



The **FINE**

When people visit an attorney, it is generally because they have some problem they are not capable of addressing on their own. This problem is particularly acute in matters where litigation looms. The potential clients have been wronged in some way or have been accused of wrongdoing, but they are ill-equipped to pursue or handle the intricacies of litigation themselves. Prospective clients bring an expressive language into the interviewing conversation, and a wise attorney will consider not only the potential legal theories and procedural issues raised during the interview, but will also consider the client's expressive language as a relevant factor in conducting the interview.

Mention the word "feelings" or emphasize too much of the lawyer's role as counselor and many attorneys are likely to write off such talk as touchy-feely nonsense, which at best will have no impact on the success of a particular matter, and at worst will shortchange the success of the case in favor of giving clients the warm fuzzies just before they are carted off to jail or sent home with a take-nothing judgment. For a lawyer to hold such a view, however, is potentially to shortchange the lawyer's own success in representing his or her clients.

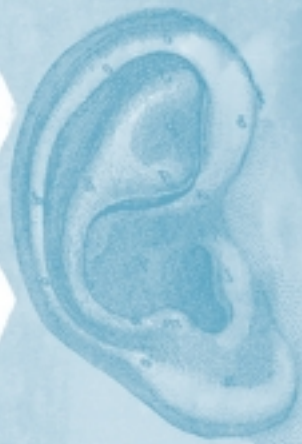
Understanding a client's expressive language provides significant benefits to the lawyer in his or her practice. Consider this for a moment: many people have personally experienced working with a medical doctor who has a poor "bedside manner." These are doctors who are technically competent, but their interpersonal skills result in frustrated patients, even when the medical outcome is good. Many patients have lamented that their doctor will not take time to listen to their concerns about the medical crisis that so pervades their lives. Lawyers who lack the ability to read and address the feelings of their clients risk the same discontent.

To make well-informed plans about a client's case, the attorney, in addition to formulating innovative theories and daring strategies, must learn to listen well to the expressive language of the client. The following comments are provided as a framework for the initial attorney-client interview. They are aimed at encouraging lawyers to develop those listening skills that aid in identifying and responding appropriately to expressed and unexpressed emotions caused by the legal problem and that can impact the client significantly. It further gives examples of expressive language attorneys should be particularly aware of.

By R. Hal Ritter, Jr. and Patricia A. Wilson

ART of Listening[®]

**Skilled listening is critical
in establishing productive
attorney-client relationships**



FAST FACTS

- Rapport, respect, and relationship are three guiding principles for beginning a new conversation with a prospective client.
- Active listening, or restating what has been said back to the person who said it, is another effective tool in showing understanding and preventing miscommunication.
- Emotional words, such as fear, anger, or loss, give clues about how clients experience and understand what is happening to them.
- Law is a helping profession for real people. Extra skill in listening on the attorney's part will facilitate a client's willingness to provide key information despite other inhibitors that may exist.

Developing Active Listening Skills

When beginning a new conversation with prospective clients, there are three guiding principles for framing the conversation: rapport, respect, and relationship. These “three *rs*” of counseling provide valuable perspectives for listening to a client.

Rapport means the ability to talk and listen to clients and make them feel both understood and important. *Respect* means valuing clients as people and not snickering about the decisions they have made, no matter how ludicrous, stupid, or naïve these decisions may appear to be. *Relationship* means connecting with clients because they are human beings, and as such, are more than simply a source of income or an opportunity to further one's legal reputation.

The few client satisfaction surveys that exist support the view that clients are indeed frustrated with lawyers who lack strong listening skills.¹ Frustrated clients are far less likely to be forthcoming with key information, and of course, the quality of the information can affect the quality of the representation. In addition, frustrated clients are less likely to actively participate in the teamwork necessary for both the client and the attorney to achieve the best result possible.

Depending on the client and the type of matter involved, a lawyer should also be cognizant of a series of potential factors that can inhibit communication with a new client. For example, many clients are concerned about the lawyer's opinion of them: will the lawyer think them stupid, dishonest, or greedy? Case threat is another potential communication inhibitor, that is, the concern that disclosing “bad facts” might influence the attorney to decline representation.

Moreover, there is the simple fact that communication about potentially sensitive matters sometimes must be discussed between individuals who may not know each other very well and who have not developed the degree of trust necessary to facilitate such communication. One must develop a degree of trust and rapport before delving into matters concerning a client's mental or physical health, familial relationships, sex life, or even his employment history, business decisions, or criminal record. Reminding clients of the attorney-client privilege and of the attorney's need to know such information can help convince a client to disclose difficult information, but it is only a first step to discovering potentially sensitive information. Developing good listening skills provides yet another way to

facilitate communication on such sensitive issues. Only when an attorney has developed a working relationship of rapport, respect, and relationship can the attorney expect to discuss, for example, a client's loss of consortium claim or to explore other sensitive areas with a client.

Active listening is a skill that facilitates the three *rs*. Active listening, sometimes referred to as reflective listening, is more than simply listening very closely. Described as the “most effective talk tool that exists for demonstrating understanding and reducing misunderstanding,”² active listening involves identifying a client's vaguely or inarticulately stated feelings and reflecting them back to the client to show understanding or to allow the client to correct a misunderstanding. For example, a client describing an invasion of privacy claim may say, “I couldn't believe that all my business was put out for every Tom, Dick, and Harry to hear.”

An active listening response from the attorney might be, “So, you were embarrassed that your private information was available to everyone.” If the lawyer's active listening response is correct, it goes a long way in establishing that he or she hears and understands the clients. On the other hand, even if the active listening response is incorrect, clients are likely to appreciate their attorney's attempt to understand and will in all likelihood feel the freedom to correct the misunderstanding.

From our work with students, we are aware of a common initial reluctance to use active listening. Students' responses often include comments that active listening seems unnatural and that lawyers are not therapists. Certainly, an active listening response after every client statement would be strained and unnatural. Nevertheless, active listening is an acquired skill, and effective active listening requires concentration and experience. Learning to actively listen in an effective and natural way takes practice for the inexperienced, but it is well worth the effort.

Listening for Expressive Language

Using the three *rs* of counseling additionally means learning to listen for emotional words. Emotional words are those used by prospective clients that give clues about how they experience and understand what is happening, or has happened, to them. For example, a common emotional word is *fear*. While people may use words

like “afraid” or “fear” in a rather careless and imprecise idiomatic expression of language, often there are real concerns underlying the use of such words. People use the word *fear* sometimes because they are almost desperate. Often, fear is related to a threat of injury or loss: “I’m afraid I’ll be hurt.” “I’m afraid I’ll lose everything.” “I’m afraid I won’t see my kids.” It is generally helpful to ask these clients about their fears: “What are your fears about this issue? What concerns do you have?” And then, *listen!*

Will addressing a client’s unexpressed fears use valuable time? Yes, but only as an initial matter. Recognizing the underlying concern and allowing the client to speak can save time in the long run, however. On the other hand, a client who is worried about some unaddressed concern is less likely to focus on providing the kind of complete information that is necessary for quality representation. Referred to as “greater need,” it is a recognition that failure to address what is of concern to a client can in fact inhibit effective communication.³ *Rapport* means to listen carefully to the client’s fears and to allow the client the freedom to talk about those fears.

Loss is another emotional word. People fear they will lose a job, their family, money, physical abilities, a marriage, or any other important concern in their life: “I played the game and lost.” “I can’t take another loss.” There is real pain in these words, and it is important that we respect the pain of their real or potential loss.

Anger, another example, manifests itself in many different ways and behaviors. People will sometimes say they are “mad” or “furious.” Anger may also manifest itself as a client’s being verbally aggressive, pushy, and demanding. These times may be loud and tense and often related to loss or the fear of loss. Sometimes a client wants to get even, or they want revenge. Sometimes they want justice: “It’s not fair.” “I just want what’s fair, what is due me, what’s mine.”

In counseling, we have to be in *relationship* with these angry people. It is not a time to be demanding, controlling, or judging. By accepting clients with all of the anger, we help them accept the anger for themselves. If they know the anger will not damage the relationship, then they will begin to calm and talk about it.

Another emotional word is *pain*. Potential clients may be in physical pain or emotional pain, or both. We hear comments such as, “I just hurt all the time,” and this may mean physically or emotionally. When clients say, “Please, help me stop the pain,” it may or may not be something an attorney can do. *Hurt* is related to pain, and the prospective client may say, “He hurt me” or “continues to hurt me.”

If you have not done so already, find a good counselor you can trust. Budding counselors and therapists are often encouraged as part of their training to identify a good attorney they can trust. At some point in your practice, you will have clients who need counseling, regardless of the type of practice you have, just as counselors at times have clients who need an attorney. As an attorney, there is only so much legally you can do for someone who is upset and who is talking about the intense emotional pain of a separation, an affair, business loss, and so forth. A referral to a counselor can help manage the emotional upset of a client while freeing the attorney to pursue the legal aspects of the case.

Learning to listen to the emotional words prospective clients use will help clarify the legal decisions that an attorney has to make. The simple truth—no different than medicine, psychotherapy, or other professional endeavors—is that the law is about real people and the lives they live. In short, the law is a *helping* profession. In this regard, our work should have a sense of vocation about it, a sense of calling. The German word *weltenshauung* represents a worldview in which what one does matters—it matters to clients and it makes a contribution to the history of humankind.

Active listening truly requires work on the part of the attorney to focus on exactly what clients are saying or leaving unsaid, and how they are saying what they do say. It is just the kind of attention clients appreciate and which will facilitate their willingness to provide key information despite other inhibitors that may exist.

What does this mean in practical terms for attorney-client interviews? The first lesson is simple: attorneys must learn to speak plain English with their clients. To respond to clients with an extensive or complicated legal explanation will hinder them from adequate understanding, particularly if they are already experiencing the intensity of overwhelming emotions. In this regard, extensive cognitive comments will only increase their emotional overload.

Simply put, do not use “legalese” or “legal-babble.” Think clearly and precisely, but speak the language of rapport, respect, and relationship. Be clear about what is being said, and give clients the respect of being heard and of being offered the opportunity to clearly understand what is being said. This is attorney-client counseling with the fine art of listening: using the three *rs* of rapport, respect, and relationship.

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Footnotes

1. See, for example, *When You Need Lawyer*, Consumer Reports, February 1996, at 34; Nancy Blodgett, *Lawyers Find a Partner in Quality*, Quality Progress, May 1, 1998.
2. See David Binder, Paul Bergman, Susan Price, *Lawyers as Counselors A Client Centered Approach*, p 52 (West Publishing Company 1991).
3. *Id.* at pp 39–40.