

Beyond the WORDS

Understanding what your
client is really saying makes for
successful lawyering

BY STEVEN KEEVA

If lawyers were a species unto themselves—and many people are convinced they are—some of their skills would be studied as near miracles of adaptation.

Think for a moment about a lawyer's ability to listen. Like a falcon that scours the ground from dizzying

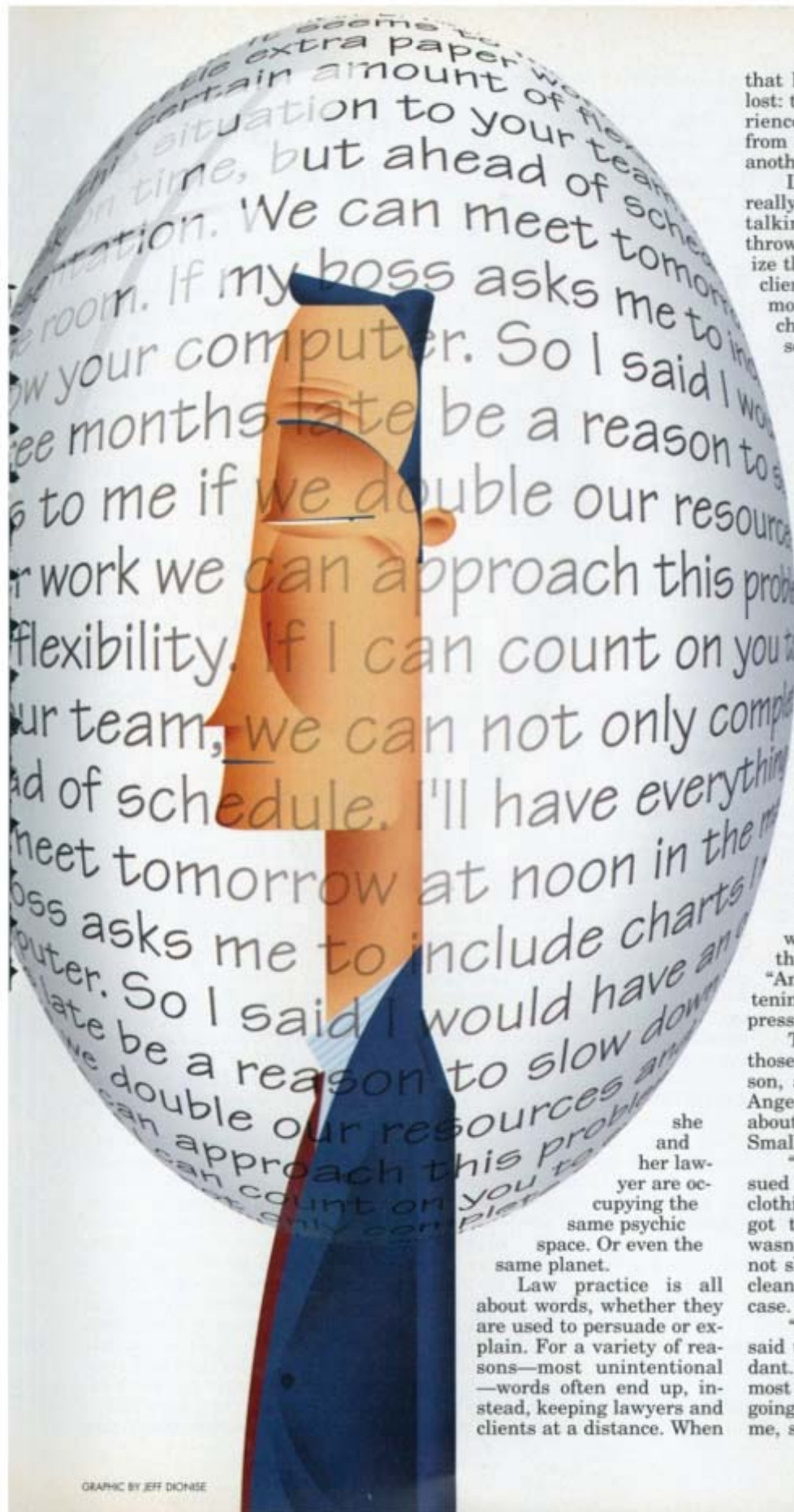
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heights, spots something moving and instantly determines its mealworthiness, a lawyer scans the environment for information, captures it, analyzes it and uses it to build a case to solve the problem at hand.

Unfortunately, while this process is going on inside the lawyer's head, the client may be sitting across the desk feeling lost.

She doesn't know whether she's been seen. She isn't sure whether she has recounted everything relevant. And worse, she's wondering whether





that happens, something essential is lost: the lawyer's opportunity to experience the satisfaction that comes from connecting with—and helping—another human being.

Lawyers who make it a point to really listen understand that too much talking and not enough listening throws things off balance. They realize that listening is how they bring a client's world into their own. When more of that world gets in, their chances of being successful counselors and advocates increase.

Listening this way also happens to be good business. In a profession in which most practitioners are pretty strong technically, being a good listener can be a way to distinguish yourself.

The Need to Be Heard

Intuition tells us that having the feeling of being heard is an important component of happiness. If you need proof, science can provide it.

In one of the better-known studies, James J. Lynch, author of *The Language of the Heart: The Body's Response to Human Dialogue*, found that when we listen to people, their blood pressure goes down. Lynch understood this when he noticed that crying babies' blood pressure continued to rise the longer they cried.

"I realized that's exactly what the adult patients [do], but their cries are inward," he says. "And I began to understand that listening to people lowers their blood pressure because we hear their cries."

The importance of listening to those cries is something James Nelson, a former chief judge of the Los Angeles Municipal Court, learned about his first day on the bench, in Small Claims Court.

"I had a case in which a lady had sued a dry cleaner for damaging her clothing," he recalls. "Well, when she got through presenting her case, I wasn't even clear about whether or not she was even suing the right dry cleaner. She just didn't seem to have a case.

"So as soon as she was done, I said the judgment was for the defendant. At that point, the dry cleaner almost attacked me. I thought he was going to jump over the bench and grab me, so I said, 'Sir, sir, I just ruled in

she and her lawyer are occupying the same psychic space. Or even the same planet.

Law practice is all about words, whether they are used to persuade or explain. For a variety of reasons—most unintentional—words often end up, instead, keeping lawyers and clients at a distance. When

your favor. The case is over.' But he was furious. He said, 'I wanted to tell you about what this woman did!' And at that moment I realized that most people would rather be heard than win. There is some kind of spiritual principle involved in hearing people."

Maybe the principle is that although adjudication may cure a legal problem, healing requires that the parties feel they have actually been heard. To put it into the law office context, if a client needs to be heard, merely listening to the words while tuning out the person behind the problem will rarely do the trick.

How Busy Lawyers Listen

If there were such a thing as a distraction index, it would probably be off the charts these days, reflecting overscheduled days and constant demands that have to be met this instant.

It happens to everyone, so it isn't fair to single out lawyers for failing to be good listeners. They are probably no worse at it than other professionals. After all, their work requires that they listen, and listen well—at least up to a point.

Marilyn Astin Tarlton, a law firm management consultant who also teaches at the University of Denver College of Law, says, "Lawyers constantly listen and analyze what they're hearing, but only until they get to the point where they think to themselves, 'Ah, I know the answer.' Then they don't hear what comes next."

Tarlton says certain unique factors in lawyers' training and legal culture make it especially hard for them to listen beyond that moment. First, they are trained in law school and in practice that people come to them for one thing: to get answers. Given that, "It's easy to get into a pattern where you want to know the answer real fast," says Tarlton.

Add to that the fact that the Socratic method used in law schools conveys a simple message: He who knows the answer gets the prize—and, Tarlton says, it is no wonder that lawyers tend to listen with a narrow focus on getting the right answer. There appears to be little incentive to listen any deeper or longer than necessary to do that.

But is there? It depends on how you perceive your role as a lawyer. "I believe that when a client

goes to see a lawyer, he or she wants more than just a legal fix," says David Hall, assistant provost of Boston's Northeastern University and former dean of the law school there.

"When I go to the store to buy a loaf of bread, I want to be treated a certain way by the cashier, and when he doesn't look me in the eye and say hello, or acknowledge my presence, I feel

diminished by the experience. And I'm not coming to him in crisis, hurting over something that has gone wrong in my life, the way I would with a lawyer."

Surveys have repeatedly shown that clients look for more than technical proficiency from a lawyer. They want to know that the lawyer hears and cares about their problems. In fact, a great many lawyer disciplinary actions can be traced to a failure to listen. After all, when clients complain that their lawyers refuse to return phone calls, aren't they really saying that they don't feel heard?

What to Listen for

When it comes to working with clients, really listening means much more than accepting a list of facts at face value, finding a recognizable pattern and plugging it into a standard solution. It also means:

- Listening through role-playing. Clients often behave according to some notion of how a client is supposed to behave.

If you can detect this, and realize that such suppositions become filters—allowing only certain things to be expressed and others withheld—you have a chance to get at underlying facts and feelings that

Hearing Aids for Lawyers

In any conversation, there are ways to be a better listener. Here are a few:

- **Stop talking.** It's much easier to receive information when you're not also transmitting it.
- **Allow the room to be silent.** When you resist the temptation to fill the silence, you make room for what often turn out to be significant revelations.
- **Limit distractions.** Block incoming phone calls, move to a quieter room or put a "Do not disturb" sign on your office door.
- **Listen with the intention of understanding,** instead of replying.
- **Be aware of the message** your body and your face are sending to the speaker.
- **Listen for meaning** in a variety of cues—not only in words, but also in the way the speaker says them, in body language, and in what he or she is not saying.
- **Tell yourself that nothing else matters at the moment** but what the speaker is trying to say to you.

might bear on the case.

- Listening for a better way to do things. If you stop as soon as you've got *the* answer, you may be closing yourself off to better options. Perhaps the client has a way to resolve the problem that is outside your experience but may be effective. Don't ignore the client's wisdom in your rush to get the *right* answer.

- Listening to your intuition. The legal culture doesn't exactly embrace this source of knowledge, but that doesn't mean your hunches and inklings shouldn't be respected and explored. If your gut tells you something is wrong with the picture, listen and check it out.

- Listening for clients' listening problems. Clients who don't listen can be maddening. They fail to give useful feedback and they waste

time. Being aware of this problem early in the relationship gives you the opportunity to deal with it—directly and with tact—before it leads to abject frustration.

In an interesting twist on this suggestion, Tarlton, the Denver consultant, describes an extremely bright client of hers, a managing partner she admires and with whom she often works.

"But sometimes he just stops listening. I can see him go away. So periodically I'll have to say, 'I know you're finished listening to me, but I have information I need to convey and I need you to listen.'" He does, and, says Tarlton, he loves it when she calls his attention to it.

Keep in mind that encouraging clients to become better listeners can pay off. Their experience causes them to pick up on different nuances than you do, nuances you might miss that could prove decisive.

One rule to remember when your goal is to listen deeply is that judgment is deadly. No one wants to be judged while revealing personal information, so it is essential to offer the speaker a sympathetic, nonjudgmental ear.

The trick is to be aware of any tendency to judge the speaker's ideas, use of language, appearance, or anything else. If you find yourself judging, don't berate yourself, simply acknowledge (to yourself) that you're doing it and let go of the judgment so that you can turn your attention to the speaker and the message.

It Takes Time

Merit Bennett, author of *Law and the Heart* and a partner at the law firm of Tinkler & Bennett in Santa Fe, N.M., says he encourages clients to "talk themselves out."

"I will let them talk and I'll ask questions to help them get what they came to say out," he says. "But I'll also allow them to explore how they feel about what they just said."

That, Bennett says, is where the gold is.

"They come in with facts and ideas and behavior and all the rest, and after it's all on the table, it's easy for me to play the lawyer and figure out what the legal issue is, analyze it, come up with a course of action and so on. But what happens behind that—and usually it's in a place the client has not gone—is

how they feel about it, about the conduct of the other party, about what happened to them, and about what kind of an outcome would give them a good feeling.

"Once you go there, it's like you've opened up the door and the answer just comes," Bennett says. "It comes right out of the client's mouth. Suddenly you see what the real issue is. It's usually not what they came in with. Usually it's about hurt, and I get them to talk about why they are hurt, how to get at it and how to heal it. Suddenly it resolves itself at a whole other level."

Bennett has learned it can be dangerous to push a client toward a result without listening to all the subtleties of what is being said. "If you do push too quickly into the case, and you fail to get to the feelings and the underlying issues, the case will often fall apart down the line," he says.

"It may happen when the other side makes a motion for summary judgment, and it's because you didn't go far enough—you didn't listen well enough at the outset. I'm really careful with this, and I guess it comes from the fact that in my younger days I was burned too many times by jumping on people's horses, then getting too far out on the prairie and finding myself surrounded."

There is significant danger, Bennett says, in simply accepting what the client initially tells you, which ordinarily is limited to what supports his or her position and justifies a desire to get back at the other guy. "When you don't explore the underlying feelings, you often don't reach the underlying facts. So getting to that level—by really listening well—is another way to make sure you develop the factual scenario so that nothing unforeseen happens."

Listening well takes effort. But according to psychologist Lynch, it is also deeply satisfying and relaxing. His research shows that not only does listening to people lower their blood pressure, it also lowers the listener's.

There is something about forging the kind of basic human connection that good listening makes possible that calms and comforts everyone. Any fears that it will deplete your energy available for the rest of your law practice—if you're listening openly—are misplaced. ■

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