



[Home](#) / [In-Depth Reporting](#) / [Two Who Care](#)

KEEVA ON LIFE AND PRACTICE

Two Who Care

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Santa Fe, N.M., lawyer Merit Bennett has spent a lot of time thinking about what gets in the way of lawyers and clients seeing each other as they really are. On the client's side, he says, there are the expectations that come from a host of cultural clichés: the lawyer as a hired gun without a conscience, as a person who will employ any aggressive tactic to win, and as one who will dispense with honesty on a client's behalf as long as he gets paid.

“On the lawyer's side,” says Bennett, “presuppositions can include the notion that a given client's wishes will not differ significantly from those of other clients with similar problems.

“It's imperative that lawyers become conscious of their own minds' natural tendency to re-experience only what we have previously experienced,” he says, lest they fail to see who is really sitting in their offices and end up living a sort of perpetual taped replay of the past. Listening becomes impossible under such conditions. And listening is the sine qua non of effective lawyering.

In his practice, Bennett encourages clients to “talk themselves out.” He asks questions to help them express themselves and also allows them to explore how they feel about what they are saying. “That is where the gold is,” he says.

“They come in with facts and ideas and behavior and all the rest,” Bennett says, “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 ... is how they feel about the conduct of the other party, about what has happened to them, and about what kind of outcome would give them a good feeling.

“Once you go there,” Bennett says, “it’s as if you’ve opened up the door and the answer just comes. 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.”

Bennett takes a small percentage of the cases he is offered, but he spends time with each prospective client.

“For me,” he says, “the lesson is that if you keep on talking long enough and really listen, all of a sudden the key will hand itself to you. But you have to hang back awhile and not jump into the lawyer mindset right away.”

Mark Perlmutter—whose Austin, Texas, trial practice includes personal injury, class action, mediation and legal malpractice—wants his clients to know that he is there for them, on a particularly deep level.

“It’s one thing,” Perlmutter says, “to say you know how a client feels, simply repeat what he says back to him, say that you’re feeling what he’s feeling. It’s quite another to reach a more profound level of empathy.”

Rowing With the Client

Perlmutter uses a technique that is based in Systems-Centered Therapy, a discipline introduced in the '90s. Drawing on a rowboat metaphor, rowing with the client describes the process by which one human being is able to most deeply share an experience with another. Here, the other person is a client, and Perlmutter’s goal is to share the client’s experience, even if it is painful.

Why? Because, according to Perlmutter, there is great benefit in it for both client and lawyer, who are able to develop a bond that is deep and lasting. “Often,” Perlmutter says, “clients have strong feelings about their plights and want to know that the lawyer not only hears them but is willing to champion their cause with the same fervor they feel. Essentially, the client wants to transfer the energy that motivates her to the lawyer so that he will be likewise motivated. Rowing with the client sends the message, ‘Energy transfer complete.’ ”

Here's the process: Imagine your tearful client in a rowboat trying to communicate with you about the issue that brought him to the office, say a medical malpractice case in which a hospital caused the death of a loved one by failure to treat. Two responses—a push or a wave—don't go far enough.

In a push, the lawyer is metaphorically pushing the client out to sea, leaving him feeling more distant. Examples of push behavior include phrases that essentially blame a client for causing his own problems and identify him as a patient with an offer to fix him. A wave is an in-between response, one that neither pushes the client away nor brings the client closer, and still identifies the client as a patient.

Perlmutter's example is: "That's a real shame. I hear where you're coming from. I've had lots of clients who have had the same thing happen to them. I feel your pain."

A row is a response that makes the client feel like you're getting in the boat with him, then emotionally rowing alongside. It consists of authentically accessing the emotion the client is feeling within yourself and communicating that. Perlmutter might say: "As I listen to you talk about your daughter, I can even feel the tears just behind my eyes." In this way, the client feels understood and the bond is established.

Steven Keeva is the author of [Transforming Practices: Finding Joy and Satisfaction in the Legal Life](#).

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