

3

ESSENTIAL SKILLS FOR MEDIATORS

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“What makes a good mediator?” is a question often posed by students pursuing mediation training. Mediators juggle many roles simultaneously in the course of their work. First and foremost, though, mediators are good communicators. That said, the mediator balances many responsibilities throughout the course of a mediation.

Facilitating the process ensures that the focus of the discussion stays on target and that the disputants move toward productive outcomes. Mediators listen to the disputants’ stories, provide a safe environment for them to vent their frustrations, validate each person’s worth or feelings, and then move the parties toward negotiation. Mediators are conduits of information. They encourage disputants to share information and to understand each other’s perspective while also keeping communication focused on important and relevant issues. They help disputants discover and express their interests and goals. Mediators are links to additional

expertise, data, or resources that may be required to settle a dispute. They know the services available in their community and assist the parties to determine whether outside, objective data are required. Mediators are boundary keepers when they frame issues, moderate emotions, and contain the conflict within a productive range.

Mediators are adept at keeping an eye on the process, emotions, content, individuals, flow of information, power issues, verbal and nonverbal messages, and much more. It seems like a lot of tasks to accomplish during a short period of time. Acquiring the fundamental tools that enable mediators to succeed is the first step in mastery of the art and practice of mediation. While the array of mediator skills may seem daunting, training and skill practice can build confidence and competence.

AN OVERVIEW OF MEDIATOR SKILLS

To some extent, the skills of entry-level and advanced mediation are the same, with the primary difference being the depth of accomplishment in each skill area. In other ways,

CASE 3.1 THE MISTAKEN GRADE

The dean of the College of Arts and Sciences referred a student grade appeal to the campus mediation center, hoping that the case could be resolved before it progressed to the formal grievance procedures. Both Valerie Smith, the student, and Mr. Washington, the professor, agreed to mediate. A student and a professor associated with the mediation center on campus co-mediated the case.

After the opening statement, the mediators asked Valerie to start and to tell them what her feelings were about her grade. Valerie explained in very emotional

terms that her work in the technical writing class was the same as the other students, but she received a “C” when other students received an “A.” She didn’t want to say why she thought that was happening, but she believed it wasn’t fair. Mr. Washington, an adjunct professor from a local corporation brought in to teach the class, related that he liked Valerie and enjoyed having her in class, but she hadn’t put in as much effort as the other students on the practical project and that even though her grades were good on individual projects, he didn’t think she had earned an “A.”

the skills of advanced mediators are quite different. Advanced mediators may specialize in a specific context or type of client—for example, child custody, divorce, victim–offender, real estate, special education, business, taxation, or environmental issues. Each client group and context requires knowledge and skills that extend beyond those of entry-level, general practice mediation.

Many theorists agree the skills necessary for mediator competency are a blend of theory and practice (Picard, 2002; Shapira, 2016; Singer, 2001). In his discussion of the professional skills of mediators, Shapira (2016) made the following comment:

Mediators undergo training that provides them with the special skills and knowledge necessary for conducting an effective mediation. . . . [Just as] lawyers are committed to an ideal of legal justice, and medical doctors to an ideal of health, mediators promote mutual understanding, dialogue, and harmony. (p. 7)

Table 3.1 itemizes a mediator’s general attributes and abilities.

TRUSTING AND CONTROLLING THE PROCESS

One key competency that a mediator must attend to is *process fidelity*. As discussed in Chapter 2, the mediator must have a strong grasp of the philosophical differences inherent in each approach to mediation. Each model or philosophical choice demands certain skill sets from the mediator. The mediation model offers direction and guidance for orchestrating the session.

Trusting the Process

Trusting the process—the phases in a mediation model—is imperative for mediators. Sometimes even experienced mediators wonder whether things are progressing as they

TABLE 3.1 ■ The Mediator's General Attributes and Abilities

- Know how to obtain a commitment to mediate
- Create appropriate ground rules
- Deal with power imbalances
- Describe behavior nonjudgmentally
- Use persuasion ethically
- Listen actively
- Gather information through asking questions
- Analyze situations and alternatives in light of the parties' interests
- Provide effective feedback
- Show empathy without being patronizing
- Help disputants create multiple options
- Understand what can and cannot be mediated
- Master multiple strategies and techniques
- Recognize difference between issues and interests
- Comprehend the moral and legal issues in mediation
- Uphold the differences between mediation and other ADR processes
- Recognize how typical conflict types manifest
- Identify when and how to involve or refer to another available resource
- Work within the mediator's personal and professional limitations

Source: Picard, 2002; Shapira, 2016; Singer, 2001.

should. There is a constant temptation to jump to the end of the process by engaging in problem solving too early. To determine whether the process is on track, the mediator must be able to assess what stage the mediation is in and what to do next. Trusting that parties eventually will create their own agreements is easier to do when you know that the process works. For example, in one divorce mediation, a significant number of issues had to be worked through (child custody, alimony, child support, and division of property). The mediation finally was nearing completion, with only one more issue to determine—dividing up one party's 401(k) retirement plan. The mediator, growing weary of a long session, opted to voice an opinion about what the parties could do, saying that if they just split the retirement fund down the middle, 50/50, the mediation would be finished. The parties agreed. The couple was scheduled to return the next day to pick up a draft of the agreement. Instead, both parties called to say they would not be coming as they had decided they didn't like the agreement. Neither party felt ownership over the 401(k) decision. One intrusion by the mediator derailed all their hard work. In this case, the mediator lost focus

on letting the parties determine their own outcomes and ultimately wasted the time of all involved.

Sometimes just initiating the process will resolve the problem. Phillip and Marshall lived near each other off campus and were referred to a college mediation center by the police, who were called because Phillip's dog chased Marshall's daughter out of her front yard. After the mediator presented the opening monologue and his understanding of the issue that had brought the two students to the mediation center, Phillip turned to Marshall and handed him a sheet of paper, saying, "Here's my phone number. The dog is supposed to be chained. It shouldn't happen again, but if it does, call me and I'll take care of it or get rid of the dog. I wouldn't want my kids threatened either." The neighbors, who had never met or spoken before, started a dialogue that improved their relationship without the mediator's assistance. While most cases are not this easy, the processes that comprise mediation are crafted for optimal efficiency and effectiveness. Trust the process.

Controlling the Process

Control of the process is an instrumental skill in mediation. The word *control* sometimes carries negative connotations. For mediation to work, however, the mediator must be in charge. The mediator controls the stage; the disputants retain autonomy over any agreements.

Many experienced mediators can attest to the problems associated with having a disputant "gain control of the process" in the midst of mediation. Once one individual begins determining the direction of the mediation, the other person responds to the shift in power with defensiveness, withdrawal, or distrust of the process. A mediator is not acting as a dictator by controlling the process. Instead, he or she is like a captain steering the mediation "ship" down a safe channel. The disputants may try to take the helm of the ship and steer it into narrow side channels, but it is the mediator's responsibility to resist and redirect the session back on course.

Mediations marked by high conflict require a mediator to maintain a strong grip on the process. In one dispute with a school team and a parent, a mediator was brought in because the parent was adept at derailing meetings. After setting very explicit ground rules (and getting buy-in), the mediator controlled the timing of topics to be discussed by diligently adhering to an agreed-upon agenda. When the parent's emotions ramped up and accusations began to consume the meeting, the mediator interrupted, reframed, and explained where the parties were in the process. Sometimes the mediator summarized the parent's statements and placed the concern later into the agenda; other times, for issues that could not be mediated, the mediator labeled the topic as something that couldn't be addressed in this context and moved the process forward. More about maintaining control of the process will be covered in later chapters.

Mediators also control the tone of the mediation. **Emotional contagion theory** explains how a mood is established. One person's behavior influences the emotions of others, as if a mood is contagious. Understanding emotional contagion theory can aid

professionals in shaping the emotional tone of a session (Hatfield, Cacioppo, & Rapson, 1993). As people interact in a social context, they tend to subconsciously align with or mimic others, which can be interpreted as empathy and connection (Prochazkova & Kret, 2017). For mediators, recognizing the neurocognitive tendency to mimic behaviors or adopt the emotional state of those around us can provide a way to control the tone of the session and its emotional expressiveness. It also offers a warning for mediators to be wary of unconsciously adopting the mood of disputing parties who are depressed, resigned, angry, or exhibiting other strong emotions. A mediator who exudes a tone of calm and genuine care may foster similar responses in the parties.

Like emotional contagion theory, **communication accommodation theory** (CAT) (Giles & Ogay, 2006) examines how humans subconsciously regulate their behaviors to meet the communication patterns of another person. If a disputant has a slow rate of speech or uses dramatic gestures, the mediator might adopt a rate of speech or size of gesture similar to that of the disputant, creating a feeling of kinship and comfort. Communication accommodation theory also provides a tool to analyze cultural communication among diverse groups. A mediator may have cases in which either the disputants have significant cultural differences or the mediator has cultural dissimilarities to one or more of the disputants. As discussed in Chapter 2, recognizing patterns of behavior when faced with cultural differences is an important skill for the mediator.

When people communicate, CAT posits that one individual's behaviors will converge, diverge, or overaccommodate to the other person. *Convergence* is a strategy of adapting to one another's communication pattern. Our behaviors converge to a common volume, eye contact pattern, or rate of speech. When disputants turn in their chairs so they can see each other more directly, convergence may be occurring. When taken by both parties as sincere, convergence is perceived as thoughtful (West & Turner, 2010).

Divergence occurs when communicators purposefully accentuate a difference in communication to separate their identities. Mediators should be aware of these patterns, especially as divergence can be a method of establishing power. Intentionally using a sophisticated vocabulary when in conflict with a person who uses more earthy terminology may be a divergence tactic that the mediator will need to address. Nonverbal divergence may be expressed by one party engaging in prolonged eye contact with someone who avoids eye contact or orienting the body away from the other disputant.

Finally, *overaccommodation* occurs when one party overadapts to the other's communication style. Frequently, overaccommodation is a reaction to a perceived communicative inadequacy. People may speak more loudly when talking to an individual whose root language is different from their own, as if increased volume would aid in comprehension. Mediators should be alert to the CAT responses of disputants (or of themselves) to ensure that overaccommodation does not derail the process.

How people manage what they disclose to others can be explained using **communication privacy management theory**. Sandra Petronio (2002, 2013) describes information as personal (known by oneself) or collective (known by oneself and others). When information is moved from the personal to the collective, rules exist to govern how that information

will be used. The parties, however, may bring different ideas to the table about what should remain personal and what can be disclosed.

A mediator can help the disputants by exploring rules for managing information. For example, a parent may be uncomfortable sharing the details of a family crisis that is affecting her son's behavior at school, but she is torn because she knows that if the school were more aware, it might be understanding of his behavior. A mediator, sensing this tension, could work with the parent to explore options for the optimal level of disclosure, allowing the protection of private information while sharing important elements of the situation or identifying rules about who will have access to the information. In general, private information will only be shared if the mediator has created a safe environment for the parties.

While mediators have control of the mediation process, new mediators often struggle with letting go of a belief that they have control of the outcome. A foundational part of mediation is the tenet that parties have control of the decision making—they maintain self-determination. This means that a mediator may masterfully employ her or his skills during a session and yet the parties may determine that a solution is unreachable. Accepting the limits of the mediator's influence is an important lesson for beginners.

LISTENING: A BEDROCK SKILL FOR MEDIATORS

While mediators must master a series of skills to be successful, no skill is more essential than the ability to listen. North Americans commonly and mistakenly assume that **listening** is a natural activity requiring little effort or skill. **Hearing** is a physiological activity that occurs naturally when the physical hearing organs function properly, but listening only occurs after the brain receives and processes the message. Hence, people who are deaf and can lip-read or understand American Sign Language cannot hear, but they may listen well. Listening is a mental skill requiring attentiveness and energy. To be competent at listening, one must understand the listening process, which is composed of five elements: reception of messages, attention to the message, concentration on processing the message, message interpretation, and memory (Ridge, 1993).

As Nichols observes, "Listening is so basic that we take it for granted. Unfortunately, most of us think of ourselves as better listeners than we really are" (2009, p. 11). The assumption that we all are naturally good listeners simply is not true. We tune out messages that are boring or not what we want to "hear." We are sidetracked by thoughts or preoccupations, distractions, daydreams, or anxiety about what we will say when it is our turn to speak. We may attend only to the meaning of the words a person is saying and miss the body language that would help us interpret the speaker's intention.

Disputants can have difficulty listening to each other for a variety of reasons: They may believe they are in the right, they may feel misunderstood, or they may doubt the other's sincerity. The mediator has the job of orchestrating an environment where parties can listen effectively. The authors of the popular guide *Crucial Conversations* address this consideration:

At the core of every successful conversation lies the free flow of relevant information. People openly and honestly express their opinions, share their feelings, and articulate their theories. They willingly and capably share their views, even when their ideas are controversial or unpopular. (Patterson, Grenny, McMillan, & Switzler, 2012, p. 23)

Until the parties can manage this level of interchange unassisted, the mediator is there to promote a safe and accessible venue for dialogue.

Types of Listening

Several types of listening are identified by communication scholars: **comprehensive listening** (to understand what is said), **empathy/empathic listening** (supporting and helping the speaker to talk through his or her problem and feelings), **critical listening** (evaluating what is said), and **appreciative listening** (listening for enjoyment) (Wolvin & Coakley, 1993). A competent mediator is adept at comprehensive listening, empathic listening, and critical listening. Each phase of the mediation process may require more focus on one type of listening than on the others. For example, empathic listening is essential to the initial storytelling phase; critical listening is vital to the negotiation and settlement-writing aspects of a case.

Regardless of the phase a session is in, mediators must listen. The mediator's listening helps the disputants develop trust and uncovers the raw content of the issues.

Variables That Affect Listening

How people learn to listen (or not listen) has intrigued researchers for decades. In the 1980s, research indicated a difference in the listening acuity of North American men and women, with men less adept at listening and less attuned to the nonverbal nuances that enable one to interpret the complexities of human communication (see the discussion in Borisoff & Hahn, 1997). Another study found females adopting a people-oriented style of listening with a focus on emotions and personal stories and men using a more action-oriented style of listening with attention to concise presentations of facts (Johnston, Weaver, Watson, & Barker, 2000). More recent scholars might cast listening as easier for those who are high in **emotional intelligence (EQ or EI)** than those who are high in intellectual intelligence.

For mediators, the question is less about what type of person is more adept at listening and more about what factors inhibit effective listening. In this section, we will explore the variables mediators should be aware of as they work to create an environment where effective listening can happen among mediators and disputants.

Listening is a complex undertaking. Brownell (2016) explains a skills-based model of listening called the HURIER model. This model identifies six components of listening: (1) *hearing*, (2) *understanding*, (3) *remembering*, (4) *interpreting*, (5) *evaluating*, and (6) *responding*. In each component, barriers can affect the ability to listen effectively. For example, emotional involvement or personal identification with an issue can prevent disputants from comprehending those who disagree with them. High emotions seem to inhibit

genuine listening. Even where people sit and the amount of eye contact can affect the ability to listen. It is incumbent on the mediator to discover the disputants' idiosyncratic listening weaknesses and styles.

Many phenomena may impede listening (see Van Slyke, 1999). For example:

- *Thinking–speaking gap*: Using the time between speaking (125–250 words per minute) and comprehending (500 words per minute) to focus on topics other than the one at hand, such as the mediator drifting off to think about the next appointment or what to have for lunch.
- *Selective attention*: Listening only to part of a message.
- *Impatience*: Assuming we know what the disputant is going to say or assuming repetition of a concern is not important. Repetition often means the mediator needs to validate strong feelings or probe for hidden details.
- *Agenda building*: Listening for facts to fit one's preconceived ideas about the case or its resolution.
- *Perceptual bias*: Predetermining meaning based on one-sided data rather than acknowledging that others may have different ideas.
- *Emotional state*: Being so consumed by how you are currently experiencing the event you cannot listen.
- *External distractions*: Letting background noise or movement capture your attention.
- *Communication style*: Focusing on the accent, grammar, or other stylistic features of speech instead of on the speaker's meaning and intentions.
- *Preconceptions*: Letting past interactions with the disputant, including first impressions, contaminate how the mediator interprets messages.
- *Affiliations*: Assuming the disputant will think or behave in particular ways because of the groups he or she belongs to (e.g., cultural groups or constituencies).

The mediator is a highly skilled listener who uncovers the hidden issues important to the disputants and a skilled communicator who creates an environment where disputants can begin to listen to each other. Van Slyke (1999) presents an excellent explanation of why listening is the preeminent variable to settlement of conflicts:

The problem in conflict, however, is not whether the other party listens to us, but rather whether we listen to and understand the other party's perspective. Only after we have listened to the other party will that party want to listen to us. Only after the other party feels understood will he or she want to understand and be influenced by us. (p. ix)

Patterson et al. (2012) speak of the “pool of shared meaning” from which parties will work together on problems. Barriers to listening inhibit parties from developing shared meanings and benefiting from others’ ideas. The mediator is charged with making it possible for each disputant to get ideas on the table and fostering mutual understanding of terms.

The stress and emotion in a conflict situation sometimes create defensiveness. Conflict management scholars use Gibb’s classic 1961 concept of supportive and defensive communication to explain the destructive communication cycles that manifest during interpersonal conflict. Gibb posited that certain types of communication behaviors create **supportive climates** where individuals feel trust, openness, and cooperation. Other communication behaviors lead to **defense-provoking/defensive climates** where individuals feel threatened, wary, and combative. Once they begin to have defensive feelings, they stop listening. The effective mediator will be alert for defensive behaviors and consider strategies to move toward more supportive alternatives.

When individuals are stuck in defensiveness, it is hard to find creative solutions that meet each person’s needs. It is the mediator’s job to mitigate defensive communicative and, if possible, assist in transporting the disputants who arrive with hostility to a more productive frame of mind. Ideally, the mediator will facilitate a more supportive/less defensive communication pattern and a climate conducive to mutual problem solving. For example, when an individual uses phrases that provoke the other party, the mediator might ask the comment to be phrased in another way.

TABLE 3.2 ■ Supportive and Defensive Climates

Behaviors Leading to Defensive Climates	Behaviors Leading to Supportive Climates
Blame others	Acknowledge personal responsibility
Speak in generalities without specifics	State issues clearly with specificity
Use provocative language to offend or escalate; attack other’s integrity or values	Show sensitivity in word choices
Use threats, hostile joking, sarcasm, pointed questions	Use inclusive words, friendly tone, and sincere inquiry
Adhere to personal agenda	Identify problems as being of mutual concern
Focus on self-serving options; stick to one solution	Search for solutions that meet each party’s needs
Frame solutions as either-or, or as forced choice	Brainstorm and explore multiple options
Criticize others, trivialize concerns, belittle ideas	Ask questions to understand; acknowledge efforts and worth of others’ ideas
Express superiority of one’s view and ideas over the other’s	Express value of others and their ideas even when disagreeing
Use manipulation to win	Be open to different approaches

Source: Adapted in part from Borisoff & Victor (1998, pp. 37–73).

Whether disputants begin with defensive postures that must be moderated or arrive in a conciliatory mood, mediators are required to listen to the disputants. Mediators also need the disputants to be able to listen to each other. Listening—either to the other party or to the mediator—is the only way disputants can understand what is driving the conflict and the only way for the mediator to address what is keeping the parties from being able to settle their conflict. Listening is the most basic mediator skill and was mentioned as critical by virtually everyone in a study that interviewed practitioners (Isenhart & Spangle, 2000).

Skills for Listening to Content, Emotion, and Relationship

To accomplish the goals of cutting through defensiveness and uncovering the information that can lead to settlement, the mediator listens for three levels of meaning in the disputants' messages: (1) What emotions are expressed? (2) What is the implied relationship between the disputants? and (3) What is the factual content of the case? This dialogue between Sidney and Gino illustrates the three levels of meaning inherent in any message:

CONTENT: Sidney notices a smelly odor coming from the cat box and says, “I wish the house was fresher.”

EMOTION: Sidney is frustrated and disappointed. Gino hasn't cleaned the cat box. She is worried about being embarrassed when Gino's mother and father arrive for dinner that night and says, “I wish the house was fresher.”

RELATIONSHIP: Sidney doesn't feel she can tell Gino directly to clean the cat box. Their communication patterns with one another have defined direct requests as nagging. So she hints about her discomfort in an effort to persuade him to clean the cat box and says, “I wish the house was fresher.”

The words in the messages above are the same. Only by attending to Sidney and asking her about the comment can the mediator determine which level of meaning is the most important at that moment. The mediator uses techniques to encourage, validate, or ask for clarification to uncover hidden levels of meaning.

The mediator's toolbox contains different types of listening skills that can be used separately or together to achieve the desired outcomes. Among these skills are empathic listening, validation, paraphrasing feelings, and pure content paraphrasing. This chapter introduces an array of listening skills for mediators and will integrate them into the phases of the balanced mediation model throughout the book.

Empathic Listening

Empathic listening helps build trust and confidence. Empathic listening strives to understand and reflect the perspective of the other person without evaluation. Individuals may rarely have an opportunity to talk to someone who will not judge them or give advice—an apt description of a mediator (Binder, Bergman, & Price, 1996). When

empathic, nonjudgmental listening occurs, people naturally want to tell their stories. In addition to building trust in the mediator, empathic listening elicits the disclosure of personal information that often is unknown to the other disputant. Empathic listening may involve displaying interest nonverbally, such as leaning forward, nodding, and using strong eye contact. Verbally, the empathic listener encourages the party to continue with her or his narrative, without being judged. Adding an occasional comment (e.g., “Then what happened?”) demonstrates a desire to understand the speaker’s story.

Validation

When a mediator listens with empathy, the disputant feels validated. Mediators learn many techniques to moderate emotions and to elicit feelings of **validation** in disputants. Disputants come into the mediation session with a need to be heard. Parties may be frustrated because they believe that no one listens to them and that no one understands their concerns. They may feel ignored, disrespected, or victimized. Disputants may exhibit an emotion, such as anger, that is masking an underlying fear that is the real barrier to resolving the conflict. A major role of the mediator is to create a place where parties can speak, be heard, and move toward mutual understanding—be validated. Ideally, the mediator orchestrates each party’s understanding of the other disputant. At the very least, a disputant must believe that the mediator has heard and understood his or her perspective, emotions, and issues—even if the other disputant does not. In Case 3.1, Mr. Washington could be validated by repeating his statement, “So, you liked having Ms. Smith in your class.” The mediator could validate Ms. Smith by saying, “It must have been surprising when you opened your semester report and saw a grade you didn’t expect.”

Paraphrasing Feelings

Paraphrasing feelings is a skill mediators apply to moderate emotion or disrupt negative venting about the other party. There are numerous variations of **emotional paraphrasing** techniques. In general, the emotional paraphrase identifies the feeling underpinning the speaker’s message. In a case where a kindergartener had fallen asleep on the school bus, had missed her stop, and was taken to the bus yard and left for two hours, the father retold the story in mediation with much anger. The mediator highlighted that emotion with a three-word **feeling paraphrase**: “You were terrified.” The identification of the emotion acknowledged the helplessness and fear that drove the father’s angry outburst in the mediation session. One mediator described the well-placed emotional paraphrase as the act of “letting the air out of the balloon.” The disputant has put energy into an emotional message that was released when the mediator acknowledged the feelings. Then the disputant was able to focus on other aspects of the issue, such as solutions for the future.

Variations of the standard emotional paraphrase technique sometimes are useful. One variation requires that the mediator interrupt or overlap the disputant’s venting. This variation is particularly useful with disputants who want to complain at length without creating a natural pause. Because the technique overlaps the disputant’s speech rather than waiting for the individual to stop talking, this variation of the emotional paraphrase technique only

is used when a person is showing intensity or high emotion. A disputant may say, “I can’t believe I had to learn from another customer that Jennifer was complaining all over the neighborhood about my business, but she never talked to me!” The heat behind the statement begs for some mediator response. A simple validation of the disputant’s feelings after the one-sentence remark (“So you were bothered by that”) goes a long way to build trust and to identify a potential emotional blockage to settlement. If, in addition to the one-sentence remark, the disputant continues to vent for a long time in the same negative tone, an emotional paraphrase that overlaps the venting may calm the disputant and decrease the amount of time an individual spends seeking acknowledgment. The mediator might overlap the long venting speech by saying, “You were disappointed” (see Table 3.3). Conversely, when the disputants are calm, interrupting them to paraphrase feelings will sound—and be—contrived.

Emotional paraphrasing and validation help disputants identify the feelings behind comments and “humanize” the parties to each another. In conflict, disputants keenly feel personal emotions and frustration, yet rarely do they consider the feelings of the other person. Through feeling paraphrases, the mediator simultaneously validates one party while helping the second party discover a new level of understanding of the situation. The mediator’s validations and emotional paraphrasing foster an opportunity for empathy to grow between the disputing parties.

TABLE 3.3 ■ Emotional Paraphrase Formula

Mix and match an opening phrase with a tone/feeling word to fit the disputant’s comment.	
Opening Phrase	Word Describing Tone/Feelings
You seem	frustrated, sad, mad, upset
You were	concerned, afraid, surprised
That must have been	scary, confusing, disappointing

Pure Content Paraphrasing

Pure content paraphrasing is a familiar skill for many people. In **pure content paraphrasing**, the mediator summarizes in a few words the essence of the facts that a disputant relates. Pure content paraphrasing is best applied when the disputants are calm or the mediator is checking the accuracy of factual details. Mediators often will paraphrase facts regarding what a typical day is like in someone’s work routine, how houses are related spatially to one another, or other data.

Content paraphrasing can be particularly useful when keeping track of many details. For example, one disputant presented the following information: “I had several estimates done on the car. One guy said he could fix the fender for \$200, but painting it would be another \$250. The other guy said he could do it all for \$500 and fix the busted taillight, too. The last guy was sky high and said it would take \$900 to fix everything.”

A content paraphrase summarizes the facts of the statement, highlighting important details without parroting every word. The mediator could say, “So the range of estimates to fix the car was between \$450 and \$900.” Content paraphrasing is an important tool in verifying key information and clarifying facts. Content paraphrasing can be destructive when applied to emotional statements or facts presented in one disputant’s slanted self-interest. It is not productive to content paraphrase the statement, “I really hate Ivan,” by saying, “Oh, so you hate Ivan.” Content paraphrasing at the wrong time can validate one person’s slanted view of reality, to the detriment of the other party. Generally, mediators avoid paraphrasing a disputant’s position. For example, a mediator would not content paraphrase the positional statement, “Ivan has to be fired,” by saying, “You want Ivan to be fired.”

REFRAMING MESSAGES

The term *reframing* encompasses a series of listening tools to change a disputant’s negatively phrased or unproductive words into more neutral terms. A mediator applies reframing to make information more usable in the session, while affirming the general intent of a comment. Reframing also can be used to summarize a substantive issue. After listening to a complaint, the mediator generalizes the disputant’s concern without validating any negative words about the other party, positions, or proposed solutions. If the disputant says, “He has to clean up his trashy yard or move out of the neighborhood or else I’m going to have my attorney file a suit,” then the mediator would offer a reframe of the general concern while deleting the threat and the positional demand. For example, the mediator might respond with “You like a neat yard” or “You’re concerned about how the neighborhood looks.” The reframe deletes the positional demand and negative description of the other party and replaces them with the speaker’s underlying interest. After reframing, be sure to listen for confirmation. If the disputant says no, probe to uncover the general interest and reframe again.

The theoretical concept behind reframing assumes that each disputant paints a personally biased picture of reality—in the example earlier in this section, cleaning up the yard or suing are one disputant’s solutions. Communication scholars know that language is ambiguous. What is a “trashy yard” to one person may be a “work in progress” to another. Even if the appearance of the yard is less than desirable, there are many possible solutions. For example, the neighbors may decide to build a tall, sturdy fence. By reframing the general concern into an underlying interest rather than repeating any of the specific solutions or positions, the mediator transforms the frame through which the disputants view the conflict.

Reframing offers an important tool to mitigate the harm that occurs when disputants engage in defensive communication or negative labeling. In conflict, disputants have a tendency to blame others, rely on stereotypes, make faulty attributions about the other party’s motivations, and provoke defensiveness. Reframing allows the mediator to take what is valuable from a statement while reducing the sting of inflammatory words (see Table 3.4). For example, during a mediation with a middle-aged male landlord and a 20-year-old female

TABLE 3.4 ■ Methods of Reframing

Negative labeling is replaced with the positive quality the disputant would prefer:

Comment: "He never talks to me. He is a jerk."

Reframe: "You'd like better communication between the two of you."

Positions are changed into general issues for exploration:

Comment: "He has to pay me the money he owes me today."

Reframe: "You'd like this issue settled as soon as possible."

Negative comments or blaming are transformed into a general concern:

Comment: "The project is failing because he is lazy."

Reframe: "You're concerned about the project."

tenant, the landlord bluntly told the mediator, "Kids these days are so irresponsible, and this girl is no exception. She poured it on with honey on how good she'd be even though she didn't have any references. Then she trashed the apartment. You can't trust them!" Imagine being the young woman hearing those comments. Most likely, you would feel defensive or embarrassed. In response, she retorted, "If you weren't such a slumlord, you wouldn't have these problems." Both parties are sharing valuable information about their perspectives but not in a frame that the other party will be able to accept. She's hurt; he's angry. If the mediator does not intervene quickly to reframe the message, the process could deteriorate. In this case, the mediator combined the skills of validation, feeling paraphrasing, and reframing to meet the goal of directing the process back on track and moderating the emotional climate. The mediator said, "As a property owner, you're disappointed with the way the apartment was left and want to discuss the damages. Being respected is important to both of you, although neither of you is feeling respected right now." Then, the mediator refocused the session on the substantive issue by asking, "Could one of you tell me more about the agreement you had?" Reframing is cited as a key skill for human resources professionals who mediate employee disputes (Virani, 2015).

LISTENING TO NONVERBAL COMMUNICATION

The skilled mediator listens to more than just words. Mediators also listen with their other senses to detect the underlying tone of the words, contradictions between words and body language, and shifts in **attitude**. A mediator may perceive that someone is hurt or angry not from the **denotative meaning** of the words but from the tone of voice. Looking at the other disputant directly and saying in a friendly fashion, "I've always enjoyed the music from your parties," conveys a message where the words and the nonverbal meaning match. Glaring at the other disputant and saying with a sarcastic tone, "I've always *enjoyed* the music from your parties," conveys quite a different meaning.

Mediators “listen” with their eyes to the nonverbal communication of disputants to gauge when they are ready to begin negotiating in good faith. Disputants who are angry may sit with their bodies slightly turned away from each other. When someone speaks calmly and turns his or her body to a more direct orientation to the other party or leans toward the other disputant, it may mean a shift of perception has occurred.

Because nonverbal communication is ambiguous and open to many interpretations, mediators should check their assumptions through emotional paraphrasing or asking questions. If one party looks surprised at the information the other is relating, the mediator might say, “You seem surprised by that remark. Is this new information for you?” Acknowledging how the cue was picked up nonverbally, a mediator could say, “I’ve noticed that you looked confused when she said she was concerned about your son being left alone at night. Did I read that right?”

CLARIFYING AND ASKING QUESTIONS

The simple question is not so simple in mediation. The mediator should understand the functions of different types of questions and develop a repertoire of stock questions. Asking the right strategic question at the right moment during the mediation process is a skill that develops with time and practice.

Open versus Closed Questions

Open-ended questions do not have a predictable answer. “What is your house like?” is an open question to elicit whatever information the disputant chooses to be important. “Does your house have a basement?” and, “How many people live in your home?” are **close-ended questions** that require a specific piece of information as the answer. Open questions suggest a topic area but do not require a specific item of information. The more “open” the question, the more choice the disputant has in answering.

Generally, open questions should be used *before* closed questions. Open questions elicit a broad sweep of information, providing opportunities for an unfiltered and rich response. The broadest of open questions can launch a mediation’s storytelling phase, such as “What brought you here today?” or, “From your perspective, what is the situation about?” When too many closed questions occur too early in the process, the mediator may solidify the issues in the disputants’ minds in a different way than might have otherwise occurred. In other words, the mediator may unwittingly bias the session. Additionally, disputants may feel they are being interrogated, which risks reducing trust and confidence in the mediator. Finally, closed questions may, in the words of Binder, Bergman, and Price (1996), cause the mediator to “miss both the trees and the forest” (p. 56). By focusing too soon on the details, the mediator may miss some of the issues important to the disputants. Closed questions are useful during late storytelling and negotiation phases to verify the mediator’s understanding of a disputant’s interests, to probe for facts, or to test an agreement.

Genuinely Curious Questions

Curiosity is a beneficial mediator trait. When a disputant says, “He just doesn’t respect me,” a curious mediator may wonder what *respect* means to that individual. Based on that curiosity, the mediator may ask, “What led you to that conclusion?” or, “What do you mean when you use the word *respect*?” From an attitude of curiosity, a mediator may say, “Help me understand how you arrived at that conclusion.” Many times the answers to **genuinely curious questions** provide insights or information that might not otherwise have been disclosed. Curious questions help individuals think through assumptions they have made unconsciously. At times mediators may even use the word *curious* in framing a question: “I’m curious about something. You said that you feel detached from the work team. What is that like?”

HONORING SILENCE

New mediators might feel they have to be doing something to fill in the silences that occur during the natural course of mediation. Silence happens for many reasons. A person may need to reflect and collect some thoughts before answering. Sometimes disputants are mentally discarding unproductive gut responses and forming a more thoughtful comment. A mediator can use silence after posing a question to both parties, asking them to make some notes before answering.

Silence is an important part of some cultures’ communication patterns. Once a statement has been made, it may be customary for there to be a silent space before the next comment is made. These reflective pauses demonstrate respect by separating the listening and responding functions. Listeners can give their full attention because they are not preparing their responses while another is speaking. As novice mediators become more experienced, they learn appropriate timing and have a better sense of when a pause becomes too long.

In summary, mediators manage a multitude of tasks related to listening. Mediators must:

- Validate the emotions of the parties
- Help the parties explore, understand, and articulate their interests
- Clarify important information
- Determine what type of issue needs attention, such as the emotion, the relationship, or the content (or all three at once)
- Summarize without trivializing the concerns of the parties
- Help parties create a common story that integrates their unique perspectives
- Address power imbalances by encouraging the lower party’s participation

- Make sure that both (or all) parties have access to problem solving and decision making
- Recognize and respond to messages sent nonverbally as well as verbally
- Honor reflective silence

LISTENING INTERCULTURALLY

Wolvin and Coakley (1996) note that scholars “have come to recognize that culture is a primary determinant of all communication behaviors—including listening” (p. 125). In cases where one or more disputants or the mediator are from different cultural backgrounds, the mediator must adopt a heightened listening sensitivity to detect potential areas for miscommunication. For example, if one disputant’s culture or faith believes that events are fated to occur, and the other disputant believes in personal control over one’s destiny, statements such as, “Our car accident was fated to be” could be inaccurately perceived by one party as a ploy to avoid responsibility. In some cultures, it is impolite to say no, and to **save face**, disputants will agree to a settlement they have no intention of fulfilling. Not looking directly at a person of higher status could be perceived as **avoidance**, lack of engagement, or lying by a mediator with a bias that direct eye contact is the norm. Some cultures encourage negotiating details and never accepting the first offer, while others may find that to be disrespectful. Nodding and smiling may indicate agreement or embarrassment, depending on a person’s cultural upbringing.

Beall (2010) states that as much of the work in intercultural communication focuses on the differences between cultures, the similarities between cultures are often overlooked. She notes, “What is apparent, however, is that unless the interactants in diverse communication events are aware of both similarities and differences, problems may occur” (p. 226). Those who are unaware of how other cultures listen are more likely to misunderstand communication behaviors.

Mediators should be knowledgeable of what is common in terms of values, communication norms, and idiosyncrasies for the populations they serve, but they should always be aware that those differences may not apply to every individual from any given culture. For example, a mediator could say, “When you nodded there, I’m not sure if that meant you agreed. Do you agree with the proposal or should we discuss it further?” Approaching disputants with sincere inquiry is generally met with appreciation. Culturally competent mediators continue to learn about the diverse populations they work with and go beyond superficial levels of cultural knowledge (Sokalingam & Williams, 2002).

ETHICAL ISSUES AND LISTENING

While listening is an essential skill, the application of listening skills does more than just guide the mediation session. The techniques discussed in this chapter function to alter the perception of the conflict in the minds of the disputants. In fact, some skills are intentionally

designed to create perception changes because the conflict must be transformed if the disputants are to have the opportunity to alter their relationship or solve their problem. However, the application of **active listening** skills inherently includes more subtle transformations that may not be consciously intended by the mediator.

Phillips (1999) comments that “active listening plays an important role in building or sculpting meanings, ideas, insights, and solutions between people, none of which would have been generated individually” (p. 179). How a story unfolds during a session and how the individuals develop their narrative is guided by what the mediator does. The reality built during a session is influenced by what the mediator chooses to select or ignore, the information solicited or discouraged, and the words the mediator chooses to paraphrase, reframe, or reformulate (Heisterkamp, 2006). In particular, Phillips (1999) discusses the inequities that can occur when a mediator uses listening and questioning skills differently with each disputant, perhaps as a result of unconscious bias toward one of the disputants. For example, a mediator may encourage one disputant’s perspective merely by using an open **reformulation** that seeks elaboration of a comment (e.g., “Oh, so you are saying you’d like more cooperation. Tell me more.”) and by minimizing the other disputant’s perspective through the use of a closed reformulation—a paraphrase immediately followed by a topic change or a shift to the other disputant (e.g., “Oh, so you are saying you’d like more cooperation. I’d like to go back to another issue you raised earlier about . . .”). The result of the inequitable treatment could subtly frame the issues to advantage one disputant over the other.

As the mediator masters listening and questioning techniques, keep in mind the necessity of consistent and fair application of skills. The mediator’s self-awareness of preferred personal communicative styles and skills in need of improvement are good places to start on the path of ethical listening competence.

SUMMARY

Mediators must acquire a variety of skills and assume numerous roles. All mediators must have both knowledge and skill competence. Mediators must understand and trust the processes in the model they are implementing and learn to control the flow of a mediation session. Emotional contagion theory and communication accommodation theory help explain disputant and mediator behaviors that may affect the session. Mediators should be aware of diversity issues and be vigilant to avoid overaccommodation. Communication privacy management theory can explain how parties work to manage the tension between what private information will be shared and

what will remain secret. How a mediator develops trust and safety will affect what disputants choose to disclose.

Listening is foremost among mediator skills. Three types of listening are applied in mediation: comprehension, empathic, and critical. Mediator listening skills include empathic listening, validation, paraphrasing feelings, and pure content paraphrasing. Reframing is a tool involving several listening skills to refocus a message to highlight one specific element. Mediators also “listen” to nonverbal messages and cultural context. Supportive and defensive climates deeply affect listening behaviors, and

mediators can learn to recognize defensive behaviors and work to aid parties in creating supportive climates to resolve disputes.

Mediators use closed and open questions to elicit information. These questions probe the emotional, relationship, and content aspects of the case. Mediators

should look for opportunities to display genuine curiosity as they work to understand the issues.

Finally, mediators must be aware of the ethical implications of how they apply listening and other communication techniques. Inequitable application of skills such as reformulation can create bias.

CHAPTER RESOURCES

Discussion Questions

1. What personal attitudes, philosophies, and experience do you already possess that will become positive mediator qualities? What new skills do you need to hone?
2. How difficult is it to avoid starting questions with the word *why*? How might a disputant's answer be different if a question begins with the word *what* rather than the word *why*? For example, "Why did you do that?" versus "What were you thinking when you did that?"
3. Purists view the mediator who suggests solutions as overly intrusive into the disputants' outcome and as either unskilled or unethical. Conversely, some mediation contexts allow intrusiveness. What are the consequences to the mediation process if a mediator offers suggestions, solutions, or opinions?
4. In Case 2.1, what types of listening would the mediator use? Are the same types of listening skills required in Case 3.1? Is the proportion of time spent on each type of listening different for transformative and problem-solving approaches?
5. How can we determine which level of a message (emotional, relational, or content) is most critical to validate (if validation is warranted)? What dangers are there if a mediator focuses on the "wrong" level?
6. Changing a climate from defensive to supportive takes more than just being a good listener. Discuss how each of the following variables can affect the climate of the mediation session: environment, seating, clothing choices, power differences, timing, professionalism, level of formality, speaking tone, and topics of conversation. Offer other variables that may affect the climate of the mediation session.
7. Questions that begin with *why* often lead to feelings of defensiveness. Offer possible reasons for this phenomenon.
8. Explain how actively listening to disputants can affect the course of the mediation. What should mediators do to be ethical in their listening endeavors? What can a mediator do to become more self-aware of his or her communicative biases?

Activities

1. Emotionally paraphrase the following comments:
 - A. "I can't believe it! I hate it when she uses the copy machine and then just leaves when it runs out of paper."
 - B. "Gerald is just a pit bull. He roars into the meeting and wants to have everything his own way. He just can't let go of his own ideas!"
 - C. "Noah drives like a maniac and I refuse to ride with him anymore!"

2. Reframe the following:
 - A. Role-play the scenario in Case 3.1. How would you reframe the interests of Ms. Smith or Mr. Washington?
 - B. Role-play the scenario in Case 1.1. The individual playing the mediator should reframe Dana and her neighbors' interests rather than repeating their statements of frustration.
3. Testing nonverbal accuracy:
With a partner or in a group, test your ability to read others' nonverbal communication. One person should select an emotion from the

list below and express it using only nonverbal communication: eyes, gestures, audible (yet nonlinguistic) expressions, and body posture. Other group members should guess the emotion displayed. Discuss how that same emotion could be shown in different ways.

- Shock
- Sadness
- Impatience
- Annoyance
- Dismay
- Disbelief

PORTFOLIO ASSIGNMENTS

Portfolio Assignment 3.1: Emotional Paraphrases

Every mediator needs a list of emotional paraphrases and validations. As you read the textbook or listen to sample mediations, write down every good emotional paraphrase or validation that you hear.

Title the page in your notebook "Validations I Can Use." Record at least ten emotional paraphrases or validations. Feel free to use either the format of an emotional paraphrase or general validation.

- Emotional paraphrase: "You seem _____ [emotion word]"
- General validations: "You were _____ [emotion word] when _____ [event]."

Portfolio Assignment 3.2: The Open-Ended Question

Asking open-ended questions is a skill. As you read the text and listen to other mediators, be alert for

good open-ended questions that apply to many types of mediations.

Create a page in your mediator's notebook titled "Open-Ended Questions." List at least four open-ended questions that might be useful during the early phases of storytelling for each of the following contexts:

- Open-ended questions for early storytelling in business cases
- Open-ended questions for early storytelling in roommate cases
- Open-ended questions for early storytelling in neighbor cases