

Civility Skills: The Art of Listening

March 13, 2015

Seattle University School of Law
Seattle, WA

4.75 general and 2.25 ethics credits approved
WSBA Activity # 395616



Robert's Fund

fostering civility in the legal profession

www.robertsfund.org

Brief Agenda

- 8:30 - 8:40: Introduction to Robert's Fund**
Paula Lustbader
- 8:40 - 9:00: The characteristics of effective listening and of civility**
Lisa Brodoff
- 9:00 - 9:30: How listening fosters civility and promotes justice**
Paula Lustbader
- 9:30 – 10:15: The challenges to effective listening**
Craig Sims
- 10:15 –10:30: Break**
- 10:30– 12:00: Foundations of civility as a listening strategy**
Consciousness – Tim Jaasko-Fisher
Creativity – Paula Lustbader
Community – Craig Sims
- 12:00 – 12:45: Lunch**
- 12:45-2:15: Specific strategies for listening as lawyers**
Lisa Brodoff
- 2:15 – 2:30: Break**
- 2:30 – 4:00: Practice listening**
Craig Sims
- 4:00 – 4:45: Inculcating a culture of listening**
Tim Jaasko-Fisher
- 4:45-5:00: Conclusion and evaluation**

About Robert's Fund

In an era too often marked by acts of incivility, Robert's Fund aims to elevate the way we treat one another in professional settings and to inspire acts of courtesy, kindness, and compassion among members of the legal profession. Increased civility demonstrably improves outcomes for legal professionals and the people that they serve. And because legal professionals profoundly influence society, even outside their formal work, their behavior often sets the tenor of corporate, political, and social interactions. Through consulting, continuing education programs, and collaborations with Seattle University School of Law, this family foundation works to promote civility.

About the presenters

Lisa Brodoff, J.D.

Director, Ronald A. Peterson Law Clinic and Associate Professor at
Seattle University School of Law

Professor Brodoff served as chief review judge in the Office of Appeals for the Washington Department of Social and Health Services and was appointed chief administrative law judge for the Office of Administrative Hearings. She has also worked as an attorney for the Puget Sound Legal Assistance Foundation and as legislative staff counsel to the Washington Senate. She joined the faculty in 1997.

Professor Brodoff has engaged in both scholarly work and impact litigation/legislative advocacy while teaching at Seattle University. Her areas of expertise are in the rights of gay and lesbian individuals and couples, people with disabilities, the elderly, and public assistance applicants and recipients. She is a frequent speaker at conferences and continuing legal education programs on topics including the right to counsel in civil matters (civil Gideon), end of life and disability planning, and the administrative hearing process. Professor Brodoff was instrumental in the passage of legislation in Washington State creating the Mental Health Advance Directive, a planning document for people with mental illness. Washington's statute is now considered model legislation for states seeking to expand the rights and planning options for people with mental illness.

In addition to her scholarship, speaking, and impact work, Professor Brodoff has served on a number of committees and boards including the Coalition for Indigent Representation and Civil Legal Equality (CIRCLE), the Access to Justice Board Impediments Committee, and the Street Youth Legal Advocates of Washington Board. She is also a tribal court judge for the Northwest Intertribal Court System.

Timothy Jaasko-Fisher, M.A., J.D.

Senior Director of Curriculum and Program Development, Robert's Fund

Mr. Jaasko-Fisher works with people and organizations to explore how individuals exercising leadership can promote a more civil workplace, community, and society. He engages people through interactive workshops designed to promote wellbeing within the individual, enhance productivity, and improve outcomes.

In his role as the founding director of the Court Improvement Training Academy (CITA) at the University of Washington School of Law, Mr. Jaasko-Fisher has consulted with courts across Washington State since 2007 to improve their response to child abuse and neglect. Using a systems-based approach, he helps court communities engage in meaningful conversations across disciplines to improve their process, relationships, and outcomes. As a member of the federal Quality Improvement Center on Youth Representation curriculum team, he has provided training and consultation for a nationally focused program designed to improve the quality of youth representation in child welfare proceedings. In 2010, he was awarded the Lee Ann Miller Individual Award for outstanding leadership in furthering the goals of the Washington State Children's Justice Act and led the Court Improvement Training Academy to receive the Lee Ann Miller Team award in 2014.

Mr. Jaasko-Fisher worked as an Assistant Attorney General for 11 years, leading litigation teams, including one that won the Attorney General's "Outstanding Team Award" in 2004. The Washington State Attorney General awarded Tim the "Outstanding Diversity Advocate" award in 1999. He has litigated at all levels of the justice system in Washington State, including administrative tribunals, the Superior Court, the Court of Appeals, and the Supreme Court. Tim serves as the Director of Internal Capacity Building for the emerging U.S. Department of Health and Human Services, Children's

Bureau's Center for Capacity Building for Courts. He presents nationally and internationally on issues relating to leadership, civility, and engaging groups in complex problem-solving. He resides in Tacoma with his two daughters.

Paula Lustbader, J.D.

President, Robert's Fund; Professor of Law and Director, Academic Resource Center at Seattle University School of Law

Professor Paula Lustbader is best known for the passion and energy she brings to her work as co-founder and director of the Academic Resource Center and its Access Admissions program at Seattle University School of Law. For 28 years, she has provided instruction, support, and mentorship to law students from underrepresented groups and, in the process, has been instrumental in changing the face of the legal profession. She has touched the lives of more than 1000 law students who, on graduation, have gone on to impact the lives of literally thousands of clients and fellow citizens in Washington and across the country.

The Association of American Law Schools Section on Academic Support acknowledged her contribution to the academy with an Award in 2015. In 2010, she received the Loren Miller Bar Association President's Award for her role in increasing the diversity in the legal profession. The Washington State Bar Association recognized Professor Lustbader's outstanding contributions by naming her co-recipient of the organization's Award for Excellence in Diversity (2006).

Professor Lustbader is an internationally recognized leader, scholar, and speaker on law school academic support programs, learning theory, teaching methods, and diversity. She has also presented in England, Switzerland, Spain, and Italy. In addition to using her vision to help found two national organization sections on Law School Academic Support and the Center for Teaching and Learning at Seattle University, she has assumed numerous leadership roles with the legal academy's national organizations.

In recent years, Professor Lustbader has turned her focus to address issues of civility in her role as president of Robert's Fund, where she has undertaken a variety of initiatives. In addition to creating and producing articles for the Washington State Bar News; she is developing curriculum, programs, and seminars; is facilitating conversations on civility with focus groups; as well as making multiple presentations and providing consulting to law firms and other legal professional organizations.

Craig Sims, J.D.

Chief of the Criminal Division, Seattle City Attorney's Office

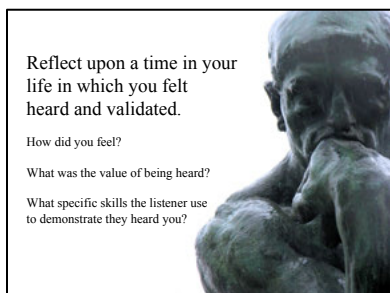
Craig Sims received the 2011 Washington State Bar Association Professionalism Award. At the City Attorney's Office, Mr. Sims' primary responsibility is to oversee all attorneys and staff who prosecute criminal and traffic crimes that occur within the city. Before becoming Criminal Division chief, Mr. Sims was a trial attorney with the civil firm of Fury Bailey. During his time there, his primary focus was serving clients who had suffered serious personal injuries.

Before joining Fury Bailey, Mr. Sims enjoyed a distinguished 10-year career as a senior deputy prosecuting attorney with the King County Prosecutor's Office. During that time, he represented the public in over 100 trials. His career as a prosecutor also included a multi-year assignment to the Most Dangerous Offender Program. While a member of the program, Mr. Sims prosecuted several homicides and other high-profile cases. One of his most notable prosecutions was *State v. William Joice*, in which the defendant was a civil defense attorney convicted of the attempted murder of his opposing counsel. Mr. Sims' career demonstrates his passion for helping those who have been harmed by others.

Mr. Sims is an adjunct professor at Seattle University School of Law teaching comprehensive pretrial advocacy. He is also a visiting lecturer at the University of Washington Law School instructing a section of trial advocacy.

He is a member of several organizations, including the Loren Miller Bar Association, of which he was president in 2007-2009. He is also a member of the Washington State Bar Association and the King County Bar Association, of which he served as a trustee. Mr. Sims is also on the advisory board for the WSBA Leadership Institute. He is licensed to practice law in the Washington state courts and the United States Federal Court for the Western District of Washington. In his spare time, Mr. Sims enjoys spending time with his family, biking and skydiving.

The characteristics of effective listening and of civility



Reflect upon a time in your life in which you felt heard and validated:

- *How did you feel?*
- *What was the value of being heard?*
- *What specific skills did the listener use to demonstrate they heard?*

Listening fosters civility and promotes justice

In *The Cost of Bad Behavior*, Christine Porath and Christine Pearson cite a poll they conducted of a large, diverse national sample of managers and employers. In this poll, they found incivility reduced productivity. Of the targets of incivility they polled:

- 48% intentionally decreased work effort
- 47% intentionally decreased time at work
- 38% intentionally decreased work quality
- 80% lost time worrying about the incident
- 63% lost time avoiding the offender
- 66% said their performance declined
- 78% said their commitment declined
- 12% leave the workplace



Incivility impairs cognitive function:

- Targets suffered 20% reduction in recall ability
- 61% of targets performed lower on verbal tasks
- 50% had a fewer creative ideas

Witness of incivility also suffered impaired cognitive function. In a 2009 study by Porath and Erez, found that while attempting to unscramble the anagram “remdue” to “demure”, those who had witnessed the minor incivility were seven times more likely to unscramble it to the word “murder”.

Students exposed to minor incivility also generated less creative responses in the “brick test”, and displayed a higher level of dysfunctional ideation.

Incivility reduces volunteerism:

In the same study, Poratha and Erez found that 58% fewer students were willing to help pick up a dropped book when they had observed the person dropping the book engage in a mild incivility toward another student; 50% of the controls agreed to volunteer as compared to only 26% who witnessed the rude response; and that the controls were three-times more likely to volunteer.

Incivility impacts psychological well-being:



Lawyers are 3.6 times more likely to be depressed when compared to 104 other occupational groups. When compared to general population, lawyers suffer increased levels of depression, obsessive compulsive disorders, anxiety, and alcohol problems:

Depression

Females: 14% / Female lawyers: 16%

Males: 9% / Male lawyers: 21%

Obsessive compulsive disorder

Females: 2% / Female lawyers: 15%

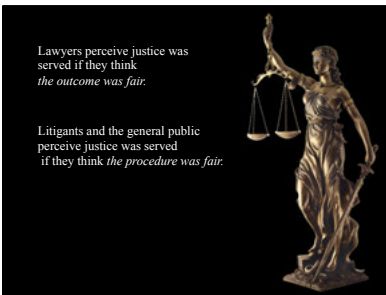
Males: 2% / Male lawyers: 21%

Anxiety

Females: 4% / Female lawyers: 20%

Males 4% / Male lawyers 30%

Lawyers, in particular, seem to suffer personally as a profession. For example, in a study by Beck, Sales, and Benjamin, lawyers were found to be at much higher risk of alcohol related problems or other psychological concerns. For example, 71% of female lawyers in the study reported having issues with alcohol use whereas the prevalence rate in the general population is only 8%. Likewise, male attorneys reported at 67% compared to only 20% of males in the general population.



Lawyers perceive justice was served if they think the outcome was fair.

Litigants and the general public perceive justice was served if they think the procedure was fair.

In general participants in the legal system want to give their views, tell their stories, and share in the discourse of the case. Thus although they might not be pleased with the outcome when they

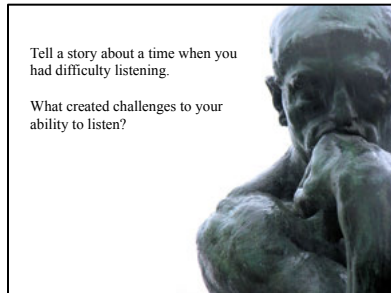


lose, as long as they have been given the opportunity to provide their voice, they feel the system was fair.

In a study of gender differences in satisfaction with divorce settlements, women were more satisfied with settlements because through mediation they perceived that they had control over the process.

Red hook: 86% of the defendants thought the court process was fair, “regardless of race, socioeconomic status or disposition of the case.” The most significant factor in the perception of fairness was that the judge “treated them with respect, helpfulness, and objectivity.” The next significant factor is that court actors (judge, attorneys, court officers) treat them with respect and communicate clearly. Those at Red Hook “clearly explained the proceedings, answered questions, and listened to what the defendants had to say”.

The challenges to effective listening



Tell a story about an incident you recently observed that exemplifies civility and how listening contributed to the situation.

Listening Exercise

In pairs: listen to your partner's story and write down what you were thinking, what you observed, and how present you were while listening.

What am I observing?	What am I thinking?	How present am I?



RPC Link:

The rules of professional conduct require a lawyer to abide by the client's decisions concerning the objectives of representation and also require consultation with the client as to the means by which those objectives are to be pursued. In order to truly know the client's objectives, the lawyer must be able to listen and fully hear the client's articulation of those objectives and clearly communicate the course of the litigation. Although this is a seemingly simple process, the means

by which a client might choose to communicate as well as the many lenses through which a lawyer might choose to listen often generate a complex dynamic at the heart of the lawyer-client relationship. At stake is the very purpose of the relationship – good listening at this stage of the process not only builds a strong foundation of trust with the client, it also serves as a foundational skill to prevent later ethics complaints and clearly define the scope of the representation.

RPC 1.2

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

RPC 1.4

(a) A lawyer shall;

(1) promptly inform the client of any decision of circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Pillars of civility

Consciousness

- increases awareness of our feelings and triggers
- enhances awareness of our impact on others
- facilitates practice of discernment
- enables us to live with congruency



Creativity

- provides vehicle for mindfulness
- stimulates whole brain activity
- expands perspective
- supports effective problem solving

Community

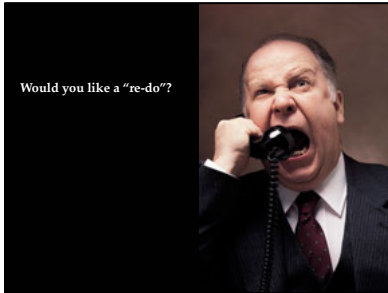
- revives civic humanism
- promotes psychological well-being
- builds positive social skills

Specific strategies for listening as lawyers



How can you tell if someone is a good listener?

Practice listening

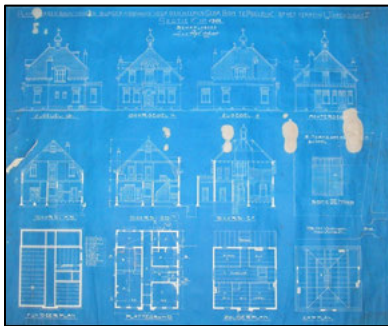


Think of a conversation you have had that you would like to “re-do” in order to be a better listener.

OR

Think of an upcoming conversation you will have in which you would like to really focus on improving your listening skills.

Inculcating a culture of listening



What characteristics would a good listening space have?

Take away of the day



What is one thing you learned today that you would like to implement immediately?

Readings and Resources

March 13, 2015

Seattle, Washington

I. Characteristics of listening and civility

1. Donald E. Campbell, *Raise Your Right Hand And Swear To Be Civil: Defining Civility As An Obligation Of Professional Responsibility*, 47 Gonz. L. Rev. 99 (Dec. 2011)
2. Humphrey, Thomas E., "Civil" Practice in Maine, *Maine Bar Journal*
3. Julie Braman Kane, *Civility: It's Not a Sign of Weakness* (Subtitle I: Make Your Mama Proud; Subtitle II: Would You Do it in Front of Your Grandmother?), 1 Ann.2007 AAJ-CLE 809 (July 2007)
4. Paula Lustbader, *Igniting a Culture of Civility*, *Washington State Bar News* (January 2011)

II. How listening fosters civility and promotes justice

5. Kevin Burke & Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction (A White Paper of the American Judges Association)*, 44 CT. REV. 4 (2008)
6. G. M. Filisko, *Be Nice: More States Are Treating Incivility as a Possible Ethics Violation*, A.B.A J. (April 2012)
7. Paula Lustbader, *Listening from the Bench Fosters Civility and Promotes Justice*, forthcoming in the *Seattle Journal of Social Justice* 2015.
8. Harry J. McCarthy, *The Value of Civility in the Legal Profession*, *Washington State Bar News* 2011)
9. Sandra Day O'Connor, *Professionalism*, 78 Or. L. Rev. 385 (Summer 1999)

III. Challenges to listening

Vicarious trauma

9. Jared Chamberlain & Monica K. Miller, *Evidence Of Secondary Traumatic Stress, Safety Concerns, And Burnout Among A Homogeneous Group Of Judges In A Single Jurisdiction*, 37 J. AM. ACAD. OF PSYCHIATRY AND THE LAW ONLINE 214 (2009)
10. Peter G. Jaffee, Claire V. Brooks, Billie Lee Dunford-Jackson & Michael Town, *Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice*, JUV. & FAM. CT. J. Fall 2003
11. Joy D. Osofsky, Frank W. Putnam, & Cindy S. Lederman, *How to Maintain Emotional Health When Working with Trauma*, JUV. & FAM. CT. J., Fall 2008 at 91
12. Isaiah M. Zimmerman, *Helping Judges In Distress*, JUDICATURE, July-Aug. 2006, at 10

Additional resources for vicarious trauma:

The National Child Traumatic Stress Network Website <http://www.nctsn.org> contains a comprehensive list of recommendations, including the Child Welfare Trauma Training Toolkit.

The National Child Traumatic Stress Network Website's Self-Care Inventory can be found at http://www.nctsn.org/nctsn_assets/pdfs/cwt3_sho_inventory.pdf.

Cross-cultural communication and implicit bias

13. Lera Boroditsky, *Lost in Translation*, *The Wall Street Journal*, July 23, 2010
14. Roger O. Crockett, *Listening is Critical in Today's Multicultural Landscape*, *Harvard Business Review Blog Network* (Mar. 14, 2011, 2:15 PM)
15. Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012)
16. David Kreider, *Inter-Cultural Dynamics in Peacemaking: The Arab-Israeli Case in Point, Practice: Skills for Conflict Transformation*, (2007)
17. Jeff Tolman, *Looking at the World Through Other People's Eyes*, *Wash. Bar News*, (Mar. 2011)
18. Mary I. Yu, *Civility in Our Conversations about Race and Culture*, *Wash Bar News* (May 2011)

Additional resources for cross cultural communication and implicit bias:

Susan Bryant & Jean Koh Peters, Five Habits for Cross-Cultural Lawyering, in RACE, CULTURE, PSYCHOLOGY & LAW 47-62 (Kimberly Holt Barrett & William H. George eds., Sage Publishing, Inc. 2005)

Kim O'Leary, Nelson Miller, Tracey Brame & Dale Iverson, *Cultural Competence as a Professional Skill*, in REFLECTIONS OF A LAWYER'S SOUL: The Institutional Experience Of Professionalism At Thomas M. Cooley Law School 175-206 (Amy Timmer & Nelson Miller eds., William S. Hein & Co., Inc. 2008).

IV: Foundations of civility as a listening strategy; General principles for listening

Consciousness

19. Amanda Enayati, *Seeking Serenity: When Lawyers Go Zen* (May 2011)
20. Leslie A. Gordon, *Law Prof Teaches Meditation Techniques for Lawyers*, A.B.A. J. (Feb. 1, 2014)
21. Janet Ellen Raasch, *Putting Relaxation Back Into Firm Retreats: Loosening Up the Lawyer Mind*, 32 Law Prac. (Jan.-Feb. 2006)
22. Stella Rabaut, *Lawyers: Leading with Integrity*, Washington State Bar Association, (October 2013).
23. Robert Zeglovitch, *The Mindful Lawyer*, GPSolo Magazine (Oct.-Nov. 2006)

Additional resources for consciousness:

DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* (Bantam Books 1st ed. 1995)

RICK HANSON, *BUDDHA'S BRAIN: THE PRACTICAL NEUROSCIENCE OF HAPPINESS, LOVE & WISDOM* (New Harbinger Publications 1st ed. 2009)

Creativity

24. Steven Keeva, *Lose the Box* (Sept. 12, 2004, 11:46 AM CST), A.B.A. J
25. Daniel H. Pink, *Revenge of the Right Brain: Logical and precise, left-brain thinking gave us the Information Age. Now Comes the Conceptual Age - ruled by artistry, empathy, and emotion*, Wired, Issue 13.02 (2005)
26. Janet Ellen Raasch, *Inspired by the Wonder of Poetry*, A.B.A.

Community

27. A.B.A., *Staying connected to friends and family, not necessarily your PDA, helps keep stress at bay* (Sept. 2011)
28. Celeste F. Bremer, *Fostering Civility Within the Legal Profession: Expanding the Inns of Court Model of Communal Dining*
29. David Brooks, *Nice Guys Finish First*, N.Y. Times (May 16, 2011)
30. Isaiah M. Zimmerman, *Isolation in the Judicial Career*, 36 CT. REV. 4 (2000)

V: Specific strategies to improve listening

31. Carol Bailey-Medwell, *Enhancing Civility and Maintaining Privacy for Your Clients*, Washington Family Law Deskbook (2d. ed.) 2000 plus 2012 supplement, Chapter 6.
32. Donna F. Howard, *Learning to Listen, Learning to Be Heard*, GPSolo Magazine (Apr.-May 2006)
33. Steve Leben, *An Expectation of Empathy*, WASHBURN L.J., Fall 2011
34. Steve Leben, *Good Judging Often Starts with Good Listening*, Procedural Fairness for Judges and Court Blog (May 26, 2012)
35. Mike Moore, *4 Unusual Listening Tricks for Lawyers*, Legal Productivity Practice Management Blog (July 23, 2012)
36. Julian Treasure, *5 Ways to Listen Better*, Ted Talk (July 2011)

Additional resources for listening strategies:

Douglas Stone, Bruce Patton, & Sheila Heen, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* (2d ed. 2010)

VI: Abstracts of Relevant Washington Rules of Professional Conduct

VII: Washington State Bar Association Creed of Professionalism-adopted by the WSBA Board of Governors July 2001