

# Interactive Listening Skills: The Listening Triangle<sup>1</sup>

## Introduction

Communication is typically the first casualty of conflict. Once a dispute begins or escalates, communication suffers. Parties stop listening, and they stop talking.

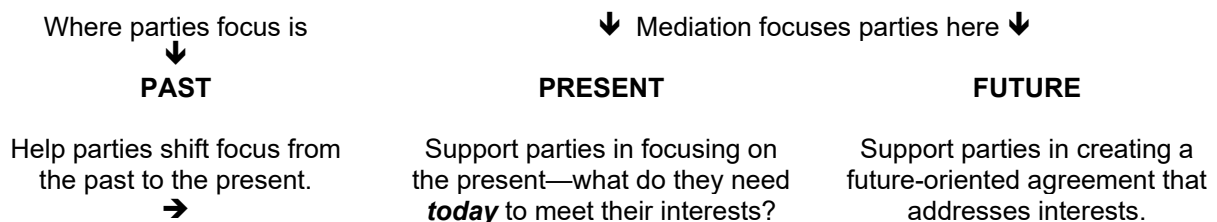
Dispute Intervention is designed to address these communication barriers. It is an ideal mechanism for encouraging expression, bringing issues to the surface, facilitating the exchange of information, confronting misperceptions, and exploring the range of options for settlement or resolution. These opportunities arise through the neutral's ability to communicate effectively.

These communication skills break down into two main components: question asking and active listening, skills which work in tandem together. Questions invite reflection and perspective-taking, and draw out essential information. Active listening expresses understanding, offers new ways of conceptualizing a problem, builds rapport, and moves the discussion forward.

Each of these skills is essential. Without questions to consider, the parties would have difficulty considering their problems anew or weighing the full range of options. And questions alone, one after the other without pausing to consider the response they elicit, can seem more like an interrogation or a deposition. Question-asking and listening skills transform the process from a mere process for negotiation into a conversation.

## A Model for Communicating: The Listening Triangle

As process facilitators, assigned officer assist parties in transitioning productively from positions to interests and ultimately to options to meet their interests. This also involves a temporal shift for parties, who come to mediation focused on problems and issues that arose in the past. Through the strategic use of questioning and listening skills, mediators help people shift their focus from the problems of the past to their interests today and to develop options to produce a future-oriented agreement:



To help new mediators and negotiators master the essentials of question asking and listening, MWI training faculty member Moshe Cohen created The Listening Triangle<sup>1</sup>, a model for communication. It specifies three steps for eliciting and responding to information:

1. Ask a question
2. Listen to the response
3. Reflect back what you hear

The Listening Triangle is flexible enough for use at all stages of the mediation, but it is particularly adept at identifying interests, a central focus of facilitative, interest-based mediation. It helps

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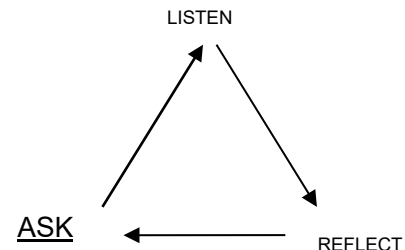
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mediators integrate both question-asking and listening to guide parties in making the conceptual and temporal shift from past positions to present interests.

### **Step 1: Ask**

Good questions, skillfully posed, accomplish a great deal. They can be used to:

- Draw out the background of the dispute or basic issues
- Identify interests
- Brainstorm options
- Reality test
- Encourage perspective-taking
- Weigh alternatives
- Address barriers to agreement
- Confirm commitment



Questions break down into two main types: **closed questions** and **open-ended ones**. Both have their uses in mediation.

#### **Closed questions:**

- Can be answered with one or two words or simply “yes”, “no”
- Are useful for confirming information or agreement
- Focus attention narrowly on a particular detail
- Invite brief answers when time is short
- Elicit only limited information or suggest a response by leading

#### **Examples of closed questions:**

- Do you want to give mediation a try?
- Did you communicate with them again?
- How long were you out of work?
- When did you refinance?
- How long have you owned the business?
- Do you need to contact your attorney?
- Would you like to take a break?
- How old is your daughter?

#### **Open-ended questions:**

- Begin with words such as “How...”, “Why...”, “What...”, “Could you tell me about...?”
- Can be verbal prompts that function like questions (“Tell me more about that”)
- Invite full discussion
- Produce more information
- Encourage discussion
- Allow free expression
- Are ideal for drawing out interests, generating options, addressing other elements of negotiation

#### **Examples of open-ended questions at work:**

- Draw out background or basic issues
  - “Can you tell us what brings you here?”
  - “What happened?”

- “So, please tell us why you’re here.”
- “Can you give us a little background?”
- “How did things change?”
- “Tell me more.”
  
- Identify interests
  - “What are your concerns?”
  - “What else is important to you?”
  - “Could you tell me why that bothered you so much?”
  - “What else do you want her to understand?”
  - “Tell me what else you need.”
  
- Brainstorm options
  - “How can this be resolved?”
  - “What other options do you see?”
  - “If this were any other business problem, how would you solve it?”
  - “What ideas do you have for getting the company back on track?”
  - “In the future, how can problems like this be handled?”
  - “What else would improve communication?”
  - “What other ideas do you have?”
  
- Define objective standards
  - “How have others in your industry addressed this issue?”
  - “How will you both know that an outcome is fair?”
  - “What are some ways to obtain an objective valuation of the business?”
  - “What kind of standards does your field recognize?”
  
- Reality test
  - “What is your worst case scenario if negotiations fall through?”
  - “What are the strengths and weaknesses of your case?”
  - “What are the strengths of their case?”
  - “Given your current financial condition, how will you survive the next few months?”
  - “What will the impact be on your customers if you do that?”
  - “How will your shareholders view that course of action?”
  
- Encourage perspective-taking
  - “Why do you suppose she feels that way?”
  - “You say he’s always stressed out and difficult. Why do you think that is?”
  - “You’ve helped me understand what’s important to you. What do you think is important to them?”
  
- Weigh alternatives
  - “What happens if you don’t reach agreement?”
  - “What kinds of costs will you face if this does go to trial?”
  - “What will a loss at trial mean for your company’s competitiveness?”
  - “How will your shareholders view the risks of trial?”
  
- Address barriers to agreement
  - “What’s stopping you from resolving this?”
  - “What’s your worry about settling this today?”
  - “I can see you’re having a hard time coming up with ways to resolve this. What’s going on?”
  - “Trust continues to be a big concern. What safeguards can you build in to allay that doubt?”

- “What would it be like to be able to move forward with your life?”
  - “How would it feel to have this resolved?”
  - “Imagine a colleague came to you with this problem. What would you advise her to do?”
- Reach or confirm commitment
    - “What are you each willing to do?”
    - “What contingencies do you want to build in to prevent it from happening again?”
    - “How realistic is that timeframe given these new factors?”
    - “What else should this agreement address?”

*Some guidelines for asking questions:*

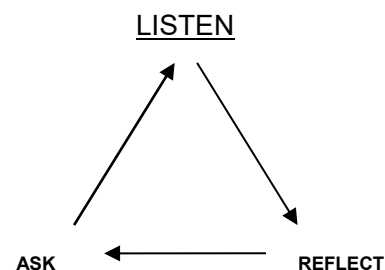
- **Be purposeful.** Know why you’re asking the question; have a reason. What is your motive? Is it to explore interests fully? Or are you following your own agenda?
- **Be diplomatic.** Good questions, tactfully asked, build trust between mediator and party. They can function as an invitation, encouraging parties to let down defenses and discuss issues candidly.
- **Avoid judgment.** Questions can also shut parties down if they seem judgmental or accusatory in tone. If you ask a difficult question, alert them in advance that you must do so and explain that your role is to have them think through their decisions with care.
- **Allow silence.** Questions can be difficult, pushing people to confront harsh truths or make hard decisions. People need the room that silence leaves to weigh their answers carefully. Let silence sit to allow parties time to think.
- **Be curious.** Seek to fully understand parties’ interests and motivations. Demonstrate interest and a desire to be helpful.
- **Keep questions short and ask just one at a time.** Questions that are too lengthy will only confuse parties. Limit yourself to one question at a time to help parties focus. Simple conversational prompts such as “Say more” and “tell me more” encourage people to speak fully, and one of the most powerful questions in the world is the one word, “Why?”

## **Step 2: Listen**

Now that you have asked a question, you must listen carefully to the response.

Suggestions for listening:

- **Focus your attention** on what the party is saying in response to the question you just asked. Forget for a moment about the question you will ask next. Concentrate on listening to what the party is telling you.
- **Listen for elements of negotiation.** As parties respond, they are revealing important information to the mediator. They may describe their interests or point to concerns about past communication or their prior relationship with the other party. They may touch upon their alternatives if no agreement is reached or throw out an option as a potential idea. Teach yourself to recognize



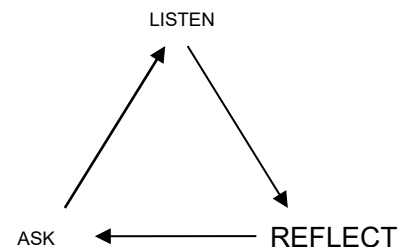
these elements and to understand how they work together. Train yourself to hear interests – the motivations, concerns and goals that hold meaning for the party.

- **Show that you are listening.** While you listen, use body language to demonstrate your full attention. Make eye contact and lean forward. Take notes while they speak.
- **Be ready to reflect.** The next step in The Listening Triangle is to show your understanding – to reflect back what you have heard. Listen, knowing that you will be reflecting back what you have heard in just a moment.

### **Step 3: Reflect**

In *Challenging Conflict: Mediation Through Understanding* (2008), mediation pioneers Gary Friedman and Jack Himmelstein describe the central role that listening plays in mediation – through what they describe as “the loop of understanding”. In their approach to mediating, listening is not simply about understanding a party, it is also about expressing that understanding:

*“With understanding as central to the parties finding a way through conflict together, the purpose of looping is not to convince or contradict, not to take exception, nor explain away. It is to understand...By establishing some understanding from the start..., the mediator begins to help break the cycle of misunderstanding.”*



So passively listening to the parties’ response to a question is not enough. The mediator must also take listening a step further and express understanding by reflecting.

To reflect, the mediator has three choices. The mediator can:

- Parrot
- Paraphrase
- Reframe

### **Parroting**

Parroting means to repeat verbatim what a party has said. Parroting holds up a mirror for some honest self-reflection. Hearing your own words come back at you can be highly instructive. Although parroting has limited utility since it does little to further discussion, it can be used when parties are repeating themselves and you sense that this is because there is something you have missed. (“You have said several times, ‘He’s holding you back’. Help me understand what you mean.”)

#### ***An example of parroting:***

Party [angrily]: “You’re not getting it at all! How many times do I have to say it? I’m not just a little upset, I am really infuriated with him!”

Mediator: “Okay, I get it loud and clear. You’re really infuriated with him.”

## Paraphrasing

Paraphrasing means to restate in your own words what someone else has just said while remaining true to its original meaning. Paraphrasing shows understanding and can convey empathy. Paraphrasing is also a way of restating what a party has said in a more neutral and non-confrontational way. Like parroting, paraphrasing has limits. It acts a snapshot, capturing in that moment a party's present state of mind or their experience of a past issue, but it does not invite a different way of conceptualizing the problem.

### ***An example of paraphrasing:***

Party: "He's the most infuriating pain I've ever worked for! He doesn't trust me to do my job and is constantly looking over my shoulder. It makes it impossible to get any project done on time since I have to run every little detail by him."

Mediator: "It sounds like you're very frustrated. You find it really difficult to work when you're being micromanaged. You don't feel trusted to do your job and you're experiencing delays in getting projects completed."

## Reframing: Listening for Interests

Mediation can help individuals in conflict gain new perspective, bringing fresh insight and understanding of each other and the underlying conflict. To enable disputants to see things differently, mediators utilize a technique called "reframing" to assist parties to redefine the way in which they understand or conceive of a problem.

In *The Dynamics of Conflict Resolution: A Practitioner's Guide* (2000), dispute resolution expert Bernard Mayer describes reframing this way: "[R]eframing is the process of changing the way a thought is presented so that it maintains its fundamental meaning but is more likely to support resolution effort." He describes the balance the mediator must strike, capturing honestly the intensity with which parties experience the conflict but also assisting parties to see the problem anew, as one capable of mutual resolution. According to Mayer, "The art of reframing is to maintain the conflict in all its richness but to help people look at it in a more open-minded and hopeful way."

To reframe:

- Restate the position as an interest – *as a problem that could be resolved*
- Restate it so that it describes a present need, rather than a demand on the other party
- Focus on the need, not personalities ("You need dependable, prompt service to keep your equipment up and running", not "You need him to stop ignoring your calls when you need your equipment repaired.")
- Restate it as an affirmative need, not a negation or a denial of a need: ("You want to be valued as an employee", not "You don't feel valued as an employee.")
- Convey the full meaning, including the emotional impact if any, but use neutral language

**An example of reframing, revisiting the scenario in the paraphrasing example above:**

Party: “He’s the most infuriating pain I’ve ever worked for! He doesn’t trust me to do my job and is constantly looking over my shoulder. It makes it impossible to get any project done on time since I have to run every little detail by him.”

What are the interests to be reframed?

- Ability to work independently
- Feel trusted
- Complete projects on time.

Mediator: “Work has been very frustrating for you lately, since you’re finding it hard to do your job. Meeting project deadlines is really important to you, but you need trust and the space to work independently with minimal supervision to achieve that.”

Another example of reframing:

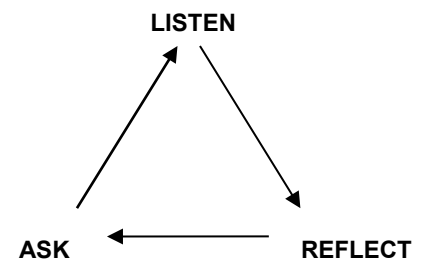
Party: “He’s got to stop pestering me with these stupid ideas that waste my time. I need help, not annoyance.”

Mediator: “So you need ideas that will save you time and get your job done.”

**The Listening Triangle: Putting It All Together**

To put The Listening Triangle into practice:

- Ask a question
- Listen
- Reflect back what you hear
- Ask a **relevant, open-ended** question that draws out additional information about what you’ve just heard.
- Listen
- Reflect
- And so on



<b>Ask</b>	“Tell us what’s going on.”
<b>Listen as they say</b>	“For the third week in a row, my boss has walked into my office at 4:30 with an assignment to complete a report due on Monday morning. There’s no way anyone can do a good job with so little lead time. And I’m sick of giving up time with my family on weekends just because my boss can’t plan better.”
<b>Reflect</b>	“You need more advance notice not just to complete work during business hours but so you can do the best job possible. And you want to manage your workload to assure you quality time with your family.”
<b>Ask</b>	“Could you say more?”
<b>Listen as they say</b>	“The other problem is that I’m salaried! I don’t get paid for working overtime. It’s just not fair.”

<b>Reflect</b>	“So you’re also concerned that there’s an issue of fairness – you want your compensation to reflect fairly the amount of work you perform and the hours you put in.”
<b>Ask</b>	“What else is important to you?”

**Use The Listening Triangle to identify interests or for generating options:**

**Ask for interests**     Party: “I want him to get rid of that dog. It’s making my life a living hell.”

                         Mediator: “You say you want him to get rid of his dog. Let’s say he does. What will be different for you?”

                         Party: “I’ll finally get some sleep at last without all that racket.”

                         Mediator: “So you’ll have the peace and quiet you need. What else?”

**Ask for options**     During an early private session, the party has had a chance to vent and identify interests with the mediator’s help. It’s time now to shift from interests to options.

                         ...

                         Party: “Look, it all boils down to this. If Olive and I are going to have to share an office, she needs to leave my stuff alone. She’s not a bad person and sometimes she’s given me great creative insights and critiques on projects, but she has to respect my space if this is going to work. I just don’t know how to talk to her about this stuff. Every time I’ve tried, we’ve just ended up yelling, which obviously doesn’t help.”

                         Mediator: [summing up the interests and then asking for options] “Sounds like you value your relationship with Olive and appreciate her contributions. At the same time respecting each other’s property and work areas is important. Although you’re not quite sure how, you also want to find a better way to communicate. Given that these are your goals, what ideas do you have about sharing the office and improving communication?”

                         Party: “I’d like to start with the easier issue – the office. Maybe a masking tape line down the middle of the office would establish whose area is whose. But that would be temporary. Maybe we need some kind of screen or we need to rearrange the furniture to establish separate working areas in the office.”

                         Mediator: “As far as sharing the office goes, you’ve identified two solutions, one temporary, one more permanent, both aimed at identifying your separate work spaces – a masking tape line; or either a new configuration of furniture or the introduction of a screen. What other ideas do you have?”

Listening well is a skill that requires constant practice to master. It demands much of us, claiming our time, our energy, and our full attention. But it is essential to the work that gets done at the mediation table. As Friedman and Himmelstein write, “By establishing some understanding from the start..., the mediator begins to help break the cycle of misunderstanding.”



## Reframing: Redefining the Conflict

Dispute Intervention can help individuals in conflict gain new perspective, bringing fresh insight and understanding of each other and the underlying conflict. Mediators utilize a technique called “reframing” to assist parties to redefine the way in which they understand or conceive of a problem – to recast it as an *interest* to be addressed.

In *The Dynamics of Conflict Resolution: A Practitioner’s Guide* (2000), dispute resolution expert Bernard Mayer describes reframing as “the process of changing the way a thought is presented so that it maintains its fundamental meaning but is more likely to support resolution effort.” According to Mayer, “The art of reframing is to maintain the conflict in all its richness but to help people look at it in a more open-minded and hopeful way.”

Here are suggestions to help you master this critical component of the mediator’s craft.

Reframing tip	Examples
Restate the position or demand as an interest – a need to be addressed:	<p>“You need to have the repairs completed so you can put your home on the market for sale.”</p> <p>“You want to have input into decisions that affect your job.”</p> <p>“As a parent, greater involvement in your children’s day-to-day lives is really important.”</p>
<p>Begin your reframe using words that state the issue as a present need, not a recitation of past frustrations:</p> <p>“So what you need is...”                      “What’s important to you is...”                      “What you want is...”</p>	<p>“You need reassurances that this time phone calls will be returned promptly.”</p> <p>“What’s important to you is cutting business costs and finding new sources of revenue as quickly as possible.”</p> <p>“You want to be able to count on your staff and for all members of your team to arrive on time so that the store is fully staffed for your customers.”</p>
Focus on the need, not on making it personal	<p>“You need dependable service, including calls returned promptly, to keep your equipment up and running”, not “You need him to stop ignoring your calls and blowing you off when your equipment breaks down.”</p>
Restate it as an affirmative need, not a frustrated need or a negative	<p>“You want appreciation for your contributions as an employee”, not “You never feel appreciated by your boss.”</p>
Convey the full meaning, including the emotional impact if any, but use neutral language to avoid alienating the other person.	<p>“Trust is the biggest issue here, and you need safeguards in place to ensure commitments are met”, not “You feel totally deceived by his sleazy conduct and don’t trust him without guarantees.”</p>
Restate it so that it describes a present need, not a demand singling out one individual	<p>“In your company, professional attire for all employees is critical when it comes to first impressions with customers”, not “You want her to stop treating every day like casual Friday and leave the pink spandex pants at home.”</p>

**How reframing works in practice:**

What the party says	What the mediator writes in his/her notes:	What the mediator reflects back:
<p>“He’s the most infuriating pain in the a---- I’ve ever worked for! He doesn’t trust me to do my job and is constantly looking over my shoulder. It makes it impossible to get any project done on time since I have to run every little detail by him.”</p>	<p>Interests:</p> <ul style="list-style-type: none"> <li>– Work independently</li> <li>– Trust</li> <li>– Projects done on time</li> </ul>	<p>“Work has been very frustrating for you lately. Meeting project deadlines is really important to you, but you need trust and the space to work independently to achieve that.”</p>
<p>“Ever since the bakery moved in, our neighborhood has suffered! Customers block our driveways or park in spaces reserved for residents, and throw trash out their car windows that ends up in our yards. The owner never cleans up the trash that accumulates in front, and she keeps promising us change but nothing happens – like the trash cans she was going to put out for customers but never did. She’s not acting like a neighbor– it’s like an occupying army.”</p>	<p>Interests:</p> <ul style="list-style-type: none"> <li>– Neighborliness</li> <li>– Respect</li> <li>– Commitments kept, action taken</li> </ul>	<p>“The quality of life in your neighborhood matters a lot. You want those who live and work there to treat each other like neighbors – with respect. This also means that neighbors are responsible for their guests, ensuring that they honor parking regulations or dispose of trash properly. You want assurance that these problems get addressed to make your neighborhood a good place to live again.”</p>
<p>“Their offer’s absurd—it won’t begin to cover my client’s medical expenses, let alone compensate her for her lost wages. They need to get real here. I’m not here to waste time with unrealistic offers, I’m here to settle this case, and I’m willing to be reasonable to do that – they should be too.”</p>	<p>Interests:</p> <ul style="list-style-type: none"> <li>– Compensation for meds, lost wages</li> <li>– Reasonable, fair</li> <li>– Reach settlement</li> </ul>	<p>“You’re here to work out a settlement that will fairly compensate your client for her medical expenses and lost wages. You’re willing to be reasonable and you’re asking the same of them.”</p>
<p>“Look, I’m willing to work with her to settle this. But I won’t pay her a dime without an independent inspection to ascertain the actual extent of the repair costs. I just can’t take her word for it.”</p>	<p>Interests:</p> <ul style="list-style-type: none"> <li>– Settlement</li> <li>– Verify cost</li> </ul>	<p>“You’d like to settle this. However, to move forward you need independent verification of the cost of these repairs.”</p>

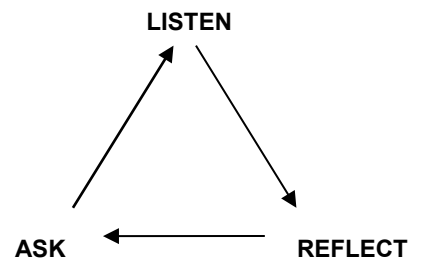
**Quick Guide to Commonly Heard Interests**

You hear these words	The interest is:	You reframe as:
"unfair" "not fair" "not right"	Fairness	"You want to be treated fairly." "You want a fair resolution."
"not reasonable" "unreasonable"	Reasonableness	"You want to find a reasonable way to resolve this."
"...they never listen..."	To be heard	"You want better communication." "You want your ideas to be heard."
"...shouldn't treat me that way..." "...I've been a loyal customer for 10 years..." "...I've worked here for 17 years..."	Respect	"Respect is important to you."  "You want to be treated with respect as a long-time customer."  "You'd like your long years of service taken into account."

**Using The Listening Triangle to reframe**

To put The Listening Triangle into practice:

- Ask an open-ended question about the party's interests
- Listen
- Reflect back what you hear



<b>Ask</b>	"Tell me what's going on."
<b>Listen as they say</b>	"I want him to get rid of that dog. It's making my life a living hell."
<b>Reflect</b>	"Sounds like you'd like things to be more stress-free at home."
<b>Ask a relevant question about what they just said to find out about their interests</b>	"You say you want your neighbor to get rid of his dog. Let's say he does. How will things be different?"
<b>Listen as they say</b>	"It's the incessive barking all night long – it's impossible to get a good night's sleep. And I'm sick to death worrying about my kids getting attacked by the dog in their own yard while they're playing. I'm terrified for their safety
<b>Reframe</b>	"So you want peace and quiet, particularly at night, and you want to know that your children are safe in their own yard."
<b>Ask a relevant question about what they just said to find out more about their interests</b>	"Besides regaining peace and quiet, as well as peace of mind as a parent, what else is important to you? "

## Using Neutral Language

For the mediator, using neutral language in mediation serves two purposes, 1) to neutralize the harmful side effects of conflict and encourage de-escalation; and 2) to uphold the mediator's ethical obligation to conduct the process impartially:

- **Neutralizing and de-escalation.** One of the tenets of Roger Fisher's negotiation classic *Getting to Yes: Negotiating Agreement Without Giving In* is "Separate people from the problem." At the mediation table, this means finding ways to help parties focus on problems rather than on personalities. Through the strategic choice of words, mediators can deploy tools like reframing to allow parties to conceptualize their problems in new ways or ask questions that can overcome defensiveness. Neutral language eliminates the accusations and blaming that can derail negotiations and creates a middle ground where parties can meet.
- **The duty of impartiality.** Mediators are known as "neutrals" for a reason. For parties to have confidence in the mediators and trust in the process, the mediator's conduct must be free from actual or perceived bias. Every professional code of conduct for mediators specifies an ethical duty to function impartially. Impartiality ensures a fair and balanced process for all parties. The words mediators choose can affect that equilibrium.

*Consider the following guidelines as you master the use of neutral language:*

- **Reframe, reframe, reframe.** Reframe for interests to de-escalate tensions between the parties and to keep discussions productive. Particularly in joint sessions, where parties are observing the mediator's interactions with each party closely, avoid reflecting back inflammatory language. ("You want to be treated respectfully as a valued customer", not "You feel totally insulted by the shabby way she treated you.")
- **Be direct but tactful when asking questions.** As we discussed earlier in this Section, questions can invite elaboration or shut down discussion. Use them with care. However, do not shy away from asking hard questions; it is part of the mediator's job description. Learn to ask them with tact, avoiding questions that sound accusatory or that demand justifications. ("Help me understand more about the reason for that decision", not "What on earth were you thinking when you did that?") Tone of voice matters, too, not simply the words you choose.
- **Point out shared interests.** To encourage joint problem solving and emphasize areas of agreement, mutualize interests when possible.
- **Be careful when offering encouragement.** Saying, "That's a great idea" suggests that the mediator has endorsed or approved of a particular proposal. Rather, let the party know that you have heard their options and that option generation will bring resolution to their matter.

## Managing High Emotions

### Emotions in Negotiation

The role of emotion in negotiation and decision making is nuanced and complex, as research from the fields of neuroscience and behavioral economics indicate. Emotions can function as either hindrance or helpmeet, and studies suggest that they are critical to our ability to deliberate, consider the future, conduct cost-benefit analyses, and assess choices. Positive emotions can motivate us to work collaboratively with another, repair relationships, work toward resolution, or show greater openness to others' ideas.

This dual aspect of emotions is the focus of *Beyond Reason: Using Emotions as You Negotiate* (2005), a book by negotiation experts Roger Fisher and Daniel Shapiro, which explores the role that emotions play in negotiation. Fisher and Shapiro identify five core concerns that are implicated in negotiation, triggering negative emotional responses or motivating us in positive ways, depending upon whether they are denied or fulfilled. These concerns are:

- Appreciation:** To be understood; to be valued; to feel that one's ideas and contributions have merit
- Affiliation:** To be treated as a team member, colleague or family member; to have a sense of connection
- Autonomy:** To be free to make decisions and choices
- Status:** To have respect and recognition for one's standing
- Role:** To be fulfilled by one's role

For Fisher and Shapiro, these five concerns are "a lens to understand the emotional experience of each party."

Mediation, with its capacity for defining problems broadly to encompass not merely legal or economic issues but emotional concerns as well, can prove effective in helping parties address their core concerns and the emotions that they can spark. The challenge for the mediator can be how best to respond.

## Ideas for Handling Emotion

**Acknowledge emotion.** Whether parties are sobbing with grief, or shouting in anger, acknowledge it. Do so fully. For example:

What the party says	The mediator's response	
	Not this way:	But this way:
"I'm [expletive deleted] infuriated at their offer! After all I've been through, after the humiliation I've suffered, this is [expletive deleted] bull***!"	"You sound a little upset".  OR  "Vince, we had agreed not to use inappropriate language."	"You're incredibly angry at the offer they made – as you said, it's humiliating. You need a serious offer that recognizes and addresses all that you've been through."

<p>[Weeping openly]</p> <p>"My son is dead – my only child. He's gone! Nothing, nothing is going to bring him back. And they never once told my husband and me that they were sorry – not the doctors or his nurses. Not the hospital administrators. No one. I still can't believe it!"</p> <p>[Sobbing now]</p>	<p>"Let's take a break, everybody."</p>	<p>"I am so very sorry for your loss, Luisa. How devastating for you and your husband to lose your son Hector. I am truly sorry."</p> <p>[Pause, pushes a box of kleenex toward the party]</p> <p>"Do you need to take a moment before we go ahead? It's perfectly okay if you do. We'll all understand."</p> <p>[Party shakes head no.]</p> <p>"For now it sounds like you want to continue. But if at some point you do need to stop, please let me know."</p> <p>"Luisa, it also seems as if what has made your son's loss even more difficult for you is that you had hoped for some acknowledgment of your grief from those involved with your son's medical care – that they had reached out to you and your husband."</p>
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**Know your comfort level with emotional expression and conflict.** Not everyone is comfortable with conflict and the strong displays of emotion it can produce, including, ironically, some mediators. Mediators who are uneasy in the presence of strong emotion will attempt to control it through the imposition of ground rules or by separating the parties the moment the shouting or tears begin.

**Emotions are healthy.** Emotions are a normal response to conflict, and their expression can be healthy. Venting can clear the air, allowing people the chance to get things off their chests so that they start focusing on addressing the problems they face together. The intensity with which the parties react as they discuss their situation highlights the importance of the interests at stake, educating the mediator about the nature of the dispute and the participants involved. It may help parties understand for the first time fully the impact their actions had on someone.

**Watch for the other party's response.** If one party is venting and verbally attacking the other party, be sure to watch out for the reaction of the other party. Be prepared to check in with that party or respond to requests for intervention. Allow the parties the opportunity to propose their own ground rules. You can ask them both, "Is this working for you? I'm guessing you don't need my help to do this. Is there a different way you want to talk to each other?"

**Encourage parties to identify standards for fairness.** One of the major emotional triggers in negotiation is the perception that something is unfair. In fact, often a core interest shared by all sides in a dispute is the need to be treated fairly and to reach a fair deal. Addressing this core concern can lower the temperature in the room.

## Dealing with Difficult Behaviors

### *General Guidelines for All Difficult Behaviors*

- **Be compassionate.** Conflict sometimes brings out the worst in people. Imagine how you might be reacting if you were in their situation. Consider how difficult conflict has been in your own life, and recall times when you were not at your best.
- **Remember the principles of mediation.** Mediation gives parties autonomy and choices – it is not your responsibility to fix things, the responsibility is theirs. Mediation is voluntary for everyone, including the mediator, so you can withdraw if a situation truly becomes untenable.
- **Rely on your co-mediator.** If you are fortunate to be working with a co-mediator, you are not in this alone. Take a break to strategize.

### *Dealing with the Angry Person*

- **Allow venting.** Stay silent, allowing them to express their anger and frustration. This may be the first time they have had the opportunity to talk about the problem openly and in the presence of someone who is listening.
- **Offer them a break.** Continuing the mediation may not be productive for anyone. Give them a chance to step outside and catch their breath.
- **Show understanding and empathy.** Think back on a time when you were angry and put yourself in their shoes for just a moment. Reflect back the pent-up anger and frustration and show you understand the reason for that frustration.
- **Put control in their hands.** Often people are angry because they feel as if they have little control over the situation they face. Let them know that all decisions are ultimately theirs. Remind them that mediation is a voluntary process and that the session can end any time they choose.

- **Protect the other party.** If one party is verbally attacking the other party in anger, you will need to step in. Separating parties and going to private sessions can give everyone an opportunity to cool off.

*Dealing with the Person Who Challenges the Mediator*

- **Remind them that mediation is voluntary.** Let them know that mediation is their choice and they are free to leave at any time. Mediation may not be the right process for them. Let them know it's okay for them if they wish to pursue other avenues.
- **Do not take it personally.** Parties challenge mediators only rarely. When it occurs, the issue usually has little to do with the mediator and everything to do with the level of frustration the person is experiencing with the issues and the other person.
- **Confront it directly.** Be honest and direct about the behavior you observe. Sometimes personalities fail to mesh, and another mediator may be a better fit. You might say, "I notice that several times during the past hour you have asked for my credentials and commented on something I did or didn't do. If you don't want me to serve on this case, it's not a problem. We can end right now. What do you want to do?"
- **End the session and withdraw.** If a person is so difficult that you are not able to do your job or you find yourself getting so frustrated that you are no longer able to remain impartial, you may need to conclude the mediation and withdraw.

*Dealing with the Person Who Is Positional or Stuck*

- **Describe what you see and seek understanding.** "You keep talking again and again about all the mistakes your partner made and how it's all been his fault. What I haven't heard from you is how this gets fixed. You and your partner are both here today. You both have an opportunity to put this behind you and move forward, but it doesn't seem like that's what you want to do. What's going on?"
- **Be explicit about the purpose of the process.** "You have talked a lot today about the past – about the difficult relationship you had with your sister over the years. Unfortunately, mediation can't change the past. I wish it could, but it can't. But it can help you do something different. It can help you figure out how you and your sister, despite your shared past, can work together today to do what's right for your mom. Is that something you're open to doing?"
- **Inquire into BATNA.** Push them to think about what happens if no agreement gets reached. "What happens if you walk out without an agreement today? Walk me through that." "What kinds of costs, financial and otherwise, will you be facing if you don't resolve things today?"
- **Challenge them to explain.** "You have told us several times that you could go to court and win – a 'slamdunk' you called it. So why are you here?"
- **Make them responsible.** As you would do with the person who challenges the mediator, confront them directly and place responsibility in their hands. "You made a demand for \$150,000 at the outset. You haven't moved from that figure and have rejected their offer without explaining why, even to me. They are about to walk out the door, but I told them I'd meet with you one more time. They're looking for explanations. It's now up to you. What do you want to do?"



### Dealing with the Person Who Is Silent and Withdrawn

- **Meet in private.** Sometimes people can become so angry or be so affected by grief or other emotion that they do not trust themselves to speak. In private, meet with the person who is remaining quiet. Remind them of the confidentiality of mediation communications and affirm that you can keep in confidence whatever they tell you.
- **Show concern.** Let them know you are concerned about their comfort level and their confidence in the process. Ask for their help. "I notice that you said very little when we all met together, and that even now you've remained quiet. Is there anything you need, or anything we can do?"
- **Remain silent yourself.** Too many questions can at times put unwelcome pressure on parties. Silence can provide space for people to open up to speak; this person may need time and a little room.
- **Empower them.** Remind them that mediation is voluntary and that any time they choose they can end the session – even now.

**ROBOTMAN** by Jim Meddick



## Overcoming Barriers to Agreement

Sometimes despite the best effort of the assigned officer and careful preparation in advance by the parties, people can get stuck. Issues of trust over past conduct, difficulties with communication, and other problems can halt progress. To maneuver past roadblocks, try the following tactics:

**Tackle less contentious issues first.** Parties facing a number of issues can be overwhelmed. To help them gain confidence and build momentum toward agreement, encourage them to begin with issues that are easier for them to address. For example, in a divorce case, where the issue of the marital home is a particularly sensitive one, starting with decisions involving other, less valuable assets may make sense.

**Take a break.** Everyone – parties, their counsel, and mediators all benefit from a break. Encourage parties to break for a meal or go for a walk. Parties may need a break to talk with their advisors, gather additional data that may aid them in decision making, or to reflect on their choices.

**Explore BATMA** – the best alternative to a mediated agreement. Parties may have not confronted the realities of the no-agreement alternative. Use private sessions or caucuses to explore with parties what inability to reach agreement means and what the cost and consequences of alternatives to agreement realistically may be.

**Review the progress made so far.** People can get bogged down in the details of their dispute or become exhausted from the emotionally and intellectually demanding work that addressing conflict and the problems it stems from produces. Give parties a sense of perspective and the progress made so far by reviewing points of agreement and summarizing the remaining issues to be addressed.

**Be honest with parties and ask for their help.** It's now three hours into the mediation. One party has remained positional, offered no ideas for resolution, and repeatedly shot down options the other side has proposed. Be direct with this individual. Describe for them what you are observing and ask them for help. "I can see that you're not showing a lot of flexibility here. You're having a tough time coming up with ideas, and you have objected to the ideas others have floated without telling us why or offering suggestions to improve on them. This mediation can't work unless you're involved. What's going on?"

**Use hypotheticals to overcome barriers.** Inviting parties to consider "what if" scenarios can encourage them to see the issues they face in a different light.

**Mediate within the mediation.** Sometimes when parties are represented by counsel, differences of opinion between the client and lawyer can impede progress. The economic interests of each may potentially be in conflict; or the lawyer may be struggling to manage the unrealistic expectations of a client heedless of the risks of trial. In the same way in multi-party mediations, there may be divisions or rivalries within a team or group, and individual interests may not align with the interests of the group as a whole. You may need to meet with individuals separately to explore and overcome these differences to move forward.

**Ask parties to envision resolution.** Encourage parties to imagine what life might be like if the dispute is behind them. As collaborative law and ADR pioneer David Hoffman says, invite them to “trade hope for certainty” – parties hope that they will prevail at trial, but in mediation they can trade that hope for the certainty of agreement and closure.



*“You’re wrong and you know it, and I’m right and I know it!”*

## Effective Use of Visual Aids

Visual aids can be a useful addition to the mediator's toolkit. They can be as simple as an easel, pad, and markers, or as high-tech as laptops with LCD projectors or giant flat screen monitors.

Visual aids help parties keep track of new information as it emerges. They are useful for developing an agenda as the mediator writes down each party's interests to be addressed. They serve as an aid to brainstorming because they can capture ideas as they emerge, and they help participants track the progress they are making. They are also useful for decision-making to create maps or diagrams of various decisions to assess the costs and benefits involved in each. They can also be used later as a basis for the mediator to prepare a summary of the meeting.

Visual aids can be used not only to facilitate the process but also as an aid to deliberation or even as part of the mediator's opening statement. For example, using computers, large-size LCD monitors, and financial software, the parties can run through various scenarios to assess gains, risks, and tax implications of the options on the table. Some mediators have also experimented with the use of slide presentations to cover information as part of an initial consultation, or at the mediation in their opening statements to parties to highlight the information that parties need to understand the mediation process and their role in it.

Decision trees are popular tools for aiding in decision-making in civil and commercial mediations. They are used to create models to map out the costs, benefits, and risks that each decision involves.

In using any form of visual aid effectively, consider the following suggested guidelines:

- If you plan to use visual aids, be familiar with their use, and test them and set them up in advance of the mediation to be certain that they work properly. Be sure that such aids are visible from all areas of the room wherever parties will be seated.
- Use visual aids to assist parties in focusing on interests, not positions or personal accusations.
- Capture only the information that is necessary; avoid wordiness.
- Make sure that information being recorded is fully visible. If writing on an easel and pad, write legibly and use strong pen colors such as blue or black.
- Do not allow the use of visual aids to interfere with eye contact or to create a barrier between you and the parties. This is particularly a concern with the use of laptops and other forms of digital technology which can interfere with direct communication between the neutral and the parties.
- Not all parties are comfortable with certain kinds of visual aids, and in some cases they may not be culturally appropriate.
- Take into account the special needs if any of the parties. If parties are visually impaired, or have some other disability that may affect their participation or

comprehension, be sure that the use of visual aids will not hamper their ability to take part and that you have provided accommodations.

- Visual aids are just that – aids. They should support and not distract from the mediation and your role.
- If you plan to use visual aids that rely on digital technology, have a contingency plan in place, since technology is notoriously undependable. Have an easel and pad or a whiteboard ready just in case.
- Like notes, the information you record through visual aids is confidential and should be protected from disclosure. This can be a particular risk with digital information. Ensure that all mediation work product is secured.



*"Butt out, Buster! Who the hell do you think you are—Jimmy Carter?"*

Notes: