

Acknowledgement, a Dispute Resolution Basic Skill

“From Clenched Fists to an Open Mind”

By David Levin

Mediation to work often needs for participants to feel heard and to navigate the heat of conflict. These needs can be separate or intertwined. Acknowledgement offers a key tool for achieving both.

Acknowledgement is a mediation communication technique. The format is simple. The mediator repeats back to a participant what the participant has just said, and asks, “Did I get it? Did I miss or misstate something?” After the participant responds, the mediator may say, “Can you tell me more about ____ (what was said) ____?” This simple technique can have significant benefits, including:

- Getting out more details, needs, interests, emotions, and resolution options;
- De-escalating heated emotions; and
- Dissolving impasse.

This essay will explore what is acknowledgement and how acknowledgement may be used. The essay is intended to be read in conjunction with, Tanz and McClintock, *The Physiologic Stress Response During Mediation*.¹ Neuroscience offers an awareness of how the physiologic stress response can impact the mediation response, and how acknowledgement can be used to navigate the biology of the mediation experience.

Acknowledgement can be useful in any style of mediation, and at any stage of the mediation process. The use of acknowledgement can be brief or extended. Acknowledgement is a useful tool in a mediator’s toolbox. The actual use of acknowledgement will depend upon the mediator and the ever-changing dynamics of the mediation process.

The Power of Being Heard

How to get “From Clenched Fists to an Open Mind?” Being heard is a key. People often feel no one is listening to them. Their reaction is to repeat themselves with ever increasing vigor. The result, escalating conflict. Simply saying “I understand” will not work.

Mediation training includes many communication techniques known collectively as “active listening.” A primary objective is to have a mediation participant feel heard. While many individual communication skills are presented during mediation training, the skills in practice will often overlap. Mediation practice is often a blended flow of many different communication tools.

Acknowledgement is one of those techniques. Acknowledgement may also be known as validating or emphasizing. Acknowledgement may be used in conjunction with other active listening skills, such as clarifying, summarizing, asking open ended questions, restating, paraphrasing, reflecting emotions, and reframing. Acknowledgement specifically targets how a person may experience being heard.

Acknowledgement offers more than just saying, “I heard you.” Acknowledgement is a communication technique which affords the participant a fuller, almost physical, experience of being heard. The mediator demonstrates with acknowledgement that he or she has heard the participant.

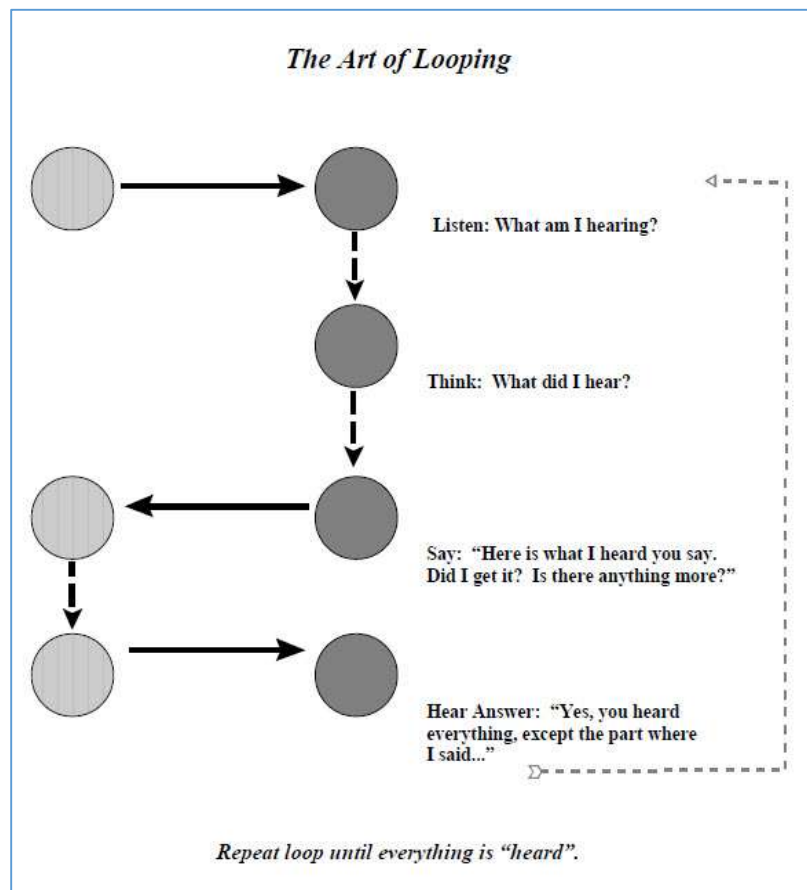
As a result, the participant can feel that the listener “got it.” There is relief. Finally, someone listened. The imperative to advocate can subside. The participant can feel safer to have a more open mind.

What Acknowledgement Is and Is Not:

- Acknowledgement is conveying your understanding of emotional and substantive content;
- Acknowledgement is not saying you agree or disagree with what has been said;
- Acknowledgement is demonstrating your interest and respect for what is being said;
- Acknowledgement is allowing the participant feel safe to tell you what the participant needs to say without being judged or attacked; and
- Acknowledgement must be authentic. To be an effective mediator, your interest must be genuine, and you need to be able accept inconsistent truths from the participants. When the participants tell their respective stories, you need to offer full attention, interest, and respect to each. The mediation environment needs to be a place where everyone feels safe to be heard.

Loop of Understanding

Acknowledgement has been described by Gary Friedman as the loop of understanding. The technique can be diagramed.ⁱⁱ



The Power of “Tell Me More”

“Can you tell me more about _____?” This open ended question is an effective tool. The response will often provide previously unexpressed information and will move the mediation forward. Stuck at any time? Ask a participant to “tell me more,” and then, use the loop of understanding. “Tell me more” is this author’s first choice technique to solve many a tough moment.

Literal Looping

A recent case spiraled towards impasse. One participant was absorbing all of the mediator’s attention. The other participant was feeling ignored and discounted. The other participant was about to leave the mediation process, both mentally and physically. The mediator, sensing a potential disaster, turned to the other participant and asked:

Mediator: I would like to be sure that I understand what you have been saying. You said, a, b, d, e, and f? Did I get that part right?

Other Participant: Yes.

Mediator: Then you said, u, w, x, y, and z. Did I get that part?

Party: Yes, but you missed v.

Mediator: Thank you. Got it. Can you tell me more about your experience?

What happened next:

- The mediator and the other participant had a profound discussion of what had happened from the other participant’s perspective. The other participant began to feel heard, opened up with more details and concerns, and re-engaged in the mediation;
- The participant who had been absorbing all of the attention and who had experienced being fully heard by the mediator, became quiet and listened to the conversation. Listening, the participant was affected by what was being said; and
- Later, when a joint conversation resumed, the participant surprised both the mediator and the other participant by offering new understandings and new possibilities for resolution. The mediation had side-stepped a possible impasse and moved forward.

To repeat back verbatim what you have heard may feel silly. However, the impact on the participant telling you his/her story can be powerful. The participant will know that you are interested, that you worked to understand him/her. Just saying “you said a, b and c, right?” can work. Do not be self-conscious about using what can be beneficial.

The Power of Hearing What You Said

For a participant to hear what he/she just said can be powerful. The experience is analogous to writing an article. The writer can become absorbed in the words on the screen or on the paper. If the writer asks another to read aloud what is written, then the writer can hear the words from another perspective. Listening to one’s own words can help a person assess what he/she has written. The writer may see what

needs to be clarified, rephrased, or further explained. Further, the writer may discover that what is written is not what was intended to be said, or that what is written may lead to a new understanding of what needs to be said. A participant in mediation can have a similar experience when the mediator repeats back what the participant has said. The participant has an opportunity to listen and to learn from his/her own words.

Invisible Impact

The impact of acknowledgement on a participant is frequently invisible at first. Even if the impact on the participants may not be immediately visible, the movement towards resolution can be profound. For example, a participant may be tightly holding on to a fixed position. After experiencing being heard and acknowledged, the participant may gradually move toward being open to considering more possibilities. The movement can be happening silently within the participant and may not be visible to the mediator or the other participant. Then, seemingly long after the use of acknowledgement, the participant may become more ready to shift his/her position and/or attitude, and may express the change. A trap for the mediator can be to solely judge the impact of acknowledgement based upon the immediate results from its use.

The Overheard Conversation

The other participant is listening while a mediator is acknowledging a participant. For the other participant, the impact of the “overheard conversation” can be real and substantial. There are traps and benefits to consider.

For example, watching the mediator work to understand a participant, the other participant may believe the mediator is becoming aligned with that participant. The other participant can also have an adverse reaction, such as being angry or insulted by what the participant is saying. An unintended consequence can be that the other participant shuts down or worse.

A mediator must monitor the other participant’s reaction and must work to preserve the other participant’s good will. A mediator may need to reassure the other participant, such as by saying, “Thank you for letting work with (the participant). I look forward to working with you to more fully understand what is important to you,” or “I know you see things differently. I look forward to learning more about your view.” The essential elements of reassuring the other participant include:

- Acknowledging their patience;
- Expressing your interest in what they will say;
- Asking them to be patient; and
- When observing that further listening will be detrimental to the other participant, changing what is happening to restore balance to the mediation process.

One benefit from an overheard conversation is for the other participant to observe how the mediator is fair and balanced, and how the mediation is safe and constructive. As the other participant feels acknowledged and heard from his/her own interactions with the mediator, he/she may relax enough to listen, rather than to be preoccupied with defending and promoting his/her position. Slowly the other participant may come to understand more than his or her own position, and to listen with a more open mind.

The impact of the overheard conversation can shift the entire mediation. At first, the impact may be hidden. The other participant just listens. Then, the other participant's understanding of the situation can begin to grow. Finally, the other participant may express something new. Another possible solution may come to mind for the other participant, or a barrier to a specific agreement raised by the other participant may vanish. To the surprise of everyone else, the other participant may even acknowledge the experience of his/her "opponent." Mutual ground can begin to emerge.

Flexible Use of Acknowledgement

How much should a mediator use acknowledgement and the loop of understanding? Too much can get in the way of a meaningful discussion. Too little can prevent a meaningful discussion from ever happening.

- Using acknowledgement during the early stages of mediation can be important for initially building rapport and a good working environment;
- Using acknowledgement early can build a reservoir of trust and rapport between the mediator and a participant for when a tough moment appears later. When a difficult point comes up, a touch of acknowledgement can resurrect an earlier feeling of trust and safety which can help de-escalate the situation;
- Using acknowledgement when the heat of conflict explodes or impasse looms can be helpful; and
- Using acknowledgement at any time can be beneficial.

Acknowledgement is often an overlooked or forgotten tool. Mediation can be intense. Mediators can get caught up in the action. Jumping to the heart of the matter or to the bottom line can seem more appropriate, and actually might work. Still, the "bricks and mortar" of mediation is to help the participants to feel heard and to feel safe to have an open mind. Acknowledgement is a key tool for a mediator to always keep at the ready.

Getting Stuck

A challenge for mediators is to be comfortable sitting with conflict. A common experience illustrates the problem. Mediators often get "stuck" after each participant initially tells his or her story. Here is what may happen:

The mediation has been going smoothly. The mediators have greeted the participants, explained the mediation process, and the agreement to mediate has been signed. The interaction has been comfortable and easy. Both the mediators and the participants are beginning to settle in – they are beginning to know each other and to ease into conversation together. Then, each party is asked to briefly explain what brought them to mediation...

Each party has been thinking about coming to mediation for a while. Apprehension can build. Mediation can be unknown, and going into an unknown experience can be daunting. The prospect of sitting down with an adversary can also be challenging. Typically, each party has spent time anticipating how to present and to defend his or her position. After initially telling their stories, there should be no surprise that the gulf between them will seem deep and wide, that they are on the brink of open conflict, and that heat threatens to come into the room.

This moment is an invitation for the mediation to get stuck. The participants can just argue their perspectives endlessly, reinforcing and escalating the conflict. Mediation can grind to a painful halt. The chasm between the participants can seem huge and impossible to bridge. What is a mediator to do? Jump to solutions? Jump to caucus?

Getting Unstuck

Acknowledgement can help. Work with one participant and then with the other participant. Repeat to each participant what you heard the participant say. Ask, “Did I get it? Did I miss or misstate something?” Then ask, “Can you tell me more about ____ (what was said) ____?” The frozen moment can be replaced by the momentum of an on-going conversation. The mediation can get past an awkward pause and can continue.

Mediation & Self- Determination

Mediation is based upon a core value of self-determination, where the parties work together towards a mutually acceptable resolution. In other methods of dispute resolution, such as a trial or an arbitration, there is less of a reason for the participants to work together. Each side makes their pitch and a judge or arbitrator makes a decision. In contrast, rather than just exercise advocacy, mediation participants are confronted by the challenge of working together to make a decision.

Participants coming to mediation may be constrained from exercising self-determination. They are prepared to advocate and defend their position. They are intent on winning. They are in the posture of “clenched fists.” In a strange, new and unknown environment they can be apprehensive whether they will be heard and respected.

To exercise self-determination to find a mutually acceptable resolution requires the capacity to preserve one’s own integrity while making an agreement with an adversary. Thus, the mediation process needs to support each participant’s ability to move to “an open mind.”

Summary

People come to mediation because they are stuck. They are in a conflict that they cannot resolve. Mediation is an opportunity for making progress. A mediator can offer an environment and a process for working on the impasse. There are many methods of mediation. There are many techniques to use during the process. There are moments in any format of mediation, when a participant does not feel heard or understood. Among all of the obstacles found within a dispute resolution process, feeling unheard and/or misunderstood is one that can become an impenetrable barrier. Acknowledgement is one tool for working on this problem. Mediators at any level of experience and expertise will benefit from using this basic communication skill.

ⁱ Tanz and McClintock, The Physiologic Stress Response During Mediation.¹ which is available at <https://chicagomediationservices.com/wp-content/uploads/2017/04/The-Physiologic-Stress-Response-Published-Form.pdf>.

ⁱⁱ Gary Friedman has conducted several trainings in New Mexico. This diagram was produced from his trainings and has been reviewed by Gary Friedman. See also Gary Friedman and Jack Himmelstein, “Challenging Conflict: Mediation through Understanding,” American Bar Association, 2008.