

ACTIVE LISTENING: THE WINDOW TO CLEAR COMMUNICATION

By Don P. Desonier, J.D.
Joseph Shaub, J.D., L.M.F.T.
Marilyn J. Endriss, J.D.
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Introduction

“I’m telling you, I want 60% of the property and seven years of spousal maintenance. That’s the bottom line.”

“Listen, I didn’t deserve to be fired and I certainly didn’t do anything to warrant being escorted out of the company by two security guards. It was the most humiliating moment of my life! I’m 59 years old. I want them to pay me my salary until retirement, and my benefits, too!”

Each of these two clients has conveyed a significant amount of emotional and substantive information in the above statements. The lawyers listening to these clients have a variety of response options. If the lawyer can reply in a manner that conveys to the client that he or she has been heard, it is more likely the client will be able to listen to the lawyer and a productive exchange of information will occur.

Active listening

Active listening can basically be defined as reaching out to the speaker and reflecting to that person that we have understood what he or she has said. Active listening is, however, more than just parroting. The objective is to get to the heart, the essence as it were, of what is being said and to respond authentically, genuinely.

Phillip C. McGraw, Ph.D., “Dr. Phil” of Oprah fame, has become quite famous for his down-to-earth, straight talk in his interactions with individuals and couples on his TV show. Although there may be a wide range of opinion on the effectiveness of what is sometimes referred to as “five minute therapy,” it is impressive how responsive people are to Dr. Phil’s communication style.

In the March, 2003 issue of Oprah Winfrey’s magazine, “O”, Dr. Phil has written an article entitled “Dr. Phil’s Six Rules of Talking and Listening”. One of his six rules is “Be An Active Listener”. He gives an excellent and humorous example of what is, and is not, active listening. Adapting examples from his article, consider the following exchange –

Scenario #1:

A: “Sorry I’m late. As I was leaving the house, my dog ran into the street and was hit by a car.”

B: (reflecting the content): “The car hit him?”

A: “Yes.”

B: “Did your dog die?”

A: “Yea.”

B: “Did the driver stop?”

A: “Yes, but the damage was done.”

B: “Would you like to postpone our meeting?”

A: “Yes, I think I would.”

B: “Sure. Sorry ‘bout your dog.”

In this example, it is true that Person B has accurately restated the factual content of what he has heard Person A say and inquired further into other facts of Person A’s story. But, do you think Person A really feels he has been “heard”? In other words, do you think that Person B shows any kind of connection with the emotional underpinnings of what Person A is likely experiencing?

Scenario #2:

A: “Sorry I’m late. As I was leaving the house, my dog ran into the street and got hit by a car.”

B: (reflecting the feeling): “Oh, my gosh, was your dog hurt? You must feel terrible.”

A: “Yea, he died at the scene. He was a good dog, six years old; our kids really loved him.”

B: “Dogs can be such integral members of families. Sounds like this will be really hard on your kids and you, too. You’ve got a lot on your plate right now. Would it be helpful if we postponed talking about our upcoming presentation until tomorrow afternoon?”

A: “I’d appreciate that. Thanks for understanding.”

In this scenario, the interaction between Person A and Person B is much different. Person B “gets it” and is able to truly convey that he hears Person A and understands his present needs. There is both a “content” piece and a “feelings” piece to active listening. The trick is to blend the two in a way that reflects you are genuinely listening.

Let’s look at the first client’s statement at the beginning of this article –

“I’m telling you, I want 60% of the property and seven years of spousal maintenance. That’s the bottom line.”

When using the active listening skills, you, as the listener, focus on identifying the speaker’s needs and conveying your recognition of his or her interests. The above statements convey a wealth of information. To get past the surface, however, requires more than mimicking the content. What is this client really telling you? As the lawyer in an initial meeting or the financial planner consulting with a husband and wife in a collaborative divorce case, you would want to get a sense of what needs or interests are behind this pronouncement. Using active listening skills, you might reply,

“It sounds like achieving financial security in any settlement is important to you.” or,

“It seems you have concerns about making it financially after the divorce and that a secure cash flow is critical for you.”

What you’ve done is to identify the need behind the statement which will in most cases allow the client to move on. The client is likely to respond affirmatively and explain the circumstances as to why financial security is important. Using active listening skills, you would acknowledge the reasons – ***“Returning to the workforce after 15 years and at age 46 can be rather daunting and may indeed take some time.”*** Continue your inquiry by asking, ***“Would you tell me more about what you specifically need in the settlement to be okay?”***

Turning to the workplace example,

“Listen, I didn’t deserve to be fired and I certainly didn’t do anything to warrant being escorted out of the company by two security guards. It was the most humiliating moment of my life! I’m 59 years old. I want them to pay me my salary until retirement, and my benefits, too!”

At this juncture, the client does not want to hear about the employment-at-will doctrine or that the company’s practice is and has been to escort laid-off employees to the front

lobby or that she was part of a lay-off and not truly “fired.” Rather, the conversation is more likely to move forward if the listener uses active listening skills and reflects that her interests have been heard. The attorney might reply, “*Sounds like it was a scary experience and a loss of dignity to have been escorted out by the security guards. And, being unemployed at age 59 is also scary. I can understand your having very real concerns about your future and your financial security.*” Having acknowledged both the content and the needs of the client that underlie the content, the attorney is better able to understand, communicate with and represent his or her client.

Benefits to active listening

- **Obtain important information**

One of the obvious benefits to using an active listening style is that you will obtain more and better information. First, however, you must turn off your own motor and let go of your own ideas, presuppositions and agendas. Active listening requires your total attention. That means you must listen and not interrupt or speak. While listening, ask yourself, “What is going on beneath the surface here?” “What does she really want?” Look for the deeper issues, expectations, hidden meanings and the subtlety of words.

- **Build rapport and trust**

Active listening not only allows you to gain important information from the parties that may assist in problem solving, it also builds rapport and trust, which are vital for a professional working with parties engaged in conflict. The party will realize you are not just there to take notes and tell them what to do. You are truly gaining an understanding of the party’s view of the situation and their needs.

In the collaborative law setting you, the parties and the attorneys are a team. Yes, you have valuable expertise to bring to the table. That’s why you were hired. To the extent that you can interact with the party in a way that draws them out and involves them in process, the more effective the dialogue will be.

Active listening techniques

In their book, *Resolving Conflict at Work*, Kenneth Cloke and Joan Goldsmith identify a variety of communication techniques that listeners can use –

- **Encouraging.** These are questions or statements that support the speaker’s sharing his or her feelings, *e.g.*, “Go on, tell me more,” “I’m interested in what you’re thinking and feeling,” or “I hear what you’re saying.”
- **Clarifying.** Clarifying questions or statements, *e.g.*, “What did you do after that happened?” “What was your response when your supervisor said that?”

“Who else was present?” reflect that the listener is tracking what the speaker is saying and is interested. Cloke and Goldsmith advise the reader to be aware of our tone of voice and intention so that seeking clarification does not become probing interrogation.

- **Acknowledging.** These are statements which acknowledge, recognize and identify the feelings that the speaker is expressing without making any judgment about them. For example, statements such as “I can see you feel sad about that,” or “I can appreciate now why you may have felt angry about what your boss had told you” convey empathy and give permission for a greater depth of conversation without appearing manipulative or condescending.
- **Normalizing.** It is often helpful to convey to the speaker that what he or she is saying and experiencing is natural and normal. Statements such as “I think I might feel the way you do if that had happened to me” convey acceptance and normalcy.
- **Empathizing.** Empathizing statements place you, the listener, in the shoes of the speaker in order to better understand their feelings and perceptions. For instance, “I can appreciate why you may feel that way,” or “I can understand why you feel so strongly about [subject matter] because I experienced something similar in my life,” reflect that the basis for your understanding comes from a similar experience, reaction or feeling in your own life. Cloke and Goldsmith urge the reader not to say, “I know exactly how you feel,” because you don’t.
- **Soliciting.** These are questions designed to solicit advice and identify possible solutions such as “What do you think should be done about the kids and summer breaks?” or “What would you like to see happen?” or “Tell me more about why you think that would work.”
- **Mirroring.** Statements that mirror reflect back the emotions, affect, demeanor, body language, tone of voice, metaphors and even the breathing of the speaker. For example, if the speaker is loud and sitting in a defensive posture with arms crossed tightly in front of his chest, you could mirror his posture and tone as you reflect back his statement and then open up your own posture as you move toward an empathizing statement. The listener must take care that use of this technique is not misinterpreted as disrespect or mimicking.
- **Agreeing.** While it is important that communication be open, this does not mean that the listener and speaker must agree on everything being said. It is often helpful if the listener begins by saying, “I really agree with you about that,” and then moves on to, “What I think we disagree about is” This

technique can lay the groundwork for an open dialogue even when there is disagreement. Often it will allay fears (of rejection) and mollify defensiveness. By first acknowledging there are common areas of agreement, the listener has signaled that the areas of disagreement are not so absolute.

- **Supplementing.** Supplementing statements are “yes, and ...” or “Let me build on that and see if we’re on the same page...” or “Not only that” The listener therefore is omitting the all-too-common “yes, but” (the separating fence) in favor of the “yes, and” (we’re building together).
- **Inviting elaboration.** When the listener asks open-ended questions, it sends a signal to the speaker that you are listening and respecting their point of view. Ask the speaker to elaborate on her ideas or recommendations. What do you really want to know from or about this person?
- **Reframing.** Cloke and Goldsmith define “reframing” as “preserving the content of a communication but altering its form so it can be heard and possibly result in a solution.” In a conflict, reframing often takes “you” statements and changes them into “I” statements.
- **Responding.** Listening respectfully means responding to what the speaker has said and not using techniques which manipulate the speaker.
- **Summarizing.** This technique, in which the listener uses his or her own words to summarize what the speaker has said, conveys that that listener has heard what the speaker has said while providing the speaker with an opportunity to confirm, correct or change what he or she has stated.
- **Validating.** These statements recognize the speaker’s contribution to the conversation. For instance, the listener might tell the speaker, “I appreciate your willingness to talk to me about this,” or “I know it took a lot for you to be as open as you were and I want to acknowledge you for taking that risk.”

Overcoming your own doubts

“Well, this is all well and good,” you might say, “but it’s not as easy as it sounds.” If you are not the “mental health” member of the collaborative team, active listening has not been a natural tool for you. For trial lawyers, active listening is contrary to the basic rule learned in trial advocacy class – never ask a question that you don’t know the answer to! So it comes as no surprise that attorneys raise some common objections to using active listening techniques –

“It feels manipulative and condescending.” In the beginning, before reflective listening becomes a natural way of thinking and interacting, you may find yourself scanning your

mental database for the “right” words to reflect back. You might be so in your head that a reflection of feelings will feel insincere to you. If it feels insincere to you, you may believe your listener will pick up on your sense of insincerity. In our experience, however, speakers do not convey insincerity to their listener as they reflect back what the other has said. Although a wooden, scripted response will sound odd, any genuine effort to understand the speaker’s experience and reflect it back to him or her will be positively received and experienced. Often, when reflective listening is demonstrated before a group who are new to this skill, the audience will comment that the responder seemed to be condescending to the original speaker. Yet, when the original speaker is asked if he or she felt condescended to, he or she invariably replies that they do not. What is important, then, is that in responding to the speaker, you are authentic in your response.

“Feelings are for “shrinks,” not lawyers (accountants, appraisers, etc.).” While it is indeed true that we aren’t shrinks, therapy is not the point of reflective listening. We don’t suggest you actively listen in order to delve *deeply* into the psyche of the speaker. But at the same time, to suggest that people divorce their feelings from (a) the amount of information they are comfortable conveying and (b) the decisions they make, *particularly* when they are involved in a divorce or the end of a career, is unrealistic. The fundamental purpose of reflective listening is to *project empathy and gain understanding*.

“If I reflect back the wrong feeling, the speaker will think I’m insincere or not really listening and will clam up.” In our experience, the opposite is typically the case. What you are more likely to experience will be an appreciative correction or clarification – something along the lines of, “Actually, what I meant was” “No, I wouldn’t say I’m depressed about it. I’m more angry than anything.” Virtually *never* will the speaker even be thinking, “That dodo! Can’t he tell I’m really furious!” When you are genuinely seeking to reflect the speaker’s words and meaning and miss the mark, the speaker will help you by engaging in the conversation and offering clarifying statements.

“I feel empathic, but I just can’t find the right words.” Those of us who are not mental-health service professionals have a fairly limited palette of feeling words to call upon in our vocabulary. You may be amazed at how many feeling states get described as, “You must have been very frustrated.” To give you some idea of the vast number of choices available to you, we suggest you peruse the list of words in Appendix A. You need not memorize the expansive list of words. Rather, the first step is to consider the times in your own life when you have experienced loss or fury to the point that you might even have desired some revenge; anxiety and worry over a life circumstance that felt out of your control; hope and optimism about a new stage of your life unfolding; or complete and utter confusion about the situation in which you have found yourself. While you may not have had the *exact* same experience described by the speaker, that is much less important than having had *an* experience in your life which evoked a similar feeling to what the speaker is conveying. In order to exercise true empathy, we must suspend judgment of the speaker. This may be very difficult for some of us, but it is a goal well worth pursuing. It is the rare person, indeed, who will share their concerns and

vulnerabilities with a person who is projecting judgment. Rather than judgment, it would be well to ask yourself, “How would *I* feel if I was in that person’s shoes right now?” An honest, nonjudgmental assessment of that question will go much farther toward finding the right “word” than the memorization of any list.

“What if they get all emotional and we can’t get back on track?” Emotions are part of every life transition. The end of a marriage and the end of a job are two events that carry a lot of emotional weight. Therefore, hoping to segregate emotions away and outside of the divorce process is unrealistic. Similarly, it is unrealistic to expect your client to be unemotional about having lost his or her job. As attorneys and allied professionals, we need not fear the expression of emotion. There will be times when people who are divorcing become angry and show distrust. A certain amount of sniping should be expected and should not be treated as if there is a bomb in the room ready to explode. Part of our job as professionals who are not emotionally involved in our clients’ travails is to “reframe” certain comments as being an expression of anxiety rather than an attack. (***“She just wants to bleed me dry!”*** might be *reframed* as ***“I hear you being concerned about cash flow and financial stability.”***) Because anger is so ubiquitous in divorce and so many couples have a long rehearsed “anger dance,” you may want to nip that in the bud after a brief exchange. Other emotions, however, which can be touched off by an empathic response are usually quite personal, rather than interactive, and will run their course fairly quickly. After acknowledgment of the difficulty of the moment, everyone can move back to task – usually with a sense that an unnamed weight has been lifted. The key, though, is not to be afraid of the expression of feelings. These will seldom, if ever, spin out of control.

“Won’t active listening make the client emotional?” There will be times when an accurate empathic response will touch a speaker in a certain way and stimulate a sudden out-pouring of feeling. Again, this will almost always pass and with an appropriate acknowledgment of the speaker’s present experience will serve to “pro-gress” the conversation rather than “re-gress” it. What you will very likely experience (and this is the most common reaction to an accurate empathic response) will be a brightening and energizing in the speaker’s affect – almost as if you have momentarily plugged the speaker into a wall socket. There is scarcely a better method for making contact with another person and the benefits from this rapport-building are enormous.

Conclusion

Active listening is a skill that can be honed with practice and with insight and advice from those who do it well. There are a number of useful resources that you may wish to consult. Below we have listed a few of the books that we have found helpful. You may, too.

- Bush, Robert A. Baruch and Joseph P. Folger, *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*. John Wiley & Sons, Inc., 1994.
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