juvenile justice system generally: Cases were poorly prepared and ineffectively presented. Children were removed from their homes on little more than the whims of the judge. Foster care placements were in short supply and children were placed in "juvenile reformatories" that closely resembled jails and prisons with little or no chance for rehabilitation or services.⁷

In 1966, the U.S. Supreme Court proclaimed that juvenile courts delivered "the worst of both worlds: [the child] gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."⁸ One year later, the Court declared that juveniles facing charges of delinquency had the same rights to due process as adults.⁹ Writing for the Court in *In re Gault et al.*, Justice Fortas contrasted the "early conception of the Juvenile Court proceeding . . . in which a fatherly judge touched the heart and conscience of the erring youth by talking over his problems" with the "reality of the Juvenile Court process" in which a child is "committed to a institution where . . . instead of a mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and 'delinquents' confined with him for anything from waywardness to rape and homicide."¹⁰ As a result of *Gault's* more realistic assessment of the juvenile justice system and the demands of fairness, by the early 1970s, children in delinquency proceedings enjoyed most of the same constitutional rights as adults in the criminal justice system.

Although *Gault* and other decisions did not apply to status offenders, they acknowledged and institutionalized the adversarial system in the nation's juvenile courts. In doing so: they served to clarify the difference between status offenders and juvenile delinquents: If the juvenile court system was indeed a full-fledged criminal justice system, it was certainly no place for noncriminal status offenders. However, this left the states with increased responsibilities to juveniles and few additional resources. The question of how best to deal with status offenses took on pressing new importance.

D. EMBRACING A TREATMENT RATIONALE

Beginning in the late 1960s, a series of studies and reports changed the landscape for status offenders and signified a noticeable shift away from the deterrence rationale that previously governed these cases. In 1967, the President's Commission on Law Enforcement and the Administration of Justice issued a Task Force Report that contained two significant recommendations pertaining to status offenders. First, it recommended that status offenders be removed from secure custodial institutions, which the report found to *increase* the likelihood of future criminal involvement and interfere with rehabilitation.¹¹ Second, it

suggested that lawmakers consider eliminating the courts' jurisdiction over status offenses entirely.¹²

The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA) adopted the first of these recommendations by requiring states to remove status offenders from secure detention facilities. It caused much upheaval during the time of its passage¹³ and continues to create controversy today.¹⁴ Despite not adopting the second recommendation outright, the JJDPA clearly stated that status offenses did not belong in the juvenile justice system. Taking its cue from the Supreme Court's juvenile rights decisions, the Act specifically noted that "juvenile status offenders are generally inappropriate clients for the formal police, courts, and corrections process of the juvenile justice system."¹⁵ Therefore, the Act required states to offer prevention, diversion, and treatment opportunities for status offenders. Even though status offenders would still be subject to the courts' jurisdiction, they would normally avoid the actual adjudication process—because court was not the place for them.

The passage of the JDDPA marked the end of federal endorsement of the deterrence rationale for status offenses and the beginning of what Maxson and Klein refer to as a "treatment rationale."¹⁶ The treatment rationale is in direct opposition to the deterrence rationale on two key points. First, the child is viewed as the symptom-bearer of problems in his or her family. Therefore, responsibility for the child's behavior lies not only with the child but with the family as a whole. Second, the offending behavior is seen as a call for help and not necessarily a precursor of future delinquency. In fact, the punitive measures and adversarial procedures of the juvenile justice system are viewed as *harmful* to the child and the family. The proper response to these cases is diagnosis and treatment, which are best provided by community mental health agencies.

When the family, rather than the child, became the focus of intervention, much of the justification for the state acting in *parens patriae* in these cases was lost; if the purpose of intervention in status offense cases was to strengthen the family, then intervention on the grounds of "state as parent" would be counterproductive. Such intervention would weaken the family rather than strengthen it. Picking up on this contradiction, powerful groups continued to advocate for states to divest the juvenile courts entirely of jurisdiction over these cases. In 1977, the American Bar Association's Joint Commission on Juvenile Justice Standards concluded that cases of "noncriminal defiance" that do not evidence abuse, neglect, or delinquency "should not have the possibility of resulting in coercive judicial intervention."¹⁷ The Commission acknowledged that status offenses were primarily "family problems" that represented "failures of communication in the family unit."¹⁸ Judicial intervention was likely to worsen these problems, and therefore extrajudicial, noncoerced assistance should be the mode of help offered to these families.¹⁹

E. THE EVOLUTION OF THE PINS SYSTEM IN NEW YORK: THEORY V. PRACTICE

1. 1974–1984

Some state legislatures, like Washington, Alaska, and Maine, heeded the calls to remove status offenses from the jurisdiction of the courts and instead began to work on developing better social services for families with problem children.²⁰ New York took a more measured approach and opted to maintain its existing PINS law, which was already largely in compliance with the deinstitutionalization and diversion mandates of the JJDPA,²¹ and to rely on a diversion mechanism to keep PINS offenders out of the courts.

By the late seventies, however, the PINS system was the object of much criticism. The three main complaints were: (1) the time-consuming nature of the process, as both parent and child were typically required to attend multiple court hearings before obtaining diversion services; (2) the court's adversarial model of practice in those hearings, which pitted parent against child and caused family disputes to escalate; and (3) the heavy reliance on out-of-home placements for social services, which resulted from courts being ill equipped to identify and procure community-based services for families in a timely manner. In sum, the court process was hindering the PINS process.

2. 1985–2004

Many of New York's problems resulted from the fact that, while the state subscribed to a treatment rationale in theory, it followed a deterrence rationale in practice. The PINS Adjustment Services Act of 1985 (Adjustment Act) tried to eliminate this inconsistency by ensuring that both theory and practice reflected the treatment rationale. The Adjustment Act aimed to reduce the unnecessary and inappropriate use of court intervention for PINS children and families, lessen the reliance upon out-of-home placements, encourage the utilization of a broad range of social services to respond to the family's presenting problems, trim costs, and decrease the number of PINS petitions filed in family court.²² Although resorting to the family court remained an option, the New York law was premised on the belief that families were capable of making decisions that were right for them, with appropriate community-based assistance.

This principle, however, relied on the existence of community-based services to help strengthen families and meet the needs that occasioned their child's misbehavior. The Adjustment Act initially produced dramatic declines in both the number of PINS petitions and out-of-home placements; however, by 1990 and continuing through 2000, services for PINS youth and their families were on a steady decline due to lack of funding and interest.²³ Then, in 2000, the state passed legislation increasing the age of eligibility for the PINS system from sixteen to eighteen years of age.²⁴ This legislation sent counties scrambling for ways to accommodate the influx of new cases. Between 2001 and 2005, community-based services and preventive measures for PINS cases were down 45% across the state.²⁵ PINS cases were once again being referred to the family court in large numbers, because there was a lack of alternatives available despite the law's formal commitment to having them.

3. 2005–2008

Confronted with the failing condition of its diversion programs, the challenge before the state legislature was how to ensure efficient and effective service delivery. The state had two choices: (1) remove PINS cases from court jurisdiction and invest in building community-based options for families or (2) maintain court jurisdiction and use the power of the court to compel families into treatment. Despite, or perhaps in light of, the deficits in community-based service options available to PINS youth and their families, the legislature chose the second option. The 2005 amendments to the PINS law tried to make the treatment rationale a reality by erecting higher barriers to court access for families and by widening the circle of possible service providers in the PINS system, beyond the usual agencies and departments involved in juvenile justice.

The new law gave rise to three important changes in the structure of the PINS system. First, the law required counties to provide *mandatory pre-court* diversion for all PINS cases,

except in certain situations where the youth was a runaway.²⁶ Second, counties were now allowed to choose whether diversion services would continue to be overseen by criminal justice agencies, or instead transferred to the auspices of the local social services department, where employees with mental health backgrounds might be able to assess the multiple needs of youth and families more effectively. Finally, parents could no longer cast the deciding vote in whether to proceed beyond diversion services to file a PINS petition in family court; families could proceed to court *only if* the diversion service provider determined that there was “no substantial likelihood” that the youth and family would benefit from additional attempts at diversion.²⁷ And even then, the judge could overrule the diversion service provider’s determination and order the family to continue with diversion services.²⁸

These changes did not directly address the insufficiency of community-based alternatives available to PINS youth and their families. However, by effectively making court involvement a tool of last resort, the 2005 law created conditions for forced social services innovation on the county level. In order for the diversion service requirement to have the weight that the legislature intended, counties had little choice but to build new partnerships and expand diversion options, so that families seeking court intervention could instead meet their needs with services in the community.

F. MOVING TOWARD A NORMALIZATION RATIONALE

The 2005 amendments moved New York’s PINS system one step closer to a policy of judicial nonintervention. Though not officially stated, the new law reflects a reality that has been apparent to lawmakers and family advocates since status offender laws were first conceived: the court process itself, whenever families step into it, hinders the treatment rationale behind the modern PINS process. Indeed, the rationales that once favored court control over the PINS system have been systematically disproved:

- It has been definitively shown that the process of adjudicating PINS cases and formally labeling the child as pre-delinquent serves to reinforce a child’s negative self-image. As one scholar put it, “[h]aving been *called* a bad boy or girl you eventually *become* a bad boy or girl.”²⁹
- Research has demonstrated that punitive approaches that remove misbehaving children from their communities and families do not reduce recidivism and make it harder to resolve problems in the long term.³⁰
- Finally, the adversarial nature of court proceedings has itself been shown to escalate tensions between children and parents. As the family delves deeper into the court process, the adversarial nature of the proceeding makes it even more difficult to improve communication among family members.³¹

All of these factors argue for a new philosophy to guide intervention in PINS cases—one that focuses on keeping families together, concentrates on pre-court diversion with the hope of eliminating *all* contact with adversarial court proceedings, and employs *counter-adversarial* processes to avoid stigmatization and improve communication among family members.

Maxson and Klein refer to this type of philosophy as a “normalization rationale.”³² In this approach to status offenses, informal processes are favored over official responses and negative labels. The majority of status offenses are viewed as normal adolescent behaviors

that are usually transient. If families are provided with the proper amount of support, these maladaptive behaviors are unlikely to escalate into delinquency or criminality. The logic is compelling: most teenagers misbehave and most do not become hardened criminals.

Under a normalization rationale, intervention should be offered in measured doses, progressing from benign intervention, like help securing housing, food, and education, to more intrusive interventions like family therapy and individual counseling. At every step of the process, the family should be provided with opportunities to communicate with one another and make decisions about what course of action is best for them. A normalization rationale does not necessarily require that the court be divested of jurisdiction over status offenses, but it does require that *all* interventions focus on strengthening families and supporting family choice—consistent with the premise that status offender problems are normal family problems that can ordinarily be handled by the families themselves, with appropriate forms of assistance.

Of course, those appropriate forms of assistance can include various therapeutic and educational interventions. But where parents and children are in conflict over the status offender's behavior, another form of assistance can be found, in a process that has proven valuable in other kinds of conflict—the mediation process. This is because mediation operates on the premise that the family has and can mobilize the resources to handle its own problems, if opportunities for improved communication and decision making are provided. This “self-determination” premise is shared by many mediators, but one particular approach to mediation emphasizes this capacity of the process to improve family communication and decision making and thereby help family members discover their own strengths and improve their understanding of each other. This approach is commonly known as the “transformative” model of mediation.

III. TRANSFORMATIVE MEDIATION AS A BENEFICIAL INTERVENTION IN PINS DIVERSION

This part of the article discusses the ways in which transformative mediation, in particular, can be used to respond to families seeking help from the PINS system. It provides a brief explanation of the evolution of the transformative approach to mediation, followed by a more detailed discussion of why this particular model of mediation is uniquely suited to working in the status offender context and how transformative practices can complement the gradual shift toward a normalization rationale for PINS cases.

A. THE DEVELOPMENT OF MEDIATION: GOING BEYOND SETTLEMENT

The mediation process, for many decades, followed a single approach that used a common set of practices, in a standard sequence, with the aim of achieving a concrete agreement that resolved the issues in dispute.³³ However, in the mid 1990s, experts began to suggest that mediators differed not merely in the way they approached the common goal of settlement, but also—and more profoundly—in the very conception of what goal they were pursuing. Some mediators, it was argued, were following a genuinely different model of practice, aimed at a goal beyond settlement alone. Today, the recognition of different models of mediation is very widespread, and almost every text on mediation describes several such models, including models whose focus goes beyond settlement.³⁴

B. TRANSFORMATIVE MEDIATION: INTERACTIONAL CHANGE AND SUSTAINABLE RESOLUTION

One of these models, called transformative mediation, is particularly well suited for addressing intrafamily conflicts between parents and children—the kind typically involved in PINS cases. There are several bases for this claim. First, one core premise of the transformative model is that sustainable conflict resolution requires more than settlement alone, more than the resolution of whatever tangible issues are involved. Tangible issues cannot be fully divorced from the interpersonal interaction between the parties as human beings, especially in families. Put differently, disagreements are inevitably tied to human interactions, and failing to address the interactional dimension practically guarantees that resolutions will be neither satisfying nor sustainable in the long run.³⁵ For purposes of disposing of cases administratively, the concern for sustainability might not matter, because a settlement disposes of the case. But for purposes of helping families in conflict, sustainability matters greatly, for otherwise the family will continually fall back into conflict.

Transformative mediation does not focus simply on defining tangible issues and then trying to settle them through compromise or mutual problem solving. Instead, it focuses on mediator practices that support improved family interaction and help parties change the quality of that interaction from destructive to constructive.³⁶ This is not to say that agreement on specific issues is disregarded. Rather, the premise is that, when and as interaction changes, resolutions of tangible issues will emerge from the bottom up—from the family members themselves. The result is both interactional change and, as a result, sustainable resolution.

C. TRANSFORMATIVE PRACTICES: SUPPORTING FAMILIES FROM THE BOTTOM UP

A second and equally important premise of transformative mediation is the view that interactional change will rarely if ever result from top-down, controlling interventions by the mediator during the mediation process. Just as people cannot be forced to eat or drink (at least, not for long), they cannot be forced to think more clearly, make decisions, or communicate effectively and empathetically—the key behaviors involved in productive family interaction. Rather, the most an intervener can do—and all that is really necessary—is to act in ways that allow and support the parties' own intrinsic capacities for thought, decision making, expression, and understanding. If this is done consistently and effectively, parties naturally find their own footing in a more constructive interaction, and then they proceed to address disputed issues effectively.³⁷

Therefore, the transformative model of mediation uses concrete mediator practices that follow a bottom-up rather than top-down approach to intervention. Mediators support, rather than supplant party decision making, and they allow and support, rather than force, party communication and perspective taking. The resultant approach to mediation is what can be described as a party-driven rather than mediator-driven process, in all respects.³⁸

D. TRANSFORMATIVE MEDIATION AND THE NORMALIZATION RATIONALE FOR PINS

The fact that transformative mediation is built on these two core principles—that fostering interactional change is a prerequisite for sustainable conflict resolution and that employing exclusively supportive rather than directive mediator practices is a prerequisite for interactional

change—make it an especially useful intervention in PINS cases, particularly in the context of the “normalization” rationale for addressing these cases as discussed earlier. As noted above, the normalization rationale recognizes that the problems presented in PINS cases are those of the *family as a whole*, not the child alone. Through a transformative lens, a family’s constant grappling with the challenges of their situation causes family members to lose confidence in themselves and consideration for each other. What results is a general deterioration in family interaction. Both transformative mediation and the normalization rationale view these occurrences as *normal*—not pathological.

The corollary to this view is that the family itself, with the right kind of assistance, should be able to address these kinds of problems and get itself back on track. And in this light, transformative mediation is precisely the kind of assistance that the normalization rationale seeks. Understanding that the situation has caused a deterioration of interaction within the family, transformative mediation offers the family help in changing their interaction back into a more constructive one. Moreover, understanding that this poor interaction is both the result of, and the cause for, a loss of self-confidence and mutual consideration on all sides, transformative mediation uses interventions aimed at building family members’ confidence in their ability to handle the situation and encouraging their openness to each other’s views and perspectives. The kinds of interventions that help build this confidence and openness, as noted above, are ones that *support* the parties rather than controlling or directing them—and its use of supportive rather than controlling interventions is what sets the transformative model of mediation apart from other approaches.

Returning to the history of the PINS system recounted earlier, it can be said that using transformative mediation in PINS cases makes great sense as the capstone of that history. As recounted above, the evolution of the PINS system began with the recognition that status offenders did not belong in the juvenile justice system, whose punitive character was inappropriate. As the PINS system developed, it became clear that treatment rather than deterrence should be the aim in PINS cases. Moreover, it also became clear that, when providing treatment services required first placing families in the adversarial court process, the damage done by that process itself could make things far worse. This insight—that it was important to *avoid* the further deterioration of family interaction that would result from adversarial court proceedings—led to the concept of PINS diversion, placing the PINS process entirely outside of and prior to adversarial court procedures.

E. A COUNTER-ADVERSARIAL INTERVENTION FOR PINS CASES

In light of this overall rationale for PINS diversion, the diversion process should be looking for forms of assistance that help rebuild family interaction, by being not just non-adversarial but *counter-adversarial*. Counter-adversarial interventions help family members regain their individual sense of security and their mutual sense of respect and understanding, *countering* the destructive interaction that has brought them to the PINS system initially. This is precisely what transformative mediation is designed to do, and has been used to do, in many different contexts, including divorce disputes, workplace conflict, community disputes, and others.³⁹ Including this process as one intervention in PINS diversion is an innovation that stands to bring great value to the families who have the chance to use it.

In 2008, two social service agencies, Family and Children’s Association (FCA) and Long Beach Reach (LBR), together with the Hofstra Law School Mediation Clinic began using transformative mediation as one intervention in a new PINS diversion program in Nassau County. The use of transformative mediation, in conjunction with social service and therapeutic

interventions, is an innovative practice that builds upon the knowledge gained both in the development of the PINS process and in the development of mediation theory and practice. The history of that partnership, and some of the insights already gained from the initial stages of its work, is the subject of the next part of this article.

IV. A PARTNERSHIP FOR SERVING PINS FAMILIES IN NASSAU COUNTY, NEW YORK

A. TRANSFORMATIVE MEDIATION AND STRENGTH-BASED SOCIAL WORK PRACTICE

FCA and LBR are two well-established social services agencies in Nassau County. Both agencies are committed to preventing criminal and juvenile justice involvement for young people and their families—so that those families' problems are not exacerbated by the adversarial process of the courts. While the agencies partner with professionals from other disciplines, their work is primarily grounded in principles of social work and a strength-based approach to practice. Rather than focusing on deficits or what's wrong with a child or family, a strength-based approach operates on the assumption that families have abilities and resources for their own empowerment. As stated in FCA's PINS Diversion Program Manual,

[a]ll families have strengths. They are the experts on themselves and when they are included in the decision-making process, they are capable of identifying their own needs and resources and will be committed to the successful completion of their service plan and the program. . . . [A]dolescent children and their families are best served when programs improve on their ability to successfully maintain the adolescent at home . . . and help them acquire the skills they will need to effectively address difficulties that may arise in the future.⁴⁰

Strength-based practice does not ignore family members' problems or pretend they do not exist. Rather, working from a strength-based approach recognizes the structural and cultural barriers that constrain behaviors and addresses these constraints by building on existing competencies and abilities to enable people to control the process of change. In PINS cases, a strength-based approach to practice means engaging the entire family and their connections in the community, building upon existing resources to address the child's misbehavior, and creating a stable environment for healthy youth and family development.

The underpinnings of strength-based social work practice have a great deal in common with the principles of transformative mediation.⁴¹ As noted above, transformative mediation is concerned not only with the resolution of family conflict, but the sustainability of that resolution. As transformative mediators work with families in conflict, all interventions are family focused and family driven. The mediator seeks to support the family as they change the quality of their interaction from destructive to constructive. All resolutions that emerge from a mediation following the transformative model of practice are firmly rooted in the family members' own choices and decisions. Therefore, transformative mediation allows family members to access and build on their individual and collective resources to become the agents of their own change.

As the home of the Institute for the Study of Conflict Transformation (ISCT)⁴² and the Center for Children, Families, and the Law,⁴³ Hofstra Law School has a long-standing dedication both to transformative mediation and to children and families in the legal system.

Therefore, in 2007, when FCA sought to explore the use of mediation to work with youth and families diverted from the PINS system, Hofstra was a logical resource to approach for this endeavor.

After an intensive planning process, FCA, Hofstra Law School, and LBR launched the Family Solutions Program in January 2008 to provide PINS diversion services to youth and families in Nassau County. At the heart of Family Solutions is the recognition of the natural synergy between strength-based social work practice and transformative mediation. The section below will describe the program in greater detail to illustrate the ways in which transformative mediation operates within a social service setting to empower youth and families and avoid the need for unnecessary court intervention.

B. TRANSFORMATIVE MEDIATION AND THE FAMILY SOLUTIONS PROGRAM

In Nassau County, the Department of Social Services (DSS) is the gateway for diversion services for PINS families. A parent or guardian seeking to file a PINS petition on his or her child calls DSS and completes an intake interview with a DSS worker over the phone. Based on this interview, the DSS worker assesses whether PINS diversion services are appropriate for the youth and the family. If diversion services are appropriate, the family is referred to Family Solutions. A Family Solutions Specialist (FSS), a social worker from FCA or LBR, is assigned to work with the family to provide individualized assessments and referrals to community-based resources. Mediation is one service that may be offered to the family during the assessment process. Family Solutions has the capacity to serve 1,000 families each year, and the goal is for 70% of families in the program to utilize mediation as a part of their involvement.

Mediation services are provided by students in Hofstra Law School's Mediation Clinic, working under the close personal supervision of the Clinic Director. At the start of the semester, students participate in an intensive forty-hour training course in basic transformative mediation practice, with a focus on working with parents and teens. Social workers also participate in this training in order to gain greater insight into the purpose of mediation, the role of the mediator, and their own role during the mediation process. In this way, Family Solutions establishes an environment of interdisciplinary collaboration from the outset, a commitment that is renewed at the start of every school semester. Together, law students and social workers learn about the PINS system and the goals of the Family Solutions Program, explore the areas of overlap between transformative mediation and strength-based social work practice, and work together to refine how mediation and social work interventions can help to stabilize families and resolve family conflict.

1. The Role and Value of Mediation in the Family Solutions Program

Participation in mediation is voluntary and there is no penalty for declining a referral to mediation or refusing to participate in the process. Generally, mediation is used as an intervention to help families develop more effective communication skills, gain clarity on their situation, and make decisions about what course of action is right for them. A family is typically involved with the Family Solutions Program for an average of three months, and a FSS may refer a family to mediation at any time during their engagement with the program and may choose to refer one family for multiple mediations during the course of their involvement. Therefore, the point at which a family participates in mediation is a significant factor in the role mediation plays within the context of the larger program.

For example, if a family participates in mediation during the first month of their involvement with the program, the mediation may serve to support the family's decision to participate in the program and the FSS's efforts to build rapport with the family. Mediations conducted at this stage of involvement generally tend to focus on increasing communication between the parents and the child; providing an opportunity for the child's voice to be heard in both defining the family conflict and proposing possible solutions; helping the family gain perspective on the situation and their options within the PINS system; and creating preliminary agreements to address low-level conflicts, such as chores and curfew.

Mediations conducted during the second month of the family's involvement with the program tend to serve as a checkpoint for families to evaluate their progress and begin to plan for the future. Families might assess the impact of different interventions and services they have tried, consider additional options available to them, decide to reengage or disengage with the diversion process, discuss issues that have surfaced since the family began working with the program, or choose to involve kin and other family or community supports in the remainder of the process.

Finally, mediations conducted during a family's final stages of involvement with the program serve an important function of providing closure. Mediations conducted as a family prepares to end involvement with Family Solutions can help families to appreciate and recognize their connections, review progress and accomplishments, address lingering issues and concerns, decide on next steps toward transitioning out of the program, or consider strategies and tools for coping with future family conflicts.

2. The Mediation Process

a. The Mediator's Role Students in the Hofstra Mediation Clinic provide mediation services for families participating in the Family Solutions Program. The students work under the direct supervision of the Mediation Clinic Director—a Clinical Professor of Law who is trained and certified in transformative mediation practice. Students follow a co-mediation model, which allows them to attend fully to the verbal and nonverbal interactions of family members and others present, helping each participant to make their voice heard and have their perspective considered during the conversation. As transformative mediators, law students support the family's conversation by focusing on the quality of their interaction.

By helping family members become more clear on matters such as what topics they wish to discuss, what ground rules they want for the conversation, what goals they have for the mediation process, etc., *mediators facilitate a conversation* in which family members begin to feel comfortable discussing the troubles that brought them to this point. Through this conversation, family members have the opportunity to gain perspective on their situation, explore resources and options available to them, and begin to make decisions about how best to address their situation. And, because of the supportive nature of the mediator's interventions, the facilitated conversation helps the family members begin to rebuild their sense of self-confidence and mutual understanding, and therefore their overall family strength to address their problems.

The most important of the mediator's interventions include: (1) constantly reflecting the parties' comments as they take turns at talking, capturing and uplifting their comments so that they can actually hear and listen to each other (and to themselves), as they express their views, feelings, and desires and (2) periodically summarizing the topics the parties are talking about, and especially their points of disagreement, as the conversation unfolds.⁴⁴ These two interventions are most effective at helping the parties gain clarity about the situation, feel more settled, understand each other better, and make sounder decisions.

b. The FSS's Role The family's assigned FSS is also present during the mediation and plays a unique and multifaceted role. Unlike the role of the social worker in child protective mediation, the FSS is not a *party* to the mediation, because he or she does not have a direct stake in the conflict. However, the role of the social worker in mediations conducted in the Family Solutions Program is active and vital.

First, the FSS acts as a *support to the parties*. The FSS may ask to speak to any of the parties privately during the mediation or provide direct support to a party in the context of the group discussion. Likewise, the parent or child may seek the support of the FSS at any time during the process in any way he or she may find helpful. The FSS may also support the parties by highlighting their achievements during the mediation or in the program more generally.

The second function of the FSS during the mediation is to act as an *agent of reality*. If the parties to the mediation are reaching agreements that are illegal, such as agreeing that smoking marijuana or not attending school is to be permitted, the FSS may intervene to provide necessary guidance. A third and related function of the FSS during mediation is as an *information provider*. The FSS may supply the family with outside information, such as information pertaining to the education system, mental health, or the PINS system, as requested by the family members or as he or she feels is appropriate to assist the family in gaining clarity and making decisions. The FSS may also function as a *resource provider* by suggesting options for specific community-based services to meet any needs or agreements identified during the mediation process.

Finally, the FSS acts as a *safety guarantor*. Unlike the mediator, the FSS is a mandated reporter in New York State. During the mediation, the FSS is responsible for exploring and assessing risks of immediate, serious, and foreseeable harm to a child or other identified individual and making the final determination as to how to handle the situation. If the FSS decides that it is safe to continue the mediation, but the family does not wish to do so or a mediator feels that he or she cannot remain impartial, the mediator may choose to end or reschedule the mediation.

c. The Parent or Guardian's Role As parents or guardians participate in mediation, the process serves as an opportunity for them to gain perspective on their family's situation. In many cases, mediation is the first time that a parent genuinely *listens* to his or her child and how he or she is experiencing the family's conflict. Until the families reach the Family Solutions Program, the diversion process is primarily parent driven. Mediation is a useful tool for helping parents to accept responsibility for their family's present situation and their role in helping to shape their family's future. As parents and guardians participate in mediation, their role generally shifts from that of primary information provider on the family's history, to active listener, and, finally, to collaborator in determining the best path forward for their family.

d. The Child's Role The child's participation is an essential but challenging aspect of the mediations in the Family Solutions Program. While mediation is voluntary, many children in the PINS diversion process fear that, if they do not participate, they will be sent to court. Although this is not the case, the entire PINS process is frightening and intimidating for children. Moreover, it is common for children to feel betrayed by their parents for seeking outside intervention in family matters. Children are therefore angry and reluctant to participate in any process initiated by their parents after the initial PINS contact is made.

The Family Solutions Program is continually experimenting with new ways to help youth feel comfortable during the mediation process and encourage them to participate without fear of reprisal. The most promising ventures have included extensive pre-mediation consultation with youth and parents. When mediators have conversations with the parties prior to mediation, both parents and especially children seem to feel more at ease during the process. The pre-mediation conversation can help manage parents' and children's anxiety by providing them with information about what to expect, allowing them to ask questions of the mediators, and ensuring their voluntary consent before the mediation is conducted.

e. The Role of Other Participants Other participants are sometimes involved in the mediation, as determined by the FSS, the child, and the parents. Additional participants may include siblings, extended family and kin, youth advocates (e.g., law guardians or representatives from local youth programs), counselors/therapists with whom the family has a relationship, school representatives, religious or cultural figures, and child welfare workers currently involved with the family. The presence of individuals outside of the immediate family will largely depend on the complexity of the family's problems, their existing ties to the community, and the stage of the family's involvement with the program.

C. GAINING MOMENTUM

As the Family Solutions Program approaches its first anniversary, the outlook is positive. The Program is currently focusing efforts not only on mediation of PINS cases, but also on outreach and collaboration with stakeholders in the community, such as schools and youth service agencies, and experimenting with ways to best utilize the services of law students and social workers.

In addition, a research plan has been developed to study this use of transformative mediation with parents and teens in conflict. As noted above, the goal in transformative mediation is not simply to reach a settlement, but also to facilitate a change in the overall interaction of the parties. Thus, whether transformative mediation is effective in PINS cases will depend upon whether the parents and teens were able to change their dialogue from a vicious circle of negative interaction to a more productive and communicative exchange, and thus begin exploring creative ways to resolve their differences.

The research plan contemplates a qualitative study conducted in two parts.⁴⁵ In the first part, exit surveys will be administered. Each mediator and participant will receive and be asked to complete the exit survey. Additionally, if the mediators and parties agree, and where no confidentiality restrictions apply, there may be instances where a student mediator observes the mediation. A student mediator's observations may also be useful for generating further information necessary to complete the case studies. All parties, mediators, and observers will be asked to complete exit surveys immediately following the mediation. In the second part of this study, all data gathered will be analyzed. The analysis will be done in three parts. First, the data will be analyzed for evidence of patterns involving "transformative effects"—changes in the interaction between parents and children—during the mediated sessions, including: (1) changes in how the participants communicate with each other, (2) changes in how the participants view themselves, (3) changes in how the participants perceive each other, and (4) the connection between such interactional changes and resolution of the parties' differences. Second, the data will be mined for case studies that might illustrate a significant change in participant interaction from destructive to

constructive. Third, the data will be used to assess party satisfaction following a transformative mediation session.

V. THE FAMILY SOLUTIONS PROGRAM: POTENTIAL REPLICATION VALUE

Although the Family Solutions Program is still young, the experiment in using transformative mediation within a social services context appears to be providing significant benefits to families in the PINS system. This section points to three features of transformative mediation, as used in the Family Solutions Program, that make it a valuable tool for others working with family conflict, not only for clinical education but also for effective volunteer training and supervision in mediation programs generally.

A. EFFECTIVENESS IN MEDIATOR TRAINING

Mediation practice has often been described as a “toolbox” of techniques that can be used as needed in order to solve problems and gain agreements.⁴⁶ Even if, beyond the toolbox, there are guiding principles that help decide when and how to use each technique, those principles are not always well articulated in a coherent “theory of practice” that gives new mediators a clear picture of what they are doing, and why.⁴⁷ This widespread lack of attention to the theory underlying practice means that new practitioners often flounder, until they eventually develop their own personal sense of how to use the toolbox of techniques they have learned. One of the strengths of the transformative approach to mediation, and to training mediators, is that it sets forth such a theory clearly and ties every practical intervention to its underlying theoretical basis. As a result, the approach can be taught very clearly, and students gain a strong sense of the coherence and logic of what they are doing as practitioners.⁴⁸

Put simply, transformative mediation, because of its theoretical clarity and coherence, tends to make it possible for beginning mediators to learn the process more readily and become effective at practice more quickly. The value of this in a mediation clinic, in which students have a short fifteen weeks to move from training to supervised practice, is obvious. But the value is equally great in the typical mediation center using volunteer mediators, in which training and apprenticeship is expected to produce competent mediators within roughly the same time frame. In short, the Family Solutions Program has seen that the theoretical grounding of the transformative model has a practical payoff in effectiveness of mediator training—and that can be replicated in other programs.

B. EFFECTIVENESS IN MEDIATOR SUPERVISION

Parallel to the advantage transformative mediation offers for teaching new mediators, it offers a similar advantage for mediator supervision—another critically important need both in clinical education and in program administration. The difficulty of fairly and accurately assessing mediator performance has long been a problem in the mediation field, despite many efforts to develop performance criteria.⁴⁹ In major part, the difficulty lies in the same point mentioned above in training: there is a tendency to evaluate performance by checklists that mark whether mediators employed certain techniques. However, this checklist approach, like the toolbox approach, gives little indication of whether the techniques are employed

coherently and appropriately. Nor does the checklist give the mediation supervisor the basis for explaining to a supervisee why a certain technique should or should not have been used in a particular case. What is required for fair assessment, and effective supervision, is a coherent basis for evaluating what was done by a mediator and explaining why it was or was not appropriate. That basis is found in a theory of practice, according to which mediator interventions can be assessed and explanations offered that help an apprentice mediator develop in his or her practice.

The transformative approach to mediation, as discussed above, offers this clear and coherent theory of practice. Moreover, the approach has already produced well-developed instruments for assessing competent practice and methods for discussing competency assessments with mediators under evaluation.⁵⁰ These tests and instruments go well beyond the checklist approach, and offer means of contextualized assessment, based on coherent theory-of-practice grounds and placed within a process of supervisory dialogue. The result is a framework for both assessment and supervision that is of great value, both in the clinical education context and in the context of administering a mediation program that relies upon trained volunteers. This framework is another advantage of using the transformative model that is being used in the Family Solutions Program and can be used in other settings as well.

C. EFFECTIVENESS IN PROVIDING CLIENT BENEFITS

The most potentially valuable element that can be replicated from the innovative use of mediation in the Family Solutions Program lies in the benefits to families who are dealing with intrafamily conflict. Those benefits, as discussed above, stem from the way in which transformative mediation helps to strengthen families by offering family members a chance to recapture their sense of personal competence and interpersonal understanding, as they deal with specific conflict issues. By addressing the interactional dimension of family conflict, and not simply the specific areas of disagreement, transformative mediation provides families with a way to return to viable family life within the home and to address new issues as they arise. As part of an overall, family-strength-based approach to social-service intervention with status offenders transformative mediation can help to make the process a true alternative to the courts diversion and reduce the need for the intrusion of the state into family life and the removal of children from their homes—the goals toward which the evolution of the PINS system in New York has been moving for over five decades.

NOTES

1. Tina Chiu & Sara Mogolescu, *Changing the Status Quo for Status Offenders: New York State's Efforts to Support Troubled Teens*, VERA INST. JUST. (2004).

2. *In re Gault et al.*, 387 U.S. 1, 17 (1967).

3. Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909).

4. The doctrine of *parens patriae* was drawn from the English chancery laws, where it was traditionally used to justify the English Crown's assumption of a parental role to protect the estates of orphaned minors. In 1838, the Pennsylvania Supreme Court extended the doctrine to the termination of parental rights. *See Ex Parte Couse*, 4 Wharton Pa. 9 (1838).

5. Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1206 (1970). The children "saved" from their unfit parents were drawn almost exclusively from immigrant, poor, and minority families.

6. CHERYL L. MAXSON & MALCOLM W. KLEIN, *RESPONDING TO TROUBLED YOUTH* 39 (1997).

7. Fox, *supra* note 5, at 1233.

8. *Kent v. U.S.*, 383 U.S. 541, 556 (1966).
9. *In re Gault et al.*, 387 U.S. 1 (1967).
10. *Id.* at 26–27. Waywardness was a common term for status offending youth.
11. Claire Shubik & Jessica Kendall, *Rethinking Juvenile Status Offense Laws: Considerations for Congressional Review of the Juvenile Justice and Delinquency Prevention Act*, 45 FAM. CT. REV. 384 (2007).
12. *Id.* at 385.
13. See Maxson & Klein, *supra* note 6, at 3–24.
14. See Shubik & Kendall, *supra* note 11.
15. *Id.* (citing S. Rep. No. 93-1011 (1974), reprinted in 1974 U.S.C.C.A.N. 5283).
16. Maxson & Klein, *supra* note 6, at 39.
17. INST. OF JUDICIAL ADMIN. AND ABA JOINT COMM’N ON JUVENILE JUSTICE STANDARDS, STANDARDS RELATING TO NONCRIMINAL MISBEHAVIOR Cambridge: Ballinger 37 (1977).
18. *Id.* at 36.
19. *Id.*
20. Maxson & Klein, *supra* note 6, at 31.
21. Matthew Kogan, *The Problems and Benefits of Adopting Family Group Conferencing for PINS (CHINS) Children*, 39 FAM. CT. REV. 207, 210 (2001).
22. Jesse Souweine & Ajay Khashu, *Changing the PINS System in New York: A Study of the Implications of Raising the Age Limit for Persons in Need of Supervision (PINS)*, VERA INST. JUST. (2001).
23. *Id.* at 8. See also Jill Monacelli, *Viewpoints: County Lacks Funds to Handle PINS Bill* (Letter), BUFF. NEWS, Sept. 10, 2000, at F3 (stating that, “[a]s a 17-year employee, I can attest that adequate staffing has always been a severe problem, and is getting worse” and “New York State is infamous for passing mandates for the counties that the state does little or nothing to help fund. The PINS bill is just the latest example.”)
24. N.Y. FAM. CT. ACT §712 (McKinney 2000).
25. Aaron Spiwak, *Children Who Break the Rules: Juvenile Delinquency and Status Offenses*, 40 COLUM. J.L. & SOC. PROBS. 467, 468–72 (2007).
26. N.Y. FAM. CT. ACT § 735 (McKinney 2005).
27. *Id.*
28. N.Y. FAM. CT. ACT § 742 (McKinney 2005).
29. Christine Rinik, *Juvenile Status Offenders: A Comparative Analysis*, 5 HARV. J.L. & PUB. POL’Y 151, 171 (1982).
30. ABA Commission on Youth at Risk, Commission on Homelessness and Poverty, Report to the House of Delegates, 104C, 10 (2007).
31. Glenda L. Cottam, *Mediation and Young People: A Look at How Far We’ve Come*, 29 CREIGHTON L. REV. 1517 (1996).
32. Maxson & Klein, *supra* note 6, at 39.
33. Robert A. Baruch Bush, *One Size Does Not Fit All: A Pluralistic Approach to Mediator Performance Testing and Quality Assurance*, 19 OHIO ST. J. ON DISP. RESOL. 965 (2004); Christopher Honeyman, *The Common Core of Mediation*, 8 MEDIATION Q. 73 (1990).
34. See, e.g., LEONARD L. RISKIN ET AL., DISPUTE RESOLUTION AND LAWYERS 288–307(2007); JAMES A. ALFINI ET AL., MEDIATION: THEORY AND PRACTICE 107 (2006); DWIGHT GOLANN, MEDIATING LEGAL DISPUTES 21–25 (1996); JAY FOLBERG ET AL., DIVORCE AND FAMILY MEDIATION: MODELS, TECHNIQUES AND APPLICATIONS 29–92 (2004); Grace E. D’Alo, *Accountability in Special Education Mediation*, 8 HARV. NEG. L. REV. 201, 205 (2003).
35. See ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT 51–53 (2d ed. 2005); JOSEPH P. FOLGER ET AL., WORKING THROUGH CONFLICT: STRATEGIES FOR RELATIONSHIPS, GROUPS AND ORGANIZATIONS (4th Ed. 2001). The potential that transformative mediation offered to address both the “interests” and the “interactions” of the parties was a prime reason that the U.S. Postal Service adopted the model for its Workplace Mediation Program. See Cynthia J. Hallberlin, *Transforming Workplace Culture Through Mediation: Lessons Learned from Swimming Upstream*, 18 HOFSTRA LAB. & EMP. L.J. 375, 378 (2001).
36. See BUSH AND FOLGER, *supra* note 35.
37. See *id.*
38. The party-directed character of transformative mediation may help to address the legitimate concerns of some critics that mediation might work to further disempower families, especially those from minority groups, by subjecting them to the judgments of non-minority “professionals”. See, e.g., John DeWitt Gregory, *Juvenile Court Jurisdiction Over Noncriminal Misbehavior: The Argument Against Abolition*, 39 OHIO ST. L.J. 242 (1978).

39. See LISA BLOMGREN BINGHAM, *MEDIATION AT WORK: TRANSFORMING WORKPLACE CONFLICT AT THE UNITED STATES POSTAL SERVICE* (2003); Patricia Gonsalves & Donna Turner Hudson, *Supporting Difficult Conversations: Articulation and Application of the Transformative Framework at Greenwich Mediation*, available at <http://www.mediate.com/articles/greenwichM1.cfm> (last visited August 4, 2008); Thomas Wahlrab, *Dayton Mediation Center 2005 Annual Service Report* available at www.domediation.com/annsvc.doc (last visited August 4, 2008); Ruth L. Schemm, Kathryn R. Mariani & Michele Mathes, *Conflict in Assisted Living: The Promise of Elder Mediation*, ASSISTED LIVING CONSULT, Jan./Feb., 2008, at 28; Dee DePorto & Jody B. Miller, *Honoring the Victim's Voice: The Domestic Violence and Mediation Safety Project*, ACRESOLUTION, Summer 2005, at 22.

40. FAMILY AND CHILDREN'S ASSOCIATION, *FAMILY SOLUTIONS PINS DIVERSION PROGRAM MANUAL*, February, 2008.

41. See Dorothy J. Della Noce & Hugo C.M. Prein, *The Case for Transformative Mediation: A Review of Theoretical and Empirical Support*, in *TRANSFORMATIVE MEDIATION: A SOURCEBOOK FOR MEDIATORS, LAWYERS, AND THE COURTS* (eds. Dorothy J. Della Noce, Joseph P. Folger & Robert A. Baruch Bush) (forthcoming 2009).

42. The Institute for the Study of Conflict Transformation is a think-tank devoted to the study of conflict from the transformative perspective, as its website explains. See Institute for the Study of Conflict Transformation, www.transformativemediation.org (last visited on October 10, 2008).

43. The Center for Children, Families and the Law is a collaboration between the Law School and the Department of Psychology focused on education, community service, research to benefit children and families in the legal system. See The Center for Children, Families, and the Law, <http://law.hofstra.edu/Academics/InstitutesAndCenters/ChildrenFamiliesAndTheLaw/index.html> (last visited on October 10, 2008).

44. See BUSH AND FOLGER, *supra* note 35.

45. The method of data collection and analysis is based on the research studies done in the United States Postal Service's REDRESS™ Program. See generally James R. Antes, Joseph P. Folger & Dorothy J. Della Noce *Transforming Conflict Interaction in the Workplace: Documented Effects of the USPS REDRESS™ Program*, 18 HOFSTRA LAB. & EMP. L.J. 429. This research case study is awaiting Institutional Review Board ("IRB") approval for conducting research on human subjects at Hofstra University. Upon approval we will begin administering the consent forms and exit surveys immediately.

46. See, e.g., CHRISTOPHER W. MOORE, *THE MEDIATION PROCESS: PRACTICAL STRATEGIES FOR RESOLVING CONFLICT* (3d ed. 2003).

47. Dorothy J. Della Noce et al., *Clarifying the Theoretical Underpinnings of Mediation: Implications for Practice and Policy*, 3 PEPP. DISP. RESOL. L.J. 39 (2002).

48. This insight was one of the main reasons for the decision to change the approach of the Hofstra Mediation Clinic from a facilitative to the transformative model, and to search for a set of cases suitable for the transformative model. See Robert Thaler, PINS Mediation Project, (October 29, 2007) (unpublished memorandum, on file with the authors).

49. See Bush, *supra* note 33.

50. See Dorothy J. Della Noce et al., *Identifying Practice Competence in Transformative Mediators: An Interactive Rating Scale Assessment Model*, 19 OHIO STATE J. ON DISP. RESOL. 1005 (2004). See also DOROTHY J. DELLA NOCE ET AL., INSTITUTE FOR THE STUDY OF CONFLICT TRANSFORMATION, INC., *MEDIATOR CERTIFICATION: FREQUENTLY ASKED QUESTIONS*, (April 2003), <http://www.transformativemediation.org/documents/Frequently%20Asked%20Questions.pdf> (for a description of how the assessment process discussed in the above article is applied in practice).

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