



What Do You Hear When You Listen?

Five Principles with Tips for Developing Critical Listening Skills

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A mother's ear is attuned to hear her baby's cry. Each of us has had the experience of sitting bolt upright in bed having heard a "bump in the night." There is a critical difference between hearing and listening

although we often exchange one action for the other. And what is that difference? To listen means 'to hear with thoughtful intention'. When we listen, we actually attend to the speaker's verbal and nonverbal messages.

When I teach critical listening skills to lawyers, I coach them to listen with awareness. How come we must listen with awareness instead of merely hearing? Awareness improves the chance that we hear the message accurately, acknowledge the desires, and address the concerns. Following are five principles and related tips designed to help you use critical listening skills when meeting with clients, colleagues, judges, adjustors, and mediators. To narrow your focus and keep your listening on track remind yourself to ask: (1) To whom am I listening?, and (2) What do I want to learn?

Principle #1: Listening Establishes a Two-way Relationship to Improve Understanding.

"We are lonesome animals. We spend all of our life trying to be less lonesome. One of our ancient methods is to tell a story begging the Listener to say - and to feel - 'Yes! that is the way it is, or at least that is the way I feel it. You are not as alone as you thought.'" [John Steinbeck].

The downside of Blackberries, text messaging and automated phone system technology has been to isolate us one from the other. Our society has become a sound-bombarded, disoriented mess. We say we have no time to listen. Yet, think about it: how did it make you feel to receive someone's undivided attention for say, two uninterrupted minutes? It's a gift. We owe it to ourselves to give and receive the gift of listening. How else will we tell our stories? How else will we hear the stories we need to tell?

Yes, attorneys are advocates. We are taught to prize the spoken word. Law school taught us that the louder we spoke, the more forcefully we spoke, the more frequently we spoke we would be sure to hit on something that someone would listen to. Yet, like the silence between notes of music, like the pause before the punch line, attentive listening draws out a willingness to relate. In this day and age of dear, animosity, and confusion we need relationship based on listening.

Let's begin with the initial contact between the attorney and her client. And what do we call this initial contact? The attorney-client relationship. A typical approach for many attorneys is to ask a series of rapid-fire questions which force the client to answer factually. The attorney asks questions designed to elicit information to tell her if there is a viable legal cause of action. What the client wants to know is whether the attorney has heard the story being told. The client's story takes place within a context, a set of circumstances that make the facts meaningful to the client. The response the client is looking to hear is that the attorney "gets it". If the attorney has listened attentively and reflected back to the client, the client will become a better ally with the attorney in the legal problem. Why is this so? Because the client now believes he is not as alone as he thought.

Tip: Listening is a gift generally. When we listen with awareness we elevate the conversation to a relationship that improves understanding between the parties. The next opportunity you have to listen to a friend or family member, practice listening for several minutes without interrupting the thought process - or story line. It may be helpful to nod your head to let the person know you are present to what they are telling you. Consider asking yourself how it felt to listen to that person without interruption. Next, practice this skill with a new client. Let them begin to tell you the story of what happened to them without it being fractured by a series of questions. I guarantee you that you will improve your understanding of the client's situation. The client will understand better that a lawyer is a counselor at law. And counselors listen.

Principle #2: Attend to the Speaker's Underlying Messages.

"There is no greater burden than carrying an untold story." [Zora Neal Hurston].

Attorneys frequently face situations where they must listen to the disenfranchised - those who have no voice or believe they have no voice. This person wants to tell you their story so you can help them figure out their legal problem. But oftentimes they have no clue where to begin, what you need from them, or even how to move through the shame of their particular situation. Recall: attorneys are first and foremost counselors at law. And this is where the counselor side comes out: with listening that attends to the speaker's underlying message. Along with the facts you are listening for feelings, attitudes, biases, concerns, and fears.

When we become aware of the undercurrent that flows beneath speech and action we are better able to understand the reasons people think and behave as they do. We can easily discern the goals or needs of our clients by simply paying close attention. Their words and the preferences they express can provide us with insights into their intentions, needs and desires even if they are doing their best to hide their thoughts and feelings from us.

Tip: Consider voir dire. When people respond to a jury summons, they gather at the court house to form a pool of potential jurors from which they are called in groups for specific criminal or civil trials. Attorneys for each side and/or the trial judge question the prospective jurors about their background, life experiences, and opinions to determine whether they can weigh the evidence fairly and objectively. This process is called voir dire, an Anglo-French term meaning "to speak the truth."

Unfortunately, "speaking the truth" is not something that comes naturally to a juror, especially when answering personal questions in a group of strangers. If the attorney is not turned to listening the speaker's underlying messages, she will likely take statements at their face value and miss the more accurate response which is layered and shaded. Be prepared to ask your question in slightly different ways about three or four times to reach the most authentic reply possible in that setting. Some openings you can use in voir dire: Of all the things that could bother you about this case, what one thing is bothering you the most? And how come? How did you arrive at that position? Behind every

position a person holds there is a story. You want to know the story to understand the position, how deeply it is held, whether that position works for or against your client.

Pay attention to three things: (1) the facts they use to answer your question, (2) the emotion they use to express themselves, and (3) the intention behind the words. You might hear energy, boredom, fatigue, doubt, confusion, or enthusiasm. The way words are spoken informs the attorney about underlying messages. And reminds us that “It’s not what we say; it’s what they hear.” [Frank Luntz]

Principle #3: Encourage Disclosure Without Judgment.

“Listen. Do not have an opinion while you listen because frankly, your opinion doesn't hold much water outside of your Universe. Just listen. Listen until their brain has been twisted like a dripping towel and what they have to say is all over the floor.” [Hugh Elliott].

My storytelling mentors taught me that I knew the story I wanted to tell. Their job was to listen it out of me. Today, I use the same approach. I begin with the belief that my client, the attorney, knows the story they want to tell on behalf of their client. My job is to listen so completely that I can coach the attorney to identify what his client’s story is really about. Only then will be able to shape it, choose key visuals that fortify the content and deliver the story as opening statement and closing argument. During the process of discovering the true story I must be able to encourage the attorney to speak in an atmosphere of complete acceptance so we can distill the true legal story from the plethora of facts and evidence and distortions and distractions.

How often has someone acted as a ‘sounding board for you? My guess is they listened frankly, without judgment, and asked open-ended questions. They encouraged you to speak your mind without fear of judgment or embarrassment. One of the key factors to listening without judgment begins with setting up an atmosphere that encourages your client to believe that you are listening fully, even to stories that are difficult or shameful. Do this well and you will get the skeletons hiding in your client’s closet before opposing counsel discovers them in deposition.



Tip: “Tell me more” is the most invaluable statement you can ever use to encourage someone to speak. This phrase takes the burden off the attorney to keep on crafting questions when all you may need at the time is to hear the client’s guided narrative. A similar technique you can use in a group setting, such as voir dire, is to ask the “who-who-who” questions: who thinks, who sees, who feels, etc. Likewise, to encourage conversation in jury selection, leave aside the word “any” as in “anybody have something to say?”, “any more questions?”, or “anything else?” The word ‘any’ effectively cuts off conversation. Think about this the next time your waiter asks you, “Do you want anything else?” You might have been considering coffee and dessert but you end up asking for the check.

Principle #4: Ask Questions That Elicit Desired Factual Information.

“We want the facts, ma’am, just the facts.” [Sgt. Friday - Dragnet]

Once you have heard the client’s narrative, it is time to narrow the field and seek facts. Facts are content. Facts are evidence. Facts help get the job done. When we listen for facts, we are listening for *what* is said. How will your client know you are listening for factual information? Clue in the client by asking closed-ended questions.

Tip: A closed-ended question is one which can be answered with “yes,” “no,” or factual data. Closed-ended questions often begin with words like “do,” “did,” “have,” “can,” “will,” and the like. Begin by asking yourself, “What one question would I ask if I could ask only one?” This focuses your inquiry. Next, ask yourself, “What else is important?” Finally, ask, “How will knowing that one thing help me understand the situation?” Then ask the Speaker for the facts. In the alternative, if you want more narrative or context with the facts, ask open-ended questions favored by journalists which begin with the words: who, what, where, when, how, and how come (instead of ‘why’).

Principle #5: Discourage Defensiveness.

“Know how to listen, and you will profit even from those who talk badly.” [Plutarch].

Wanting to be heard is a natural response. The 21st century pace does not let up hurling information in sound bytes faster than we can comprehend them. Our defense is to begin jockeying to get a word in edgewise just so we can be heard. And the truth of the matter is that when everyone is jockeying to be heard, no one is heard. It happens when the attorney is not listening to what’s being said and is listening in their head to the next thing they want to say.

Tip: Let go of the question “Why?” “Why?” is heard defensively. Think about it: you forget an important dinner date. You are asked “Why?” And you want to defend your actions in some way. The immediate defensive response takes you both into a rabbit warren of excuses all because the word ‘why’ triggered a defensive response. Instead, substitute the word ‘because’ and ask it as a question. You can use this in voir dire, depositions, client interviews. For example, the research is incomplete because....? You will do two things for the person you are asking: (1) remove the defensive trigger, and (2) enable them to complete their thought. Another tip is to encourage discussion or solicit views and opinions by asking this series of questions in voir dire, “What are your first impressions of what you just heard?” And follow it up with, “What else comes to mind?” “How did you come to see it that way?” “How did you arrive at that position?”

Conclusion. A mother’s ear is attuned to listen to what her baby’s cry is telling her. Our particular sensory skills tell us what to listen for when we hear a “bump in the night.” When people talk to you, listen completely. You will help others tell their story by simply paying attention to the verbal and nonverbal signals they project. After today, you will hear differently because you are listening.

Diane F. Wyzga, RN, JD (diane@lightrod.net) helps more attorneys win more cases more often by developing their critical listening and persuasive communication skills. She teaches lawyers how to use storytelling techniques and principles to translate compelling case images into desired verdict action. With over 20 years’ experience, Diane founded Lightning Rod Communications (www.lightrod.net) to train attorneys to identify, shape and effectively deliver their stories using language with power, passion and precision. Diane specializes in legal strategy, focus groups, opening statements, witness preparation, and jury selection.

Becoming Real

This is our first on-line edition of *The Jury Expert*. The labor was prolonged. We want to thank the authors in our first issue (and in those to come) for believing in this new digital concept of TJE and making its very existence possible by writing about their work. The Board Members of the American Society of Trial Consultants also deserve thanks for allowing us to dream big and to stretch the parameters of *The Jury Expert* into a living and breathing and changing entity.

We will continue to evolve over time based on your feedback and as we learn what works well and what we could rethink. Please send us your feedback, ideas, and perspectives on how we can make TJE a "must read" publication for litigators.

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