

Mediator Insights: Receptivity and Resolution (Part 2)

By: Sylvia Mayer

As noted in my prior article, receptivity is being open to listening and accepting new information, ideas, or suggestions. In the context of mediation, receptivity is often the key to resolution (i.e., settlement). Receptivity is also the core focus of Robert Cialdini's *Pre-Suasion: A Revolutionary Way to Influence and Persuade*. Relying on real-life situations and scientific studies, *Pre-Suasion* explores a myriad of ways to enhance receptivity before making any meaningful "asks."

My first article focused on word choice, focus, and connection as tools to build receptivity (<https://smayerlaw.com/mediator-insights-receptivity-and-resolution/>). In this article, I focus on creating receptivity through trust-building, timing, and reciprocity and how these apply to mediation and conflict resolution.

Trust.

Trust is often touted as critical to mediation. But how do we build trust with a stranger? By using trust-building tools. To illustrate, Cialdini looks to Warren Buffet's letter included in Berkshire Hathaway's annual report. Each year, Buffet begins his letter to investors by sharing a mistake made or challenge faced over the past year. This builds credibility, which leads to trust. Why? In making these admissions, Buffet is relatable (we all make mistakes), aware (he recognizes the mistake), and open (he admits the mistake). While the letter goes on to discuss strengths and opportunities, it is how it begins that builds trust between Buffet and the investors.

In mediation, parties typically arrive with a trust deficit. Something has occurred between them that has eroded their trust. In addition, even if the attorneys know the mediator, the actual parties may not. Thus, there may not be any pre-existing trust between the parties and the mediator. And yet, mediations result in settlement daily. Why? Because mediators use trust-building tools to help the parties find a path to resolution.

Timing.

Sometimes timing is everything. Cialdini illustrates the importance of timing in the context of participating in a brainstorming session. If you want your input to be heard and valued, then choose your timing carefully. Do not speak shortly before the decision-maker because then they are likely mentally rehearsing their own remarks. Do not speak shortly after the decision-maker because then they are likely re-hashing their own remarks. Instead, choose your timing carefully. Time your remarks so the decision-maker can actually hear your input (i.e., is receptive), rather than being distracted by their own ideas.

Timing comes up in mediation and conflict resolution in many different ways. In some cases, a party needs time to process their emotions before they can shift to focusing on resolution. In other cases, an apology may be needed to provide closure and a path to resolution, but if the apology is offered too soon or too late it may be perceived as fake and performative. Choose your timing based on when the receiver is most likely to be receptive. To ascertain the right timing, the best approach is to stop, watch, and listen.

Reciprocity.

Those who give a benefit are entitled to a benefit in return. This is the rule of reciprocity, which is engrained in the psyche of nearly every culture. We learn this as toddlers and carry it with us forever.

How does reciprocity show up in the real world? Have you ever tried a sample at a grocery store? Those samples are based on the rule of reciprocity. Free samples boost sales of the items sampled. In one study, a chocolate store found that customers given free chocolate samples when they entered the store were 42% more likely to buy chocolates. Why? Reciprocity.

In mediation and conflict resolution, reciprocity and timing are interrelated. For example, sometimes in mediation, one party may make a big move early, but then be frustrated if their expectation of reciprocity is unmet. Why is there no reciprocity? Because the other party is not there yet. This does not mean that an early big move is a mistake (sometimes it is quite effective), but it does mean that you cannot rush the process. The rule of reciprocity is most effective in a negotiation if you first give the other party the time, space, and information they need.



Trust, timing, and reciprocity are three tools available to build receptivity. *Pre-Suasion* is replete with other suggestions to lay the groundwork for receptivity.

Author's Note: As a mediator, I am a "forever student" always seeking new ways to help people find a path to resolution in mediation. Robert Cialdini's "Pre-Suasion: A Revolutionary Way to Influence and Persuade" inspired this post. In reading his book, I was struck by the relevance to my mediation work. In the book, he explores a myriad of ways to enhance receptivity and focuses on laying the groundwork for receptivity before making any meaningful "asks." If you aren't a reader, but still interested in what he has to say, then you may enjoy this podcast in which he was interviewed about his book: Barry Ritholtz, Masters in Business (June 18, 2021), <https://podcasts.apple.com/us/podcast/robert-cialdini-on-the-psychology-of-persuasion-podcast/id730188152?i=1000423074089>.