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THE POWER OF LISTENING

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Lawyers are in the business of language, communication and persuasion. If you strive to be successful as a client advocate, to bridge the gap between just being another lawyer to transforming yourself into a great lawyer, become a student of the skill that many attorneys' overlook—listening. True listening is power and a magnificent force. Justice Oliver Wendell Holmes said: *"It is the province of knowledge to speak, and it is the privilege of wisdom to listen."*

Regrettably, attorneys and judges often fail to listen, even though they act like they are. Over the years I have observed how poor listening skills lead to a failure to communicate with your clients, the position, the courts and juries. It can often lead to poor outcomes or at a minimum make your case more difficult. By failing to listen, essential information can be lost. We put up communication barriers and shut out those we wish to reach most. Folks resist even the best ideas and think of many reasons to reject our position when they perceive we aren't genuinely listening. Our failure to listen clouds the debate rather than clarify it. Hearing what your opponent says, improves the dialog. Make sure the message is not lost in the static of advocacy.

Let's get one thing straight, listening isn't waiting for the other person to stop talking so we can provide a rebuttal. Listening is understanding, interpreting, and paying attention to what is said. The pathway to successful listening is outlined by five rules. Learn and practice them and your career as a lawyer will become a much more rewarding experience, professionally, personally and financially. The rules I follow are:

- Listen to why something is important to the speaker.
- Confirm you understand the speaker's true meaning.
- Ask for explanations, don't assume.
- Don't offer opinions.
- Edit out internal responses.

Now for many of us, trained as advocates trying to get across our point, these rules may offer more than a few challenges. But mastering them tallies a high return on our investment. By listening we show respect to the speaker and gain their confidence. Listening requires thought. Listening allows you to understand what someone is talking about and the core for their beliefs, desires, wants and needs. Obtaining this information allows us to build a better relationship with the judge and jury as well as

present a much sounder case. Utilizing these listening steps increases the likelihood of success, pure and simple.

How can we apply these skills to our practice? Freedom of client's speech is necessary to gather facts and clues about the case before you. When interviewing clients, resist the urge to impress them with your knowledge. Give them your undivided attention, look them in the eye, and permit them to tell their story, jot down a note to clarify a fact or issue. Your job is to allow them to tell their story. Stop interrupting. Sharing your jewels of wisdom prematurely cuts off their train of thought. We lose important facts and insight into who they are and what their case is about. Visit the client in their home where they are comfortable and at ease. If the client/witness is limited, obstructed or constrained into one path of discussion, then vital information necessary to prosecute or defend the claim is lost. During discovery depositions, too often questions are posed in such a way to structure the response. The examination is designed to induce the adverse witness to agree and "box them in" to a position. This tactic, although at times effective, often results in a failure to ask questions, just listen and clarify. Listen to their thought process. Hear the reasoning behind the action or inaction. By listening to the answers rather than trying to control the response, you will gain the trust of the speaker. By gaining trust you gain information. Let the witness explain his/her answer while following the logic of their account.

Look for the "window" into the mind of the witness. Listening allows us to think more clearly and thinking clearly, after all, is the first step to communication and persuasion. The more open and frank the discussion is, the more one learns about how the opponent came about making or not making a crucial decision. Successful, effective messages not only communicate and educate, not only do they allow us to share ideas – they also move people to action.

So when thinking about this year's New Year's resolution remember the power of listening and the words of Justice John Marshall: *"To listen well is as powerful a means of communication and influence as to speak well."*

David Winter has been advocating safe health care for 30 years and is a senior shareholder at Sommers Schwartz, specializing in representing patients in medical malpractice litigation. He enjoys politics, sports and, of course, listening.