


# Motivational Interviewing Tools to Enhance Mediation Outcomes

BY SHANNON A. R. ALLEN



*Applying motivational interviewing techniques in mediations increases the likelihood of settlement. This article explores the use of motivational interviewing tools to enhance agreements.*

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**M**otivational Interviewing (MI) is a research-based method of achieving positive behavior change.<sup>1</sup> The use of MI techniques in mediation has been proven to significantly increase the likelihood of settlement and improve mediation outcomes.<sup>2</sup> This article equips mediators with MI skills to help participants achieve optimal settlement outcomes. While the focus here is on mediators, MI skills are equally useful to negotiators generally.

#### **Why Motivational Interviewing?**

MI is commonly used across fields from addiction therapy to medicine. Doctors, dentists, psychologists, social workers, and probation officers are now routinely trained in MI due to its high effectiveness in helping people positively change their minds and their behaviors.<sup>3</sup> *The New York Times* recently touted MI as perhaps our only hope for successfully reasoning with unreasonable people in a highly polarized political and cultural climate.<sup>4</sup> Recent scholarship shows that MI is also highly effective in family law mediations,<sup>5</sup> and judicial officers are increasingly implementing MI strategies in communicating with parties in their courtrooms.<sup>6</sup>

MI embodies a style and set of strategies to create an environment supportive of positive change and thus increases a person's motivation to change.<sup>7</sup> These strategies include using collaborative, goal-oriented language to emphasize personal choice and responsibility and support change in a way that aligns with a person's own values.<sup>8</sup> MI capitalizes on the interviewee's own motivation and desire for change, and it protects self-determination, so it helps people achieve their own objectives.<sup>9</sup>

Recently, MI has been applied to the mediation context in select studies, which reveal that the mediation field has been missing out on the benefits of MI for far too long. Over 30 years of research in the behavior change field (such as substance abuse and other counseling situations) have shown the use of MI to be an evidence-based practice that improves outcomes, with outcomes defined as effectively helping to positively change attitudes and behaviors.<sup>10</sup> MI is also being employed to address conflict resolution in the areas of restorative justice and judicial officer training.<sup>11</sup>

Researchers have documented three major benefits to applying MI to mediation.<sup>12</sup> First, MI improves mediators' skill sets.<sup>13</sup> The mediator's role is to help parties create arrangements that will work best for them rather than to prescribe what the mediator personally believes is best.<sup>14</sup> Because mediators typically ask questions, summarize positions, and acknowledge emotions, MI's framework complements many tools they already use.<sup>15</sup>

Second, MI increases trust between the mediator and mediation participants.<sup>16</sup> When trust is present, participants are willing to be vulnerable because they have

positive expectations, which allows them to be less defensive and more open to exploring new options. The extent to which parties allow themselves to be vulnerable depends in part on the mediator's skill in fostering participants' cooperation with the process and each other. MI enhances trust by emphasizing intrinsic motivations for change and employing compassion, empathy, and acceptance.<sup>17</sup> Therefore, participants are more likely to feel cared for and able to trust the mediator and the process.<sup>18</sup>

Third, MI improves mediation outcomes. Recent research comparing family law mediations with and without the use of MI found that family law mediations with MI had double the rate of full agreements than those without and a lower rate of no agreement than of those without.<sup>19</sup>

#### Making Conversations Directional

The research is clear that what an MI interviewer says and does affects the resulting communication evoked from the client.<sup>20</sup> Therefore, the interviewer is not a passive participant in a conversation but rather an active guiding force.<sup>21</sup> The research also shows that what the interviewee says affects that person's thinking and behavior. Accordingly, interviewers need to be aware that how they listen and respond affects what interviewees say, which, in turn, forms what interviewees do.<sup>22</sup>

Mediators are commonly trained in empathic listening styles, such as active listening. But unlike other empathic listening styles, MI is directional—it maintains a clear focus on a known goal that the participants, the setting, and the mediator together establish and maintain. Mediators can maintain MI's direction by using three interviewing styles.

#### Guiding Instead of Directing or Following

MI primarily *guides* parties toward the goal to establish and maintain focus, instead of directing or following. There are three potential styles of any conversation: directing, following, and guiding.<sup>23</sup>

Using *directing*, the listener (here the mediator, but negotiators, including advocates, can also fill this role) provides the focus, which is rooted in the mediator's agenda. For example,

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the mediator might say, “I know you think the other party is being unreasonable, but it would really be better for you to settle this than to try to take that issue to court.” This statement tells the participant why, from the mediator's perspective, it is in the participant's best interests to follow the mediator's advice.

The second style, *following*, is the opposite of directing. When employing this style, the mediator tries to understand the participant's agenda and allows the direction, momentum, and context of the conversation to follow ac-

cordingly. For example, a mediator might listen and reflect, “so you don't want to accept their offer,” and allow the participant to vent about everything they think is wrong with the other side's position while actively empathizing with the participant's position. Here, the mediator follows the participant's lead with minimal control over the direction of the conversation.

In the third style, *guiding*, the mediator and the participant collaboratively search for direction by using the mediator's expertise and the participant's agenda. For example, a mediator could say, “you have some concerns with this offer. What elements of the offer do you think we could work with?” This statement establishes that the mediator is working with the participant to move in the direction of agreement, but on the participant's terms. MI employs this style, instead of following or directing, in a delicate balance of empowering and supporting the client without overtaking the conversation.

#### Creating a Map

In almost every mediation, the parties, counsel, and mediator arrive with at least one shared goal: to reach an agreement. So in applying MI, the “positive change” to be reached is from a posture of disagreement to one of agreement. However, the participants' competing interests combined with heightened emotions often stemming from the conflict can create a difficult landscape to navigate in achieving the shared goal. Accordingly, the mediator's first task when applying MI is to decode the language spoken by the parties and counsel to identify ambivalence, change talk, and sustain talk so the mediator can effectively listen in a way that will bring about positive change.<sup>24</sup>

#### Ambivalence

Ambivalence is the simultaneous presence of competing motivations for and against change.<sup>25</sup> We all know this general definition, but mediators seldom consciously identify ambivalence within their conversations and even less often respond to the ambivalence in a productive matter. This oversight is unfortunate because ambivalence is the most common place to get “stuck” on the road to change.<sup>26</sup> If mediators



fail to recognize ambivalence, participants are more likely to remain stuck in indecision and sustain their current attitudes and behaviors.

To understand ambivalence, mediators simply need to think of a habit they have that they want to change, like eating fewer sweets or working out more. The potential benefits of changing a habit (e.g., feeling healthier and more energetic, losing weight, or living longer) are clear, but competing motivations to not make the change (such as enjoying an indulgence, feeding cravings, or sleeping in instead of waking up for a workout) are also present. Ambivalence is at the root of any behavior a person wishes to exhibit but does not, or any behavior a person wishes to stop but cannot.

The same is true for mediation participants: they know the benefits of reaching an agreement can be significant (such as reducing the risk of an unknown verdict, being able to control the details of a settlement, significantly reducing the costs of litigation, and reducing the effects of stress from the conflict), but reasons to not reach an agreement compete. For example, the settlement terms may be against their financial or personal interests; they may not want to be seen as “giving in”; they may not feel adequately heard, understood, vindicated, or exonerated; they do not want to see the other side let off the hook from the conflict; or they are emotionally tied to the other person. When a participant is ambivalent, mediators usually address only the substantive aspects of the negotiation, thinking only two options exist: (1) there needs to be a different offer that *is* acceptable, or (2) the client needs to be directed to accept the current offer. However, mediators must recognize that non-substantive motivating factors are also in play that can help bring a participant toward the ultimate goal of settlement.

The most obvious examples of ambivalence in mediation are spoken in two competing statements usually combined with the word “but.” For example, “I don’t want to pay to go to court, but that offer is simply ridiculous,” or “I wish I could agree to that, but it’s just not enough.” More difficult examples require the mediator to read into the speaker’s statement. Take, for example, the statement, “If the other party is really trying to reach an agreement, can’t

they offer more?” In this statement, the speaker is acknowledging the shared goal of reaching an agreement and at the same time expressing a motivation not to reach that agreement. With these less obvious ambivalent statements the mediator can restate the ambivalence to clearly express the competing motivations. For example, the mediator could reflect, “you came here today because you have a goal of reaching an agreement, and you appreciate that the other party wants to reach an agreement as well, but you are concerned that their offer is insufficient.”

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Another example of a less-obvious ambivalent statement is, “every time I make an offer, the other party has to nitpick at the details.” The participant here is really saying she wants to resolve the conflict, as evidenced by her multiple offers, but she is frustrated about the other party’s over-attention to the details and likely also wishes the other party and mediator would recognize her good-faith efforts to reach an agreement. The mediator’s ability to find the ambivalence in what was spoken and openly

restate it in a way that clearly defines it sets the mediator up to work *with* the participant’s ambivalence to bring about a change.

Ambivalence comprises two types of “talk”: change talk and sustain talk.<sup>27</sup> Learning to identify these expressions is crucial to understanding the participant’s positions and moving them productively through the mediation.

### **Change Talk**

Change talk is any self-expressed language that is an argument for change.<sup>28</sup> In mediation, this almost always means an argument for reaching a settlement. Change talk varies in strength from (on the weak end) expressing a remote desire to change, to (on the strong end) taking steps to effectuate the change. MI both identifies change talk and ranks its strength from the weaker, “preparatory” types of change talk, to the stronger, “mobilizing” types of change talk.<sup>29</sup> A mediator doesn’t have to identify the exact type of change talk; it is sufficient to simply develop a rough idea of how strong or weak the change talk is.<sup>30</sup> Preparatory change talk indicates a lower commitment to change.<sup>31</sup> It is expressed, in order of increasing strength, as (1) *desire* (e.g., “I wish we could get along”); (2) *ability* (e.g., “I can try to come to an agreement today”); (3) *reasons* (e.g., “It would save us a lot of money to resolve this out of court”); and (4) *need* (e.g., “I need to stop paying my lawyer to battle this out”).<sup>32</sup>

While preparatory change talk simply explores the pro-change side of ambivalence, *mobilizing* change talk demonstrates movement toward the positive change. It is expressed, in order of increasing strength, as (1) *commitment* (e.g., “I will agree on maintenance if he will agree on child support”); (2) *activation* (e.g., “I’m willing to offer to pay that support if I can have the equity in the house”); and (3) *taking steps* (e.g., “I’m calling my insurance company to tell them I’m making this change”).

### **Sustain Talk**

Sustain talk is any self-expressed language that is an argument against change.<sup>33</sup> As with change talk, MI ranks the strength of sustain talk from the weaker, preparatory sustain talk, to the stronger, mobilizing sustain talk.<sup>34</sup> Conversely

to change talk, the weaker the sustain talk, the more likely the change.

Examples of preparatory sustain talk, in increasing strength, are (1) *desire* (e.g., “I don’t want to fight anymore”); (2) *ability* (e.g., “I’ve tried to come to an agreement with her, but she’s being too difficult”); (3) *reasons* (e.g., “I’ll get a lot more money in court”); and (4) *need* (e.g., “I need more money to live on than that”).<sup>35</sup>

Mobilizing sustain talk demonstrates action toward sustaining the status quo (avoiding the change). Examples of mobilizing sustain talk, in increasing strength, are (1) *commitment* (e.g., “I’m going to walk out”); (2) *activation* (e.g., “I’m prepared to go to court”); and (3) *taking steps* (e.g., “I’m throwing away the draft of the offer because it’s so ridiculous”).

### Resolving Ambivalence in the Direction of Change

Change talk and sustain talk are opposites, and the presence and strength of each predicts the ultimate likelihood that an attitude or behavioral change will take place.<sup>36</sup> Both a predominance of sustain talk and an equal mix of change and sustain talk are associated with no ultimate change.<sup>37</sup> Unsurprisingly, a predominance of change talk predicts subsequent behavioral change.<sup>38</sup>

The participant’s balance of change talk and sustain talk is substantially influenced by the mediator. Using MI, the mediator helps people move themselves forward through the natural process of resolving ambivalence in the direction of change. The goal is to elicit and strengthen change talk in relation to the presence and strength of sustain talk.

### Tools to Elicit and Strengthen Change Talk

MI offers a number of tools for eliciting and strengthening change talk. The most useful and common are open-ended questions (including scaling questions), affirmations, reflective listening statements, and summarizations (OARS).<sup>39</sup> Because these techniques apply so broadly to any behavioral change, this section refers generically to the “listener” and “speaker.” In the mediation context, the listener will almost

always be the mediator (but could also be an advocate or another player in a negotiation), and the speaker will almost always be the client (but could also be counsel, especially when counsel is actively directing the trajectory of the settlement).

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### Open-Ended and Scaling Questions

The goal is to get the speaker to talk about all the positive arguments for change. Asking an open-ended question is a great segue to change talk. Typical open-ended questions begin with who, what, and why, but other phrases such as “tell me” and “I wonder” can usher the speaker into change talk as well. Some examples of eliciting change talk with open-ended questions

are, “tell me about the ways this agreement could work well for you,” “tell me what the benefits would be to this proposal,” and “I wonder what your ideas for how to bridge the gap between these positions might be.”

The tone of the speaker’s voice can make all the difference. If the listener maintains a nonjudgmental, curious tone while asking questions, the speaker can engage in change talk without feeling pressured or defensive. However, when an open-ended question is posed in such a way that makes the answer seem obvious or makes the speaker feel patronized (e.g., “why can’t you just agree to this?”), all benefits of the open-ended question are lost.

Another form of an open-ended question to elicit and strengthen change talk is the scaling question, where the listener asks speakers to rate, on a scale from 0 to 10, their confidence in their ability to make a change and/or the importance to them of making the change; for example, “on a scale of 0 to 10, where 0 is not important at all and 10 is extremely important, how important is it to you to settle this matter out of court?”<sup>40</sup>

There are three potential categories of answers to scaling questions. In the first, the speaker gives a fairly high number, in which case the listener can affirm how important it is to the speaker and ask more about the reasons the speaker gave that high value. Second, the speaker may give a fairly low number of 1 through 4. In this case, the listener elicits change talk by asking, “why did you say 1 and not 0?” or “why did you say 4 and not 1?” The “why” question automatically prompts the speaker to focus on the importance of the change (this is why it is important to make 0, instead of 1, the lowest reading on the scale).

Third, the speaker may respond “zero.” If this uncommon response is given, the listener must take a step back and assess whether he or she is trying to effectuate a change that the speaker does not in fact want. No ambiguity whatsoever indicates that the speaker does not desire a change; he or she only has argument to sustain. In this case the listener would no longer be guiding the client toward his or her desired change by moving in the direction of change. It is never the listener’s role to force an

unwanted change or an unwanted agreement on the other person, so if the answer is “0,” the only appropriate response is to stop trying to elicit change.

It is important to use scaling questions sparingly because their overuse comes across as overly clinical. However, used sparingly and strategically, scaling questions can be a powerful agent in bringing about change talk.

### Affirmations

The second important tool for a listener to elicit and strengthen change talk is the use of affirmations. The listener should seek every opportunity to affirm, appreciate, and reinforce the speaker’s strengths and attributes, past successes, future hopes, struggles and desires, and current or past efforts to make improvements.

When formulating affirmations, the temptation is to use the word “I”; for example, “I’m impressed with the progress you’ve made so far,” or “I can see you’ve worked really hard already.” But when a listener says “I,” the subject of the conversation becomes the listener, not the speaker, and the affirmation is therefore less empathetic to the speaker. The listener should instead try to use “you” language, such as “you’ve taken a big step today, and clearly have a lot of determination,” or “you’re doing a good job of focusing on coming to an agreement even though emotions are running high.” When the listener affirms the speaker’s efforts to focus on change, the speaker feels more freedom and encouragement to engage in change talk.

### Reflective Listening Statements

Simply reflecting or repeating back to a speaker what he or she just said can considerably increase the speaker’s trust in and overall experience with the listener.<sup>41</sup> Reflections have the effect of encouraging the speaker to elaborate, amplify, confirm, or correct the speaker’s statements back to the listener. A recent study found that when a doctor made reflective statements at appointments, the patient’s satisfaction of the session increased significantly.<sup>42</sup> Psychologists sometimes describe the effect of empathic listening as receiving a “psychological hug.”<sup>43</sup>

Reflective listening happens by stating back to the speaker the listener’s perceived meaning.<sup>44</sup>

In a reflective listening statement, the voice inflection turns down, instead of up, at the end, to ensure it’s not a question (e.g., “you don’t like that offer,” versus “you don’t like that offer?”).<sup>45</sup> The latter would create a closed-ended question rather than a reflective statement.

Reflective statements can start with phrases such as “so you feel . . .,” “it sounds like you . . .,” “so you . . .,” “it seems to you that . . .,” “you’re wondering if . . .,” or “you’re feeling . . .,” but reflective statements can also simply be a restatement back to the listener of what the speaker believes the listener is trying to convey. *Simple* reflective statements repeat an element of what the listener says, and *complex* reflective statements make a guess at the unspoken meaning or reflect an unspoken feeling.<sup>46</sup> For example, if the speaker says, “I can’t agree to this proposal; I’ll be broke,” the listener could respond with a simple reflection and say, “you don’t want accept this offer because it’s not enough money.” Or the listener can guess at the unspoken feeling or need and say, “you’re worried about providing for your family in the future.” When taking a guess at the unspoken meaning or feeling, the listener should not be overly concerned about getting it wrong, because even when the listener’s best guess at the unspoken feeling or meaning is not entirely accurate, the effectiveness of the reflection is not diminished.<sup>47</sup> This is likely because the listener appreciates the empathic effort and is given an opportunity to explain more accurately what he or she is actually thinking or feeling.

### Summarizations

Summarizations can help check the listener’s understanding of the speaker’s accumulated statements, thereby setting the stage to make a change.<sup>48</sup> Similar to reflections, summarizations restate the speaker’s statements but go further by pulling together several things the listener has said.<sup>49</sup> This communicates that the speaker remembers what has been said and wants to understand how everything fits together. For example, in a mediation that is going well, after hearing an unsuitable offer, a participant may become slightly derailed and vent their frustrations. A helpful summary statement in this case could be, “reaching an agreement

today has been important to you, and your priorities in this negotiation have been A, B, and C. This most recent offer doesn’t satisfy those priorities yet.”

Summarizations are most effective when they pull out the most salient change talk and set the client up to come to an agreement. Summarizations also set the stage for new questions. In the previous example, the listener could then ask, “what are some creative counteroffers that could better address those priorities?”

### Conclusion

MI’s techniques foster conflict resolution and are especially helpful in mediations. By using MI’s directional style and its techniques of open-ended questions, affirmations, reflective listening, and summarizations, mediators can identify and resolve ambivalence and thus effectively guide participants to reach their goal of an agreement. **CL**



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### NOTES

1. Blankley et al., “Applying Motivational Interviewing to Parenting Act Mediation: The Promise of the Process,” *Neb. Law.* 31 (Jan./Feb. 2017).
2. Morris et al., “A randomized controlled trial comparing family mediation with and without motivational interviewing,” 32(2) *J. of Family Psychology* 269 (2018).
3. In more than 70 studies, MI has been demonstrated to enhance change in a wide range of problem behaviors. *Id.*
4. Grant, “The Science of Reasoning with Unreasonable People,” *N.Y. Times* (Jan. 31, 2021), <https://www.nytimes.com/2021/01/31/opinion/change-someones-mind.html>.
5. Morris et al., *supra* note 2.

6. See Bailin, *Motivational Interviewing for Judicial officers*, Nat'l Ctr. for State Courts Training Manual Handout 4.2 (2006).

7. Miller and Rollnick, *Motivational Interviewing: Preparing People for Change* at 16 (Guilford Press 3d ed. 2013).

8. Blankley et al., *supra* note 1.

9. Miller and Rollnick, *supra* note 7 at 16.

10. *Id.* at 32.

11. Morris et al., *supra* note 2. See also Bailin, *supra* note 6 at 9; Blankley et al., *supra* note 1 at 33.

12. Blankley et al., *supra* note 1.

13. *Id.* at 33-34.

14. *Id.* at 32.

15. *Id.* at 33-34.

16. *Id.* at 34-35.

17. Miller and Rollnick, *supra* note 7.

18. Blankley et al., *supra* note 1 at 34-35.

19. Morris et al., *supra* note 2.

20. Miller and Rollnick, *supra* note 7 at 167-69.

21. See, e.g., Glynn and Moyers, "Chasing change talk: The clinician's role in evoking client language about change," *J. of Substance Abuse Treatment* 39 at 65-70 (2010) (demonstrating

that when a clinician intentionally tried to evoke and strengthen change talk, the amount of change talk drastically increased, which was not the case with other empathic listening styles), [https://www.nfartec.org/wp-content/uploads/2018/04/chasing-change-talk\\_glynn-moyers.2010.pdf](https://www.nfartec.org/wp-content/uploads/2018/04/chasing-change-talk_glynn-moyers.2010.pdf), cited by Miller and Rollnick, *supra* note 7 at 169-70.

22. The information in this section is adapted from Miller and Rollnick, *supra* note 7.

23. The information in this section regarding styles of maintaining focus is adapted from Miller and Rollnick, *supra* note 7.

24. The information in this section is adapted from Miller and Rollnick, *supra* note 7.

25. Miller and Rollnick, *supra* note 7 at 157.

26. *Id.*

27. *Id.* at 167-69.

28. *Id.* at 159.

29. *Id.* at 160-63.

30. *Id.* at 163.

31. *Id.* at 159-63.

32. The types of preparatory and mobilizing change talk are from Miller and Rollnick, *supra* note 7 at 160-63.

33. *Id.* at 164-65.

34. *Id.*

35. The types of preparatory and mobilizing sustain talk are from Miller and Rollnick, *supra* note 7 at 160-63.

36. *Id.* at 168-70.

37. See, e.g., Sellman et al., "A Comparison of Motivational Interviewing with Non-Directive Counseling" in Tober and Raistrick, eds., *Motivational Dialogue: Preparing Addiction Professionals for Motivational Interviewing Practice* at 137-50 (Taylor & Francis 2007) (finding that reflective listening without the goal-directed component of MI did not produce a significant reduction in heavy drinking, while MI did produce such reduction (cited by Miller and Rollnick, *supra* note 7 at 170)).

38. *Id.*

39. The information in this section is adapted from Miller and Rollnick, *supra* note 7 at 183.

40. *Id.* at 174-75.

41. Blankley et al., *supra* note 1 at 33-36.

42. Pollak et al., "Physician Empathy and Listening: Associations with Patient Satisfaction and Autonomy," 24(6) *J. of the Am. Bd. of Family Medicine* 665-72 (Nov. 2011), <https://www.jabfm.org/content/24/6/665>.

43. See, e.g., Bookbinder, "Empathy, Listening Skills & Relationships," <https://learninginaction.com/PDF/ELSR.pdf>.

44. Miller and Rollnick, *supra* note 7 at 52, 59.

45. *Id.* at 53.

46. *Id.* 57-58.

47. *Id.* at 52, 59.

48. *Id.* at 66-69.

49. *Id.*

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