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Learning to Trust: Thoughts from a Law Clinic

The State Bar Legal Education Committee is now the Legal Education and Professional Standards Committee. This marriage seems an apt occasion to raise, through the prism of students, the issue of trust in client relations, though not in the traditional sense of “getting the client to trust me.” Rather, the more ignored “getting me to trust the client” is the focus.

A recent case litigated by students in a clinic here at the University of Michigan Law School brought the importance of this topic front and center. The students filed suit against the Department of Corrections to establish our client’s legal right to a life-saving medical procedure. The client’s continued medical eligibility for the procedure depended on his remaining drug free. Just one failed random drug test would make him medically ineligible, moot the case, and significantly hasten his death.

The case was becoming endless, and, with each passing day, our client more sick and despondent. Then one gray morning we received word that he had tested positive for marijuana. He quickly lost his medical eligibility for treatment. All seemed lost, except to the client. He claimed he was clean, that he hadn’t, in a moment of despondency, reverted to the behaviors that put him behind bars for the last 19 years. Given his history, his documented use of drugs several years before, and where he was, to us his “slipping” seemed logical if not inevitable. Then there was a written statement from a guard saying the sample was “without doubt” the client’s. The students and I didn’t believe our client—me, regrettably, most of all.

Despite all the reassurances we gave him, he knew we had lost faith in him, and he, consequently, lost all faith in us. Only at his repeated insistence did we learn that it might be possible to obtain the “positive” sample for

DNA testing. We saw it as a desperate, complicated, and expensive no-chance last gasp option. We couldn’t have been more wrong. The test exonerated him. His medical eligibility and his chance of living were restored.

Trust grows between people, and the more mutual trust there is, the more effective an advocate one can be.

The reasons for putting trust in a client are less obvious than those for getting a client to trust us, but they are there and are, in one important sense, the same. The confidentiality protections of MRPC 1.6(b) are designed to facilitate full and frank lawyer-client communication “even as to embarrassing and legally damaging subject matter.”¹ The primary goal is the “full development of facts essential to proper representation . . .”² When clients trust us—when they feel that we hear and truly appreciate their circumstances and trust in what they have said—their stories are more full and complete and we communicate better.³ Our jobs are easier, we are better advocates, and our clients are more likely to return with their next problem irrespective of the outcome of the present one.

Trust, however, is a two-way street. Showing our trust in a client will help her trust in us. And clients are not disposed to trusting

us. Apart from our suffering public image, we are often strangers to our clients, with differing backgrounds and experiences. Difficult circumstances force them to us. We’re disposed to look at the law as “necessary and functional,” they often see it as “oppressive [and] intrusive.”⁴ Clients evaluate us:

*Does the counselor measure up to his reputation? Whom or what does he look like? What role does he assume? Does he seem friendly? Able to produce communication? Empathy? *** Show sensitivity to tension or unstated problems or feelings?⁵*

Simply put, a warm handshake, a law degree, and the confidentiality protections of MRPC 1.6(b) usually aren’t enough for a client to trust us. Showing our trust in them can help tip the scales.

There are numerous barriers to trusting clients. They are most often strangers to us. Race, age, ethnicity, and education, for example, can conjure stereotypes that clients must, in varying degrees, work against.⁶ Power issues are at play in the relationship. We see possible motives for the client to be less than candid. (Is he hiding his guilt? Is the executive protecting her company? Is the accountant protecting her job? Is the divorce client hiding his assets?) And the more legal and life experience we have, the more jaded we tend to be. (Witness the grandeur of my disbelief of our client as compared to my students.)

We also know the law, and it shapes how and what we listen for, and thus what we hear, what we think is important, and what, in some sense, is true. And then there is our time and prioritizing it. The sum of all these things is that we can, and sometimes do, not trust, at least not as much as we otherwise might, but for the fact that the other person is a client.

Learning to trust our clients more requires thinking about it more, before we interact with a client, and then again after.

All columns are the opinion of the writer and do not represent the position of the Legal Education Committee or the State Bar of Michigan.

Most law school clinics teach this reflective approach in the context of client relations (and most other things). Students are also encouraged to start with the simple things, to forgo a “lawyer’s airs” and relate in a more human sense. Each semester we put students through several mock client situations, and observe them in many more with real clients in courthouse hallways and our interview rooms. Students quite often don’t show the simple courtesies and empathic responses they share with even their most casual acquaintances. Students, of course, are not the only ones guilty of this.

Empathy is particularly important in building mutual trust.

[I]n its most fundamental sense... [empathy] involves understanding the experiences, behaviors, and feelings of others as they experience them. It means that [lawyers] must, to the best of their abilities, put aside their own biases, prejudices, and points of view in order to understand as clearly as possible the points of view of their clients.⁷

This approach heightens our understanding of our clients, their motivations, and how they got there. We get a better sense, overall, of the person, and a better foundation to trust them. They, too, will have a better sense of us, a more solid footing on which to place their trust.

The way we listen is a critical part of this. It can be difficult to resist steering the conversation too sharply, prioritizing what we believe is important to the client, speaking, perhaps, when we should be listening. It can be difficult to empathize without being paternal or patronizing. It can be difficult not to rush our clients or ourselves.

There are, of course, varying degrees of trust. A healthy dose of skepticism can be a good and necessary thing; it’s just not the place to start from. Trust grows *between* people, and the more *mutual* trust there is, the more effective an advocate one can be. And so while we can’t trust everybody, we should try harder with our clients. ♦



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FOOTNOTES

1. MRPC 16 cmt. (2002).
2. *Id.*
3. See Bastress and Harbaugh, *Interviewing, Counseling and Negotiating: Skills for Effective Representation*, at 188 (1990).
4. Shaffer and Elkins, *Legal Interviewing and Counseling*, at 63 (1997).
5. Freeman and Weihofen, *Clinical Law Training*, at 9 (1972).
6. See generally, Michelle Jacobs, *People from the Footnotes: The Missing Element in Client-centered Counseling*, 27 *Golden Gate U L Rev* 345 (Spring 1997).
7. Binder, Bergman and Price, *Lawyers as Counselors*, at 40 (citations omitted) (1991).