

# Why Mediation Works

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[www.HeshaAbramsMediation.com](http://www.HeshaAbramsMediation.com)

- Mediation allows the parties to retain control of the outcome
- Mediation restores communication and builds trust
- Mediation breaks the impasse by dispelling unverified assumptions, unrealistic expectations
- Mediation employs a facilitator, not a decision maker
- Mediation is win/win, NOT win/lose
- Mediation is private and confidential
- Mediation neutralizes problems of ego and personality
- Mediation is flexible and informal
- Mediation is quick
- ***Mediation Settles Cases!***

## WHAT MEDIATORS DO

- Create a positive tone and establish behavior guidelines
- Explain procedures and educate the parties about the process
- Meet with both parties separately and together
- Control the proceedings and the flow of communication
- ***LISTEN!*** Record and reflect what is said and proposed
- Bring structure to the negotiation process
- Provide a safe place to vent frustration and diffuse tension
- Engage in confidential risk analysis and reality testing
- Discover underlying assumptions, needs and priorities
- Encourage the exploration of options and alternatives
- Reveal to the other side **ONLY** the information authorized to be disclosed
- Once the parties reach common ground, the mediator helps bring about closure
- Leave the door open, when there is no settlement, for a time when mediation may be more appropriate or another impasse resolution procedure, such as arbitration, can be used

## Blocks to Listening

Below are descriptions of twelve blocks to listening. You will probably identify some that are old favorites you tend to use again and again. Others are held in reserve for certain types of people or situations. Everyone uses listening blocks, so don't worry if many of the blocks are familiar. This is an opportunity to become more aware of your blocks at the time you actually use them.

- 1. Comparing.** Comparing makes it hard to listen because you're always trying to assess who is smarter, more competent, more emotionally healthy - you or the other. Some people focus on who has suffered more, who's a bigger victim. While someone is talking, you might think to yourself: *"Could I do it that well?" "I've had it harder, he doesn't know what hard is." "I earn more than that,"* or *"My kids are so much brighter."* You can't let much in because you are too busy determining if you measure up.
- 2. Mind Reading.** The mind reader doesn't pay much attention to what people say. In fact, s/he often distrusts it. S/he is trying to figure out what the other person is *really* thinking and feeling: *"She says she wants to go to the show, but I'll bet she's tired and wants to relax. She might be resentful if I push her when she doesn't want to go."* The mind reader pays less attention to words than to intonations and subtle cues in an effort to see through to the truth. If you are a mind reader, you probably make assumptions about how people react to you: *"I bet he's looking at my lousy skin,"*

*"She thinks I'm stupid," "He's turned off by my shyness."* These notions are born of hunches, vague misgivings, insecurities, past experiences, but likely have little to do with what the person is actually saying to you.

3. **Rehearsing.** You don't have time to listen when you're rehearsing what you will say next. Your whole attention is on the preparation and crafting of your next comment. You have to look interested, but your mind is going a mile a minute because you've got a story to tell or a point to make. Some people rehearse whole chains of responses: *"I'll say, then he'll say, then I'll say,"* and so on.

4. **Filtering.** When you filter, you listen to some things and not to others. You only pay enough attention to see if somebody is angry, or unhappy, or if you're in emotional danger. Once assured that the communication contains none of those things, you let your mind wander. One woman listens just enough to her son to learn whether he is fighting at school again. Relieved to hear he isn't, she begins thinking about her shopping list. A young man quickly ascertains what kind of mood his girlfriend is in. If she seems happy as she describes her day, his thoughts begin wandering.

Another way people filter is simply to avoid hearing certain things—particularly anything threatening, negative, critical or unpleasant. It is as if the words were never said; you simply have no memory of them.

5. **Judging.** Negative labels have enormous power. If you prejudge someone as stupid or nuts or unqualified, you don't pay much attention to what they say. You've already written them off. Hastily judging a statement as immoral, hypocritical, fascist, pinko or crazy means you've ceased to listen and have begun a "knee-jerk" reaction. A basic rule for listening is that judgments should only be made **after** you have heard and evaluated the content of the message.

6. **Dreaming.** You're half listening, and something the person says suddenly triggers a chain of private associations. Your neighbor says she has been laid off, and in a flash you're back to the scene where you got fired for playing hearts on those long coffee breaks. Hearts is a great game, there were the great nights of hearts years ago on Sutter Street. And you are gone, only to return a few minutes later as your neighbor says, *"I knew you'd understand, but don't tell my husband."*

You are probably more prone to dreaming when you feel bored or anxious. Everybody dreams, and you sometimes need to make Herculean efforts to stay tuned in. But if you dream a lot with certain people, it may indicate a lack of commitment to knowing or appreciating them. At the very least, it's a statement that you don't value what they have to say very much.

7. **Identifying.** In this block, you take everything a person tells you and refer it back to your own experience. They want to tell you about a toothache, but that reminds you of the time you had oral surgery for receding gums. You launch into your story before they can finish theirs. Everything you hear reminds you of something that you've felt, done, or suffered. You're so busy with the exciting details of your life that there's no time to really hear or get to know the other person.

8. **Advising.** You are the great problem-solver, ready to help and make suggestions. You don't have to hear more than a few sentences before you begin searching for the right advice to give. However, while you're cooking up suggestions and convincing someone to *"just try it,"* you may miss what is most important. You didn't hear the feelings and you didn't acknowledge the person's pain. He or she still feels basically alone because you couldn't listen and just be there.

9. **Sparring.** This block has you arguing and debating with people. The other person never feels heard because you're so quick to disagree. In fact, a lot of your focus is on finding things to disagree with. You take strong stands, are very clear about your beliefs and preferences. The way to avoid sparring is to repeat back and acknowledge what you've heard. Look for one thing you might agree with. One subtype of sparring is the put-down. You use acerbic or sarcastic remarks to dismiss the other person's point of view. For example, Helen starts telling Arthur about her problems in a biology class. Arthur says: *"When are you going to have brains enough to drop that class?"* Al is feeling overwhelmed with the noise from the TV. When he tells Rebecca, she says: *"Oh god, not the TV routine again."* The put-down is the standard block to listening in many marriages. It quickly

pushes the communication into stereotyped patterns where each person repeats a familiar hostile litany.

Another type of sparring is discounting. Discounting is for people who can't stand compliments: "Oh, I didn't do anything," "What do you mean, I was totally lame," "It's nice of you to say, but it's really a very poor attempt." The basic technique of discounting is to run yourself down when you get a compliment. The other person never feels satisfied that you really heard their appreciation. And they are right—you didn't.

**10. Being Right.** Being right means you will go to any lengths (twist the facts, start shouting, make excuses or accusations, call up past sins) to avoid being wrong. You can't listen to criticism, you can't be corrected, and you can't take suggestions for change. Your convictions are unshakable. And since you won't acknowledge that your mistakes are mistakes, you just keep making them.

**11. Derailing.** This listening block is accomplished by suddenly changing the subject. You derail the train of conversation when you get bored or uncomfortable with a topic. Another way of derailing is by joking it off. This means you continually respond to whatever is said with a joke or quip in order to avoid the discomfort or anxiety in seriously listening to the other person.

**12. Placating.** "Right... Right... Absolutely... I know... Of course you are... Incredible... Yes... Really?" You want to be nice, pleasant, and supportive. You want people to like you, so you agree with everything. You may half-listen, just enough to get the drift, but you're not really involved. You are placating rather than tuning in and examining what's being said.

*Adapted from: McKay, Davis & Fanning (1983). Messages: The Communication Book. New Harbinger Publications.*

#### Effective Listening Increases:

- ☐ Your ability to help others—you'll hear more and understand more fully
- ☐ Your ability to make effective decisions by acquiring more information
- ☐ Your knowledge of others, the world and yourself—you'll profit from the insights, experiences and perceptions of others
- ☐ Your ability to manage and solve problems—you'll be able to respond to warnings of impending problems before they develop or escalate beyond your control
- ☐ Your ability to lead others with confidence and integrity—not only do others respect and follow those who have listened and attempted to understand them, they will listen and attempt to understand you as well!



**Hesha Abrams, Esq.** a nationally acclaimed attorney mediator for over 30 years, is known for crafting highly creative settlements in very difficult cases. She has created settlements worth over \$700 million in the past year alone. She specializes in creating innovative solutions for complex or difficult matters in Commercial, Intellectual Property and "Deal Mediation", which is driving a complex business deal to successful signing. She has the unique ability to work with big egos and strong personalities. Hesha has successfully mediated for thousands of parties and was an innovator in the mediation field serving on the legislative task force that drafted the landmark Texas ADR law. She mediates, consults, and negotiates on behalf of private parties throughout the country and internationally. She has worked in London, Hong Kong, Mexico, Thailand and India and with parties from all over the globe in complex patent licensing deals. She taught mediation and negotiation at the 2001 International Symposium on Negotiation and Conflict Resolution in The Hague. She was on the national panel for Dow Corning Implant cases and was the Chair of the Texas Bar Intellectual Property ADR Committee. She has been appointed Delegate to the Fifth Circuit Judicial Conference, 1988, 1990, 2002, speaker 2005, elected as a fellow of the Texas Bar Foundation in 2006 and received the Brutsché Award for Excellence in Mediation from the Association of Attorney Mediators.

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