

Mediator Listening Skills for All Attorneys

By Robert E. Lee Wright

> **A**re you a good listener? Well of course you are, but does anyone else realize it? How often do your clients thank you for being a great listener? Would you like to hear more of those compliments? Before you decide, realize that clients who feel heard are more likely to return to you for legal services and recommend you to their friends for their legal needs. Chances are we can all improve our listening skills. Read on for five easy tips to improve your effectiveness as a communicator.

Listening Skills Used by Mediators

Good mediators realize the importance and value of listening during the mediation process. Mediators seek to promote greater understanding of positions, needs, and interests among all mediation participants by actively listening. By using mediator listening skills, all lawyers can develop a greater understanding of their clients and witnesses.

Listen to the Whole Person

Listen with your eyes as well as your ears. Don't just rely on the words a speaker uses. Tone of voice, hand gestures, eye movements, and facial expressions are all important parts of the mes-

sage the speaker wishes to convey. Dr. Albert Mehrabian's 1967 studies proved that only 7 percent of our *emotional* messages are conveyed by the words we use!¹ The other 93 percent is supplied by our tone of voice, body language, and facial expressions, also known as the three Vs: verbal, vocal, and visual. Importantly, if there is a conflict between what is said (verbal) and the tone of voice (vocal) or body language (visual), the listener will rely on the last two Vs to determine the true message.²

Listen Without Judging

When we judge others, it tends to shut down our ability to take in all that they have to say. Listening to others without judging whether what they are saying is right or wrong allows us to hear them clearly and, when combined with other techniques, allows those speaking to decide whether their own words have validity. Suspend disbelief and try to imagine what others are feeling as they speak.

Listen Reflectively: Repeat What You Hear

Perhaps the most powerful tool in the mediator's tool box is reflective listening. Reflective listening is paraphrasing (but not

Fast Facts

- Mediators use listening skills to improve communication in mediation.
- Anyone can improve listening skills by:
 - Listening with your eyes as well as your ears.
 - Listening without judging.
 - Listening reflectively to complete the communication loop between speaker and listener.
 - Asking open-ended questions.
 - Effectively using silence.



Reflective listening is paraphrasing (but not parroting) what others say and repeating it back to them. The goal is not only to make sure you understand what they are saying but, more importantly, to let them *know* you understand what they are saying.

parroting) what others say and repeating it back to them. The goal is not only to make sure you understand what they are saying but, more importantly, to let them *know* you understand what they are saying. It is especially useful to do this when receiving an important piece of information.

Often, we assume we know what someone meant by the words he or she used. However, our assumptions are occasionally wrong and we miss what the speaker intended to convey. If we continue listening with a false conception of what a speaker said earlier, we may miss important aspects of the rest of the message as we try to fit what is being said into the wrong context.

Think of building a house. To construct a house with a basement, the walls and floors of the basement are poured and inspected before construction of the framework can begin. Any mistakes in the foundation that are overlooked could create a problem later. Likewise, we inspect the framework before the house is sheathed with siding, the rafters before the roof is nailed down, the plumbing before the water is turned on, the wiring before the power is switched on, and so on.

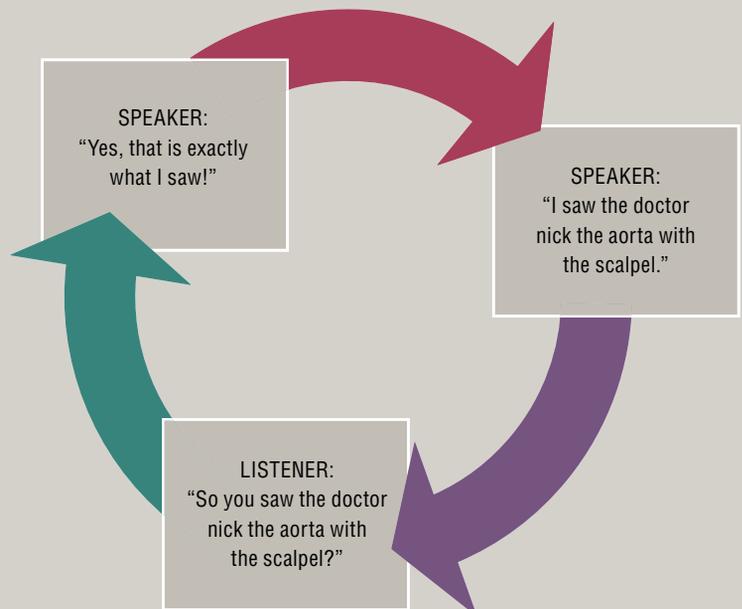
Paraphrasing a speaker's message and repeating it back to him or her at convenient intervals throughout the conversation keeps us from building on a basic misunderstanding of what that person is saying. It also lets the speaker know we are really listening

by completing the "communication loop" from speaker to listener and back to speaker (see diagram below).

As mediators, when we do not reflect back the content of a speaker's message, it often leads to uncertainty on the part of the speaker regarding whether the correct message was received. The speaker may communicate this uncertainty by repeating the message as often as necessary until satisfied that he or she was heard by the listener. When mediators hear someone repeating the same message more than once, they will take the time to reflect the message back to the speaker, exploring its meaning and any related emotions.

Reflective listening is *not* interpreting what you hear and making something more out of it. For instance, Jane says, "When I turned onto Cedar Street, I saw a white BMW ram into the rear end of a red Mercedes." A good mediator would not say, "So you saw the accident and it was the BMW driver's fault?" Rather, the mediator would say something like, "Turning onto Cedar Street, you saw the BMW hit the back end of a red Mercedes. Is that accurate?" This technique will often stimulate additional comments from the speaker. This is to be expected and encouraged. Continue to paraphrase any additional information offered by the speaker until he or she acknowledges that you have all the necessary information.

THE COMMUNICATION LOOP



When reflecting a message back to the speaker, you should include any emotions the speaker is displaying. If you hear anger rising in the speaker's voice, you might say, "So you are saying that X happened. I sense that in recounting it, you are feeling some anger right now. Is that accurate?" If the speaker acknowledges the accuracy of your perception, you might follow up by



If a third person speaks up during the silence, thank him or her for the contribution but point out that you are waiting for the other individual to respond, and resume waiting in silence. (Also, you may want to note that the third person may be uncomfortable with silence and use the same technique with that person at a later point.)

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asking the speaker to explain why he or she is feeling angry. Clients are often surprised when mediators (or lawyers) ask them about their feelings, but doing so builds trust because it conveys the sense that the listener cares about them.

Ask Open-Ended Questions

Contrary to everything we were taught in law school, when listening to a *client*, ask open-ended questions—questions that don't suggest the answer or simply invite a yes-or-no response. Who, what, where, when, and why are the key words in open-ended questions. If you feel as if you are cross-examining a witness, you are probably not asking open-ended questions. If you are genuinely interested in hearing a client's unfolding story with all the nuanced details, chances are you *are* asking open-ended questions.

Asking open-ended questions is often difficult for litigators, but with a little practice, it becomes much easier. Try using open-ended questions at home or in the office until you feel more comfortable. You might even find that you are perceived as a better listener by your family.

Silence

The effective use of silence is often overlooked as a communication tool because it feels uncomfortable and doesn't appear as though the mediator is doing anything. However, when the mediator asks an individual a question inviting a serious and considered response, an effective technique to facilitate concentration is to pause and wait for the individual to fill the void. Watch the clock and let a minimum of one minute go by without saying a word; wait three minutes if the individual is flipping through papers looking for something. Eventually, he or she will realize that you are still waiting for a response and say something.

Conclusion

By practicing these basic listening skills, anyone can improve his or her ability to communicate with clients, colleagues, and even friends and family. Improved communication leads to deeper levels of trust in the listener, which, in turn, leads to more information being shared. With more information, we are better able to serve our clients. Better outcomes mean greater client satisfaction, which generates referrals and more business.

So go ahead, borrow these skills from mediators. We don't mind! ■



Robert Wright is a facilitative mediator for commercial and divorce disputes in the Grand Rapids office of Miller, Canfield, Paddock & Stone, PLC. Holding a master's degree in psychology, he has more than 1,000 hours of mediation training, including 40 hours at Harvard. Secretary of the ADR Section Council of the State Bar of Michigan, he serves on ABA and SCAO ADR committees. Contact Mr. Wright at (616) 776-6334 or wright@millercanfield.com.

FOOTNOTES

1. Mehrabian & Weiner, *Decoding of inconsistent communications*, *J Personality Soc Psychol* 6 (1), 109–114 (1967); see also Mehrabian & Ferris, *Inference of attitudes from nonverbal communication in two channels*, *J Consulting Psychol* 31 (3), 248–252 (1967).
2. A new field of study dealing with "micro expressions" has developed around the third V (visual). Micro expressions are extremely brief, unconscious facial expressions that we all exhibit in reaction to stimuli. In fact, they are universal. Malcolm Gladwell mentions the work of Prof. Paul Eckman and the importance of micro expressions in his bestselling book, *Blink* (Little, Brown & Co, 2005). For a two-minute video of Prof. Eckman demonstrating the use of micro expressions as a lie detector in a televised trial, visit <<http://www.youtube.com/watch?v=EXm6YbXsYk>> (accessed May 3, 2010). The TV series *Lie to Me* is based on the work of Prof. Eckman.