

## How To Build Rapport: Beyond (& Including) Active Listening\*

Mediation 101 teaches the importance of listening to people as a way to build trust, and listening for more than just the substantive content of what they say. And showing that you are listening. And genuinely listening. And reflecting back what you hear. The trust that is developed from listening to people makes them comfortable enough to share with you things they otherwise would not tell someone they have just met and may never see again.

Trust is important for a host of reasons at different stages. Early on, you will be trying to coax out of people what they believe their own weaknesses in the case to be and to be open with you about their interests, what lies behind what their position is. In mid-mediation, you may need trust to get people to stay and keep working at it when things are getting uncomfortable and it looks like the outcome will be a disappointment. Late in the process, when they are confronted with difficult decisions, you want them to be listening to what you have to say, about their choice, about their evaluation, about the fact that there will be no more money on the table or no more concessions made.

Think about the descriptions people given to you about remarkably charming people. Folks who have been charmed in person by Ronald Reagan or Bill Clinton all seem to say the same thing: “It was as if there was no one else in the room, like I was his best friend in the world and there was nothing more interesting to him than what I had to say.” That was the power of listening. Yet there is more we can do as mediators to build trust and deepen the connection we have with the parties and lawyers in mediations. One thing that builds trust is charm. Good listening is an essential component of charm, but not the only one. Below are some suggestions for developing a way to approach people that makes them comfortable being in an intimate discussion with you.

*Be conscious of status.* People laugh at the jokes of powerful people when they would not laugh at the same joke, told the same way, coming from a janitor. People are charmed when powerful people pay attention to them. There are surely plenty of things about you that justify high status. Most important, you were selected as the mediator, which automatically confers high status on you. You are the person everyone wants to convince and attention from you is just more meaningful as a result.

High status may not always be helpful to what you want to do. It may create separation between you and another person in the room that hurts your ability to gain their trust. You can modify your relative status level during a conversation, for instance, by expressing your admiration for an accomplishment or quality of the person to whom you are speaking, or confessing your inability to excel at something the person with whom you are speaking does well. Some people have egos that need to denigrate you in order to establish high status for themselves. You may need to go along with them—they may be more open to someone loyal enough to put up with them—or you may wish to reject their attempt to dominate you and thereby win their respect. What must drive that choice on your part is not your own ego, but your sense of what will make the person more comfortable and trusting in talking with you.

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The point is to be conscious of how you are being perceived by the people around you and to exercise some strategic control over where you place your status vis-à-vis the people in the room. Figure out what will put you in the best position to influence people—being the authority figure, being the colleague or being the student—and be aware of your ability to modify your perceived status during the mediation process.

*Clarify Your Role.* It is important to be clear about your proper role in the process so people do not develop expectations about having you "on their side." There are a variety of reasons why you should be doing this anyway, but you will never establish rapport if someone confides in you expecting that you are in their corner, because when it the time for reality testing comes along, it will feel like a betrayal. One way to say it is, "I'm the lawyer for the deal, not for either side. It's my role to ensure that you have been thinking carefully about the decision you are going to make today to settle or to litigate. So if you like something I say, it doesn't mean that I am your friend; and if you don't, it certainly doesn't mean I am against you."

*Actions Speak Louder Than Words.* The one thing the mediator does have is control over is the process. Once having announced that you will be neutral, work hard to remain neutral, so that your handling of the mediation process demonstrates that you can be trusted. Do what you say you will do. Be exceptionally even-handed. Be certain everyone has a chance to contribute. Do not bad-mouth one side to the other, or they will be asking themselves, "I wonder what is he saying about me to them?"

*Listen Carefully and Ask Questions.* Remember the point at the start of this paper. Listen and reflect back—it is the most basic and important thing that you do. Keep this in your mind *all* the time, and work hard to avoid interrupting anyone. The reflecting back is especially important. Not only does it communicate that you "get it" and empathize, the repetition actually increases your own internalization of what you are hearing and makes it more real to *you*. If it seems more real to you, that will show in how you talk with the person.

*Name The Emotion.* An important element of active listening is to name and validate the feeling that lies behind the communication. It will do more than simply confirm your understanding of what you have heard and let you know where you missed it. "That must have been hard" and "Boy, that had to have pissed you off." and "So you must have been awfully frustrated" are the kinds of expressions to use. Then wait and allow the person who has been speaking to correct you. People share their emotions with people they trust, and having you express their emotion to them not only validates their emotions, it establishes that the discussion is about feelings, which is something we generally associate with intimacy.

*Share Secrets.* Sharing secrets also builds intimacy in relationships. Doing this means exposing yourself personally, and this should wait for the moment where you and the person have developed significant rapport. You must be comfortable opening up about your own life this way, because if you are not it will show. But if you are, it is surprising how many people will respond in kind.

*Eat together.* This one is easy. The brain science people say that sharing a meal builds rapport and if you doubt it ask yourself this: why is so much of romance built around having dinner together?

*Find Commonalities.* Ask questions about people to find out what you have in common, especially shared passions—they make for instant friendships. Ask about kids, and be genuinely interested. Then come back to what you have been told where it is relevant (“At this rate, you will be able to put that financial planer daughter of yours to good work when we get done here.”) It’s good if you grew up in the same neighborhood or went to the same school. It’s better if you went to the same college. It’s better still if you share a passion for dog shows, or antiques, or NASCAR (or another sport), or hunting, or history, or love the same music. In a way, it’s like speed-dating—and once you find the commonalities, keep coming back to them, as if you are hanging out with an old friend. The one thing to watch out for is the risk that while bonding with one person, you don’t leave someone (*especially* the client) out of the circle. One way to deal with this is to invite the odd man out to join in by gently ridiculing your passion.

*Use People’s Names.* People love the sound of their own names. Be sure that you have established some trust before getting on a first-name basis with someone, or you can sound as if you are speaking down to someone. But once on a first name basis, use the first name often enough to let the person feel as if you are an old friend.

*Humor.* One of the unfortunate things about legal practice is that so much of it is so serious. To catch people off-guard, get them to laugh. People love to be entertained, whether it is a one-liner or an elaborate story—use what you know will work. When people are laughing with you, they will usually feel close to you as well. But beware, humor can be overused and it can fall flat. And be ready to hear someone else’s favorite joke and laugh at it.

*Tell People What They Want To Hear.* This is controversial, because it can threaten neutrality. But there are plenty of opportunities to do this. For instance, you can say to a plaintiff, “In the eyes of God, you have been wronged. But in the eyes of the law, well, that may be another matter.” Or to a defendant, “You know what is going on here, the institution is being held to a higher standard than the individual. It happens all the time, even if it is unfair.”

Late in a mediation of a distributive problem, where there will be no future relationship, you can help someone who says they need “vindication” by observing, “I hear you that you want to be vindicated, but I really question whether that’s what is most important to you. The truth is, you know in your heart that you are right, and that you don’t need them to tell you that. Not only that, I’ll bet that you think so little of them that you wouldn’t believe they were sincere about it even if they did apologize. I wouldn’t if I were you. I think you have too much sense to spend time caring what they think. Aren’t you more focused on doing what is best for your own future?”

*Don’t Always Be Asking For Concessions.* You can gain trust by acting against type. Instead of consistently advocating for more and more concessions in a bargaining session, think about pointing out to people the benefits of being more aggressive in bargaining. Early on, one side may considering two numbers for their offer, not very far apart. Things are still at the stage that the other side will regard the two numbers as so unreasonable that they are no different from one another. You can suggest that going with the more aggressive number will likely be seen no differently than the more conciliatory one. When you do, you can say, “I may ask you for that money back later on.” You can explain that you don’t think it will advance things to make the larger concession, only to be disappointed at the reaction. This makes it easier to encourage a

somewhat bigger concession later, when you can say that it's your sense that the additional concession then will provide the maximum "bang for the buck."

One reason that this technique generates trust is that it represents unexpected support. It makes people sit up and take note that you are not a machine that only pushes for more concessions, but someone who will, within bounds of propriety, allow them to try to achieve their objectives.

*Conclusion.* Mediation is like selling. You must commit the subject emotionally to what you are selling, overcome the objections, and then provide the logical framework to support the sales decision.

And, again, mediation is like romance. You must create comfort, moving to ever greater degrees of intimacy at the beloved's pace, not your own, and provide constant reassurance that you will be what is needed and wanted.

And yet again, mediation is like raising children. You must surround the child with a safe atmosphere of love, provide guidance and limits, but allow the child to make her or his own choices and mistakes, reassuring them in disappointment, never giving up on them and always rejoicing in their accomplishments.

Building trust in mediation is like all of these things because all of them depend on the trust you build through rapport. The last words on building trust through rapport come from Lao Tze, the Chinese philosopher whose work is the foundation of Taoism:

*Trust and respect people.  
That's how you earn  
their trust and respect.*

*The Masters don't give orders;  
they work with everybody else.  
When the job's done,  
people are amazed  
at what they accomplished.*

Words to mediate by.