EFFECTIVENESS REQUIRES LISTENING:
HOW TO ASSESS AND IMPROVE LISTENING SKILLS

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I. INTRODUCTION

Listening skills are critically important for effectiveness in both law school and the practice of law and yet are among the least emphasized skills in legal education.1 Empirical research on how clients and senior lawyers define effectiveness in the practice of law emphasizes the importance of listening skills.2 In addition, a 2003 Law School Admission Council (LSAC) study found that listening was one of the most important skills for success in law school.3 These empirical data point to the exceptional opportunity for students and practicing lawyers to use strong listening skills to create a competitive advantage in terms of both academic performance and strong client relationships.4

Empirical research also demonstrates that for the average person approximately 70% of our day is spent communicating.5 “Of that time,

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1 See Ann Juergens & Angela McCaffrey, Roleplays as Rehearsals for “Doing the Right Thing”—Adding Practice in Professional Values to Moldovan and United States Legal Education, 28 WASH. U. J.L. & POL’Y 141, 169 (2008) (arguing that listening is an important skill to develop in the first year of law school).

2 See infra Part II.

3 STEPHEN W. LUEBKE ET AL., LAW SCH. ADMISSION COUNCIL, FINAL REPORT: LSAC SKILLS ANALYSIS LAW SCHOOL TASK SURVEY 1 (2003), available at http://www.lsac.org/LsacResources/Research/CT/CT-02-02.pdf (showing that law student and law school faculty respondents ranked analyzing cases or legal problems as most important, with listening in the next tier of importance together with problem solving, reasoning, writing, managing time, and constructing arguments).

4 See id. at 41 (noting that listening is important in upper-level classes that are “aimed at legal practice skills”).

9 percent is spent writing, 16 percent reading, 30 percent talking, and 42 percent to 57 percent listening.” Moreover, “[p]rofessionals typically spend 80 percent of their workday communicating; yet . . . most people listen with about 25 percent efficiency.” So, approximately one-half of our time is spent listening at about one-quarter efficiency.

While there is no question about the importance of listening skills, legal education and continuing legal education give little attention to the development of these skills. We can do much better. How can we most effectively foster the listening skills of students and practicing lawyers? One initial hurdle is that the scholarly literature addressing this question is thin and based principally on anecdotal evidence. We do, however, have some empirical evidence on listening and effective pedagogies to improve listening that can guide legal educators. Given the existing data, this Article suggests some specific listening exercises that should be effective. Part II presents empirical research that indicates the vital nature of communication skills, including listening skills, for success in client relationships and effective lawyering. Part III offers an overview of the status of the instruction of listening skills in the legal curriculum. Part IV summarizes two approaches to listening: active listening and passive listening. Finally, Part V provides exercises and activities that law students and lawyers (and other professionals) may employ to improve listening skills.

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6 Id.
8 See Josephine Romano, Coach’s Corner, VT. B.J., Winter 2005-2006, at 51, (noting that listening is not given enough focus in practice or in law school).
9 See Juergens & McCaffrey, supra note 1, at 162-63 (noting that teaching law in Moldova and a number of anecdotal articles reinforced the authors’ beliefs that more teaching of skills, including listening and professionalism, needs to occur in the United States).
10 See infra Part II.
11 See infra Part III.B.
12 See infra Part II.
13 See infra Part III.
14 See infra Part IV.
15 See infra Part V.
II. LISTENING AND RELATIONSHIPS IN THE LEGAL PROFESSION

Client-development consultants have long emphasized that good listening is critical to building client trust and confidence in the lawyer.16 Clients want respect, empathy, and problem solving from their lawyers, and good listening is a necessary component of all of these virtues and dispositions.17 The leadership and management literature also emphasizes the importance of good listening in building strong relationships with customers and effective teams to provide services.18

Empirical research also indicates that people whom others perceive as the most effective individuals have strong listening skills.19 Kerry Patterson and his colleagues asked over 20,000 people to identify the most influential individuals in their organizations who could really get things done.20 Patterson discovered that the most influential individuals had a common ability to encourage others to talk openly about high-stakes, controversial, and emotional topics.21 These individuals found a way to get all the relevant information from others and themselves out in the open.22 Patterson notes, “At the core of every successful conversation lies the free flow of relevant information. People openly and honestly express their opinions, share their feelings, and articulate their theories[,] and] . . . [i]t’s the one thing . . . the other extremely effective communicators we studied were routinely able to achieve.”23

Effective listening skills foster attorney-client relationships characterized by trust and cooperation that are beneficial for both parties.24

16 See David H. Maister et al., The Trusted Advisor 86-87, 97-98 (2000).
17 Id. at 98.
19 See Kerry Patterson et al., Crucial Conversations: Tools for Talking When the Stakes Are High 17-21 (2002) (showing how business people are able to use effective communication to gain influence).
20 Id.
21 Id. at 20.
22 Id.
23 Id.
24 See Marcus T. Boccaccini et al., Client-Relations Skills in Effective Lawyering: Attitudes of Criminal Defense Attorneys and Experienced Clients, 26 Law & Psychol. Rev. 97, 97-98 (2002).
Clients “tend to be more open and cooperative with [an] attorney[ ]” they trust, and this makes the attorney’s work more efficient and effective.\textsuperscript{25} When a client views an attorney as engaged, empathetic, and trustworthy, the client is more likely to be satisfied with the ultimate outcome of the case.\textsuperscript{26}

Good listening also allows the lawyer to diagnose and to solve more effectively the client’s problem.\textsuperscript{27} Through effective listening, the lawyer is able to understand the client’s expressed ideas and the underlying emotions from the client’s point of view, allowing the lawyer to obtain better information about the principal emotions and “psychological needs that may be driving a client’s conduct.”\textsuperscript{28} Effective listening also leads the lawyer to a more accurate understanding of the basic facts from the client’s perspective.\textsuperscript{29} Understanding the client’s emotional and factual perspective will benefit the attorney who, in the end, will be advocating for the client to solve problems based on this information, reducing risk for both.\textsuperscript{30}

Empirical studies provide strong support for the importance of listening and seeing things through the eyes of others, or empathizing, in order to be effective in the practice of law.\textsuperscript{31} In 2008, Professors Marjorie Shultz and Sheldon Zedeck at the University of California, Berkeley published a study based on interviews and focus groups of hundreds of attorneys and surveys of more than 2000 attorneys that emphasized the importance of relationship skills to the practice of law.\textsuperscript{32}

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\textsuperscript{25} Id. at 97.
\textsuperscript{26} Id.
\textsuperscript{27} Hamilton, supra note 7.
\textsuperscript{28} Id.
\textsuperscript{29} See id.
\textsuperscript{30} See id.
\textsuperscript{31} See infra notes 34-82 and accompanying text (describing a number of empirical studies).
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Shultz and Zedeck asked respondents, "If you were looking for a lawyer for an important matter for yourself, what qualities would you most look for?" From the results, they identified twenty-six factors of effectiveness separated into eight umbrella categories.

In the first grouping, Shultz and Zedeck noted that intellectual and cognitive skills are fundamental for effective lawyering. Respondents acknowledged that skills, such as legal analysis, reasoning, and problem solving, are also fundamental to successful lawyering. These skills mirrored the findings of Educating Lawyers, the Carnegie Foundation’s extensive 2007 study on legal education.

Respondents highlighted legal research and fact-finding skills in a second grouping. Shultz and Zedeck found that effective attorneys should possess particular skills in researching the law, fact finding, questioning, and interviewing. Questioning and interviewing clients, witnesses, and adverse parties requires communication skills, including listening. For example, in an interview situation, an attorney must listen acutely to identify important facts and previously unknown details.

In the third category, Shultz and Zedeck grouped communication skills as essential attributes of effective lawyers. Respondents placed importance on persuasive communication skills such as influencing, writing, and speaking. Furthermore, respondents specifically identified a lawyer’s ability to listen as one of the desired attributes of an attorney. Listening also has secondary benefits as it relates to other

33 Shultz & Zedeck, supra note 32, at 25.
34 Id.
35 Id. at 26.
36 Id.
39 Id.
41 See id. at 31.
43 Id.
44 Id.
attributes and skills, such as an attorney’s ability to understand adversaries and influence others.45 Through careful and effective listening, an attorney is able to ascertain what is important to the decisionmaker or to an adversary in a negotiation.46 Listening and recognizing these priorities allows the attorney to advocate, negotiate, and solve problems for a client.47

Shultz and Zedeck’s fourth group contains planning and organizing skills, including managing one’s own work and the work of others, and the fifth group comprises conflict-resolution skills.48 Respondents particularly emphasized an attorney’s ability to negotiate and to see the world through the eyes of others in resolving conflicts.49 Similarly, clients desire an observant and independent counselor to listen effectively to help resolve their problems.50 In order for an attorney to be able to see “the world through the eyes of others,” he or she must be able to form relationships with other individuals, including clients and decisionmakers, and understand their perspectives.51 An attorney will not be able to relate effectively to others in resolving conflicts without the capacity to listen for perspective and emotion.52 By improving listening skills, attorneys will be able to relate more closely, not only to their clients, but also to professional colleagues on the team serving the client, their adversaries, and decisionmakers.53 Ultimately, this will benefit both the attorney and the client in the pursuit of a desired resolution of the issues.54

46 See id.
47 See id.
49 Id.
50 See Hamilton & Jones, supra note 32.
52 Hamilton & Pieper, supra note 45, at 8.
53 See id. (noting the importance of building strong relationships and showing how listening can help achieve that goal).
54 Id.
The empathy involved in seeing "the world through the eyes of others" is a necessary component of effective listening.55 While listening can be defined as a technical ability to hear and remember what a speaker is saying, effective listening requires, not only technical proficiency, but also an empathetic ability to connect with the speaker.56 Definitions of empathy vary, but it is commonly recognized as an ability to feel a response to a situation that is appropriate for the other person and to put aside personal biases.57 "Empathic listening" requires the listener to forgo his or her egotistical involvement in the conversation and to get involved with the feelings of the speaker.58 An overly analytical attitude on the part of the listener can prevent "empathic listening" that focuses on the feelings of the speaker.59 Furthermore, a recent study suggests that students coming out of undergraduate work may need more help developing and fostering an ability to empathize.60

Empathy, a necessary component of effective listening, has been identified empirically as a factor that is correlated with positive patient outcomes in the health professions.61 Empirical evidence from the medical profession shows that empathy is associated with improvements in diagnostic accuracy, patient satisfaction, and patient follow-through on prescribed treatment plans.62 Physician empathy is also associated with decreased patient litigation.63 It seems reasonable that a similar correlation would exist in the legal profession.64

In Shultz and Zedeck's sixth category, respondents wanted their lawyers to be able to develop strong relationships.65 The study reported

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55 See infra notes 56-64 and accompanying text.
56 See Hamilton & Pieper, supra note 45, at 8.
57 Hamilton & Monson, supra note 51, at 146.
58 Tom Bruneau, Empathy and Listening, in Perspectives on Listening 185, 195 (Andrew D. Wolvin & Carolyn Gwynn Coakley eds., 1993).
59 Id. at 196.
60 Alan Mozes, Today's College Students More Likely to Lack Empathy, BloombergBusinessweek (May 28, 2010), http://www.businessweek.com/lifestyle/content/healthday/639533.html.
61 Hamilton & Monson, supra note 51, at 168.
62 Id.
63 Id.
64 See id.
65 Shultz & Zedeck, supra note 32, at 27.
that effective lawyers were those who could build relationships with clients that would lead to client referrals and new business.\(^{66}\) The improvement of relationships, however, does not end with clients.\(^{67}\) Study respondents, in a seventh category of working-with-others skills, also felt that lawyer effectiveness was fueled by the development of relationships with colleagues, professional staff, decisionmakers, and others, including "mentor relationships with [the] next generation of legal professionals."\(^{68}\) Each of these relationships presents an opportunity for an attorney to increase his or her effectiveness for clients, for example, by building an effective team to serve the client, while simultaneously developing and strengthening prospective business.\(^{69}\) Effective-listening skills contribute significantly to an attorney's ability to create solid relationships.\(^{70}\)

The eighth and final umbrella category that Shultz and Zedeck identified as indicative of effective lawyers was character.\(^{71}\) Respondents acknowledged the importance of specific character traits such as integrity and diligence.\(^{72}\) Character provides the foundation for the formation of trust in the attorney-client relationship in that the client must believe that the attorney is trustworthy and worth the client's honesty.\(^{73}\) The foundation for character is self-awareness or self-knowledge.\(^{74}\) Individuals must know themselves to live consistently with their primary ethical principles.\(^{75}\) Self-knowledge contributes awareness of personal bias and empathy, which is a foundation for effective listening.\(^{76}\)

A 1999 study of 103 Alabama inmates and 252 criminal defense attorneys asked clients and attorneys to rank the importance of six technical-legal skills and seven client-relationship skills, including listen-

\(^{66}\) Id.
\(^{67}\) Id.
\(^{68}\) Hamilton & Jones, supra note 32; Shultz & Zedeck, supra note 32, at 27.
\(^{69}\) Hamilton & Jones, supra note 32.
\(^{70}\) See id.
\(^{71}\) Shultz & Zedeck, supra note 32, at 27.
\(^{72}\) Id.
\(^{73}\) Maister et al., supra note 16, at 85-87.
\(^{74}\) See Hamilton & Monson, supra note 51, at 158-59 (noting that professional identity provides an ethical foundation).
\(^{75}\) Id.
\(^{76}\) See supra notes 55-60 and accompanying text.
ing. Both clients and attorneys ranked listening among the thirteen skills as an important skill (seventh for clients and third for attorneys). Finally, a 2006 study conducted by the National Association for Law Placement (NALP) Foundation emphasized the importance of relationships in the practice of law. In its survey, the NALP found that both associates and managing partners ranked quality of work, client relationships, and billable hours to be the most important evaluation criteria. However, partners placed significantly more importance than associates, not only on client relationships, but also on relationships with other attorneys and support staff. Emphasizing and listening are foundational skills for building good relationships.

III. Legal Education and Listening Skills

The required law school classroom curriculum, which at most law schools is the first-year curriculum, continues to emphasize cognitive-analytical skills with virtually no attention to relationship and communication skills such as listening, counseling clients, or interviewing, which are essential to effectiveness in the practice of law. Some law

77 Boccaccini et al., supra note 24, at 109-10.
78 Id. at 119.
80 Id.
81 Id.
82 See Hamilton & Pieper, supra note 45.
84 See, e.g., SULLIVAN ET AL., supra note 37, at 174 (including communication in a list of skills that “characterize the day-to-day practice of law”); Victor & Victor, supra note 83, at 285, 287-88 (“An attorney is only as effective as his or her ability to communicate.”); Rosenberg, supra note 83, at 1228 (noting that relationship skills are essential to the ability to achieve success).
students do take clinic or skills courses that foster these relationship and communication skills. However, the unfortunate fact is that a substantial proportion of law students do not take any of these courses. For example, 68% of current law students have never participated in a clinical course for academic credit. The result is that many students who do not take clinical or skills-based electives become attorneys who have had little, if any, engagement on relationship and communication skills, like listening, in law school. For example, a major survey of Minnesota lawyers from 1997 to 1999 found that only 13% of respondents felt that law school prepared attorneys to obtain and retain clients. Similarly, a 1991 ABA study found that less than 1% of attorney-respondents viewed law school as the source for learning how to obtain and keep clients.

One challenge in integrating a focus on improving listening skills into the traditional law school curriculum, particularly the required curriculum, is that it can be difficult to ascertain what “listening skills” are. A failure to break down competence in a skill into component parts can create confusion both for teachers, who need clear objectives and assessment tools, and students, who need clear direction, thus making it more difficult to integrate the skills into a curriculum.

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85 See infra note 86 and accompanying text.
87 See, e.g., Victor & Victor, supra note 83, at 287; Rosenberg, supra note 83, at 1226.
91 See Molly Cooke et al., Educating Physicians: A Call for Reform of Medical School and Residency 106 (2010). A common assessment loop for educational programs involves determining students’ needs, setting specific
Some attempts have been made to disaggregate listening into these component skills.\textsuperscript{92} Since listening is one of the skills most important for success in law school,\textsuperscript{93} a 2003 LSAC research report by Ken Olson tried to define a tentative set of specifications for a listening test.\textsuperscript{94} Olson found that “there is no generally accepted definition of listening.”\textsuperscript{95} He focused on identifying listening skills important to success in an academic context, where “emotional content is generally less important . . . than it is in other social interactions.”\textsuperscript{96} Olson proposed assessing the following skills as part of the listening process important for law school success: “recalling information,” “[i]dentifying the main point of a discourse,” “[i]dentifying the argumentative or rhetorical structure of a discourse,” “[i]dentifying points of agreement or disagreement,” “[i]dentifying a turning point,” “[d]rawing inferences from facts presented,” “extending content” (“an application of material . . . to a situation not discussed”), “evaluating arguments,” “[d]rawing inferences about a speaker,” “[i]dentifying an underlying dynamic,” “[r]eplying to a question posed by a speaker,” and “[i]dentifying an appropriate response to a speaker.”\textsuperscript{97} While these skills omit aspects of listening, such as showing empathy and creating a strong trust relationship with the speaker, they provide some insight for envisioning the practice and assessment of listening skills necessary for academic success.\textsuperscript{98}

The literature on listening focuses largely on two specific methodologies, active and passive listening, that emphasize the emotional content of communication, including showing empathy.\textsuperscript{99} The next sec-

\textsuperscript{92} See infra note 94-97 and accompanying text.
\textsuperscript{93} LUEBKE ET AL., supra note 3, at 1.
\textsuperscript{94} OLSON, supra note 90, at 2-3.
\textsuperscript{95} Id. at 1.
\textsuperscript{96} Id. at 3.
\textsuperscript{97} Id. at 18-20.
\textsuperscript{98} Id.
\textsuperscript{99} See infra Part IV.
tion explores the literature on active and passive listening methodologies.

IV. LISTENING METHODOLOGIES

A. Active Listening

One definition of active listening involves identifying a client’s vaguely or inarticulately stated observations and feelings and reflecting them back to the client to show understanding or to allow the client to correct a misunderstanding. This requires acknowledging the substance of the client’s statements as well as empathizing with the client’s feelings. If the lawyer’s identification of the client’s statement and feelings is correct, the client should proceed, allowing the lawyer to procure greater detail and information from the client. However, if the lawyer’s assessment is incorrect, the client is likely to be appreciative of the lawyer’s attempt to understand a difficult situation. More important, if the interpreted information is wrong, the client will have an opportunity to correct the attorney.

However, active, engaged listening should be distinguished from excessively critiquing the speaker. While engaged in active listening, the listener may easily become overly critical and preoccupied by think-

100 See, e.g., David A. Binder et al., Lawyers as Counselors: A Client-Centered Approach 48 (2d ed. 2004); Elizabeth A. Reilly, Deposing the “Tyranny of Extroverts”: Collaborative Learning in the Traditional Classroom Format, 50 J. Legal Educ. 593, 607 (2000) (defining listening by focusing on the actions of the speaker, such as “listening carefully and critically, paraphrasing others (especially if unclear about the meaning of what is being said), including the ideas of others when speaking, requesting and giving explanations when needed, listening with mutual respect, giving feedback, and asking questions to develop information and ideas”); see also Andrea A. Curcio, Assessing Differently and Using Empirical Studies to see if it Makes a Difference: Can Law Schools do it Better?, 27 Quinnipiac L. Rev. 899, 914 (2009) (establishing that listening skills include allowing the speaker to finish before responding and clarifying the speaker’s point by summarizing or restating it).
101 Binder et al., supra note 100, at 48; Gerald A. Riskin, The Successful Lawyer: Powerful Strategies for Transforming Your Practice 51 (2005).
102 See Riskin, supra note 101, at 53.
103 See id.
104 Id.
105 Binder et al., supra note 100, at 48.
ing of the next response to probe the speaker.\textsuperscript{106} A consistently critical mindset can interfere with effective listening and have potential negative effects on the speaker.\textsuperscript{107} If the attorney is too busy formulating the next response, he or she may easily miss the message being conveyed by the client.\textsuperscript{108} By using active listening techniques, lawyers can show clients that they understand their message, a crucial component of effective listening.\textsuperscript{109}

The principle of the “Three Rs” approach (rapport, respect, and relationship) from the counseling discipline also provides a framework for active listening.\textsuperscript{110} In counseling, rapport is the ability to talk and listen in order to make the client feel understood and important.\textsuperscript{111} Respect requires “valuing the client as a person,” no matter how apparently ludicrous or seemingly irrelevant the client’s thoughts, comments, or actions may be.\textsuperscript{112} The last principle—relationship—includes “connecting with the client as more than simply a source of income or an opportunity to further one’s” legal reputation.\textsuperscript{113}

Active listening techniques also face criticism.\textsuperscript{114} The most common criticism of the technique is that the skill feels uncomfortable to the listener.\textsuperscript{115} The process of rephrasing what someone has just said while probing for more information commonly feels foreign and unnatural to students and professionals alike.\textsuperscript{116} Unfortunately, this frustration can cause listeners to avoid active-listening skills and default to their usual habits.\textsuperscript{117} Attorneys or law students sometimes find it difficult to come up with sincere active-listening responses and are con-

\textsuperscript{106} Riskin, supra note 101, at 51.
\textsuperscript{108} Id.
\textsuperscript{109} Binder et al., supra note 100, at 48.
\textsuperscript{110} R. Hal Ritter, Jr. & Patricia A. Wilson, Developing the Fine Art of Listening, 64 Tex. B.J. 897, 898 (2001).
\textsuperscript{111} Id.
\textsuperscript{112} Id.
\textsuperscript{113} Id.
\textsuperscript{114} Id. at 899.
\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} See infra notes 118-21 and accompanying text.
cerned that perceived insincerity will cause the client to question the attorney’s credibility.118 While these responses may be awkward or even feel insincere at first, a sincere attempt to understand the client, no matter how awkward, is usually appreciated.119 The client will be reassured to know that the attorney was listening and attempting to understand the client’s problem.120 Practice should help develop these skills.121

An attorney’s nonverbal behaviors are also essential components of active listening.122 For example, facing a speaker squarely and maintaining eye contact are behaviors that can communicate the listener’s attention and understanding.123 Nods, facial expressions, and posture can further demonstrate understanding and presence in the conversation.124 A listener should also avoid excessive note taking and move out from behind significant physical barriers like desks to establish a connection with a speaker.125 Finally, avoiding phone calls and text messaging while engaged in a conversation is important to communicate a feeling of respect for a speaker.126 The nonverbal communication of the speaker also gives the listener important information about the emotions the speaker conveys by body language, eye contact, facial expression, and tone of voice.127

B. Passive Listening

Passive listening is another methodology for understanding listening.128 There are three skills of effective passive listening.129 First,
the attorney should place an emphasis on silence in conversations.\(^{130}\) "[A] brief but definite pause in a conversation" can be an effective tool, allowing the client to collect his or her thoughts and then provide information in a more comfortable fashion.\(^{131}\) The failure to allow periodic silence can interrupt a client’s stream of association and make the client feel cut off, hurried, or pressured.\(^{132}\) Effective lawyers will often pause and allow the client to reflect before continuing with their dialogue.\(^{133}\)

The second key to passive listening is the use of "minimal prompts."\(^{134}\) While silence can make some clients and lawyers uncomfortable, "minimal prompts” can let the client know that the lawyer is listening and understands what is being said.\(^{135}\) Some examples of "minimal prompts” are, “oh, I see,” “mm-hmmm,” “interesting,” and “really.”\(^{136}\) These responses are considered noncommittal because they acknowledge that the lawyer is listening but do not indicate how the lawyer might be evaluating or critiquing the client's information.\(^{137}\) Each of these phrases acknowledges the speaker's dialogue and encourages the conversation to proceed.\(^{138}\) By providing neutral responses, the lawyer can maintain a comfortable environment in which the client will be forthcoming with information.\(^{139}\)

The final passive-listening technique is the use of open-ended questions.\(^{140}\) Open-ended questions can be particularly effective when combined with silence.\(^{141}\) Silence allows both the speaker and listener to reflect on the conversation and to formulate a response.\(^{142}\) A long

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\(^{130}\) *Id.* at 45-46.


\(^{132}\) See Binder et al., *supra* note 100, at 45-46; Hamilton & Piper, *supra* note 45.

\(^{133}\) See Binder et al., *supra* note 100, at 45.

\(^{134}\) *Id.* at 46-47 (quoting Gerard Egan, The Skilled Helper 114-15 (7th ed. 2002)).

\(^{135}\) *Id.* at 47.

\(^{136}\) *Id.* at 46.

\(^{137}\) *Id.* at 47.

\(^{138}\) *Id.*

\(^{139}\) See *id.* at 46 (describing how clients “clam up” and feel anxious in the absence of an audible reassurance that the attorney has heard what the client said).

\(^{140}\) *Id.* at 47.

\(^{141}\) See Hamilton & Pieper, *supra* note 45 at 8 (“Conversation punctuated with silence builds rapport and respect . . . ”).

\(^{142}\) See *id.*
pause by the client can indicate that the client has finished a particular topic, and an open-ended question permits the client to respond in a narrative manner. Moreover, open-ended questions allow a lawyer to avoid simple yes or no responses from the client and obtain more thorough information. Open-ended questions can also be an effective technique for an attorney to shift the direction of a conversation. This allows the attorney to obtain new information on a separate, important issue. Finally, these techniques give clients the space to “freely communicate their thoughts and feelings.” The techniques do not, however, communicate that the lawyer truly understands or accepts the client’s message. It is the attorney’s responsibility to combine passive-listening techniques with active-listening techniques to accurately understand a client’s statements and to communicate that understanding.

V. SUGGESTED EXERCISES TO DEVELOP LISTENING SKILLS

The literature on listening offers only a few specific suggestions for techniques and exercises for the traditional law school classroom or for clinics and simulation courses to develop listening skills in relation to the practice of law. Weisberg and Peters suggest exercises that law professors could use to improve their listening skills in the classroom; however, the exercises lack guidance as to both classroom implementation for students and methods of assessment. The literature in other disciplines such as education, psychology, and business management provides more help. For example, there is a broader body of literature discussing the development of listening skills in elementary-school children. While business education scholarship provides sug-

143 Binder et al., supra note 100, at 47.
144 Id. at 69.
145 Id. at 47.
146 Id.
147 Id.
148 See, e.g., Weisberg & Peters, supra note 107, at 428-47 (describing four listening exercises).
149 Id.
150 See sources cited infra note 151 (listing a number of books that discuss listening in education).
151 See generally, e.g., Mary Renck Jalongo, Strategies for Developing Children’s Listening Skills (1991); Marion Nash et al., Language
gestions for what a manager should do to be a better listener generally, it lacks research backing up these practices and concrete ways to assess whether or not a student or practicing professional has implemented the strategies successfully.152

A. Criteria for Selection

What criteria are available to select the most effective listening exercises from among the few suggested in the literature? The starting point is that students in the professions need to participate as apprentices in social interactions and activities subject to feedback and self-assessment to develop the skills that constitute the professional service.153 Cognitive theory requires that sound assessment must evaluate students actually participating in or performing the skill rather than just testing doctrinal knowledge of the skill.154 Furthermore, cognitive theorists suggest modeling, coaching, and scaffolding to foster such skills.155 Modeling of listening techniques makes effective practices visible to students.156 A student then tries the skill with another person (preferably with a professor or exemplary lawyer, but it could also be with another student), coaching the student listener through feedback and assessment, followed by an opportunity for reflection.157 Scaffolding identifies the components of effective listening on which a student needs more work and then provides practice and support for the student

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153 Cooke et al., supra note 91, at 98; Sullivan et al., supra note 37, at 9; Neil Hamilton & Verna Monson, Legal Education's Ethical Challenge: Empirical Research on the Most Effective Pedagogies to Foster Each Student's Professional Formation (Professionalism), 9 U. St. Thomas L.J. (forthcoming 2012). Note that this article is on SSRN. See pages 64 and 73-74 of the SSRN article on the importance of the habit of actively seeking feedback, dialogue with others on the tough calls, and self-reflection.
154 Sullivan et al., supra note 37, at 174; Cooke et al., supra note 91, at 98.
155 Sullivan et al., supra note 37, at 61.
156 See id.
157 See id.
on those specific components. Mentoring, where senior lawyers are available to counsel students and junior lawyers, is also an important pedagogy to foster empathy and client relationship skills.

As listening requires the ability to empathize and relate authentically to a speaker, in addition to technical skills, educational psychology scholarship focusing on moral development, including the virtue of empathy, suggests a framework for evaluating methods of practicing and assessing listening skills. Based on twenty-five years of research, University of Minnesota moral psychology professor Muriel Bebeau recommends providing students with multiple assessment and self-assessment opportunities, allowing frequent occasions for students to reflect on their performance. Medical education also emphasizes that self-reflection is critical to the development of empathy.

This feedback from others and reflection are necessary additions to one’s individual efforts to improve listening skills. An intellectual understanding of listening skills or of information about listening is not sufficient alone. Improving listening skills and the underlying virtue of empathy requires repeated practice and feedback.

B. Six Possible Exercises

The six exercises below, aligning with recommendations of cognitive theorists, allow for an effective performance, feedback, and reflection loop. These exercises could be completed in a classroom

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158 Id.
160 See infra notes 161-65 and accompanying text.
162 Cooke et al., supra note 91, at 99 (highlighting “the importance of understanding professional formation . . . as ‘an ongoing, self-reflective process involving habits of thinking, feeling, and acting’”).
163 Rosenberg, supra note 83, at 1249-50.
164 Id. at 1233-34.
165 Id. at 1249.
166 See infra Part V.B.1-3.
setting. The exercises are placed into three categories: Self-Assessments, Role-Play, and Observational Activities.

1. Self-Assessments

The Self-Assessments category includes exercises that identify problems in the test taker's own listening abilities. For example, these problems could include the following:

- being too stressed by other matters;
- talking too much;
- faking attention;
- listening only for facts that fit a professional problem and tuning out other important content and emotions;
- moving quickly to criticize the speaker or 'to solve' the speaker's problem;
- avoiding difficult material; and
- letting emotions create over-stimulation or even antagonism.

The problems could also include allowing interruptions by cell phones or text messages. By performing a self-assessment exercise, students and professionals can identify areas and situations in which they may have weaker listening skills and target them for improvement. Moreover, the participant will reaffirm his or her strengths and be able to use that knowledge to improve problem solving with clients, team members, adversaries, and decisionmakers.

Example Exercise 1: Listening Strengths and Weaknesses Inventory

Please evaluate your own performance on the following behaviors using the scale below. When you are finished, have a friend, family member, or colleague who you know well evaluate you using the same assessment. If you think your listening behavior changes depending on

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167 See Hamilton, supra note 7.
168 Id.
169 Hamilton & Pieper, supra note 45, at 8.
170 See Hamilton, supra note 7.
171 See id.
context, answer the questions separately for each context and have someone who knows you well answer the questions about your behavior in that context.

**Always: 5   Frequently: 4   Sometimes: 3   Infrequently: 2   Never: 1**

<table>
<thead>
<tr>
<th>Question</th>
<th>5</th>
<th>4</th>
<th>3</th>
<th>2</th>
<th>1</th>
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</thead>
<tbody>
<tr>
<td>1. I take phone calls during conversations with others.</td>
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<td>2. I look at my cell phone (i.e., to check the time or emails) during conversations with others.</td>
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<td>3. I send text messages during conversations with others.</td>
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<td>4. I hold or schedule important and possibly personal or emotional conversations in loud or noisy places.</td>
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<td>5. I have the radio or music on during important conversations.</td>
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<td>6. I constantly take notes during conversations.</td>
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<td>7. I hold conversations from behind physical barriers (e.g., a desk in an office) rather than moving to sit closer to or next to a speaker.</td>
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<td>8. I confirm my understanding of what the speaker is communicating by paraphrasing what the speaker has said.</td>
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<td>9. I use verbal expressions, such as “okay,” “oh, I see,” “interesting,” and “really” to communicate attention and understanding.</td>
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<td>10. I use head nods and facial expressions to indicate that I am listening to a speaker.</td>
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<td>11. I establish and maintain eye contact with a speaker.</td>
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<td>12. I maintain strong posture and avoid slouching during conversations.</td>
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<td>13. I notice changes in a speaker’s volume or tone of voice or nonverbal expressions.</td>
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<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
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<tr>
<td>14. I face or sit directly across from a speaker rather than facing away or to the side.</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
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<tr>
<td>15. I observe a speaker’s posture and body language.</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
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<tr>
<td>16. I ask questions to help the speaker clarify and reflect.</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
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<tr>
<td>17. I ask if an example from my own experience illustrates the speaker’s point.</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
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<tr>
<td>18. I use pauses and silence in conversation to allow the speaker to formulate a response.</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
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<tr>
<td>19. I ask open-ended questions rather than yes and no questions to elicit more thorough responses from the speaker.</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>20. During conversation, I step back and reflect on all communication, verbal and nonverbal, to determine what is really going on.</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
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Note the item(s) for which your scores are strongest and weakest (questions 1 to 7: 1 = strongest, 5 = weakest; questions 8 to 20: 1 = weakest, 5 = strongest). Add up your scores from questions 1 to 7, and separately add up your scores for questions 8 to 20. Subtract the sum for questions 1 to 7 from the sum for questions 8 to 20. A positive score indicates overall strength in listening ability.

Based on these results, respond to the following questions in short journal format:

1. On which skills did you score the best?
2. On which skills did you score the worst?
3. On which skills did you rate yourself more highly than the person you chose to provide feedback did? Why do you think this is true?
4. How have your strengths in listening skills helped you in your interactions with others, both personal and professional?
5. Have your weaknesses in listening skills ever affected your interactions with others, both personal and professional?
6. How can you improve your weakest listening skills and continue to improve your strongest ones?

Focus on one of the items from the inventory on which you scored lowest. Focus on improving that skill over the course of two weeks. At the end of the two weeks, discuss your efforts at improvement and ability with the person who also performed the assessment for you.

The previous exercise was an inventory of a student’s active- and passive-listening skills with feedback from others who know him or her well. The next exercise is a self-assessment focused principally on the student’s preferences, attitudes, and emotions when engaged in listening, and a few questions focus on specific active or passive-listening skills.

Example Exercise 2: Listening Preference Profile & Listener Preference Interpretation

Listening Preference Profile

Think of a specific listening role or situation that you are often in. For example, you may focus on your listening at work, as a friend, as a spouse, or as a parent. (Note: You can complete the instrument more than one time, with different roles and situations in mind.) As you read the series of statements below, keep the particular listening role or situation you have chosen in mind. Circle the appropriate number on your answer sheet using the key below.

Always: 5  Frequently: 4  Sometimes: 3
Infrequently: 2  Never: 1

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172 See supra Part IV (discussing active and passive-listening skills).
173 See infra notes 173-87 and accompanying text.
1. I focus my attention on other people’s feelings when listening to them.  

2. When listening to others, I quickly notice if they are pleased or disappointed.  

3. I become involved when listening to the problems of others.  

4. I try to find common areas of interest when listening to new acquaintances.  

5. I nod my head and/or use eye contact to show interest in what others are saying.  

6. I am frustrated when others don’t present their ideas in an orderly, efficient way.  

7. When listening to others, I focus on any inconsistencies and/or errors in what’s being said.  

8. I jump ahead and/or finish thoughts of speakers.  

9. I am impatient with people who ramble on during conversations.  

10. I ask questions to help speakers get to the point more quickly.  

11. I wait until all the facts are presented before forming judgments and opinions.  

12. I prefer to listen to technical information.  

13. I prefer to hear facts and evidence so I can personally evaluate them.  

14. I like the challenge of listening to complex information.  

15. I ask questions to probe for additional information.  

16. When hurried, I let others know that I have a limited amount of time to listen.  

17. I begin a discussion by telling others how long I have to meet.  

18. I interrupt others when I feel time pressure.
19. I look at my watch or clocks in the room when I have limited time to listen to others. | 5 4 3 2 1

20. When I feel time pressure, my ability to concentrate on what others are saying suffers. | 5 4 3 2 1

| Scoring: |
| Tally the number of times you circled 4 or 5 for statements 1-5: |
| People-oriented = ______ |

| Tally the number of times you circled 4 or 5 for statements 6-10: |
| Action-oriented = ______ |

| Tally the number of times you circled 4 or 5 for statements 11-15: |
| Content-oriented = ______ |

| Tally the number of times you circled 4 or 5 for statements 16-20: |
| Time-oriented = ______ |

People-oriented listeners focus on the emotions of others and tend to be nonjudgmental. They also tend to get overly involved with others and lose an objective perspective by adopting the emotions of the speaker. Action-oriented listeners focus on the task at hand and the organizational structure of what is being said, keeping the conversation on task. However, these listeners may appear uninterested in building a relationship with the speaker and tend to jump to conclusions quickly. Content-oriented listeners focus on obtaining technical information and evaluate everything that is said to explore all aspects of the conversation. They may appear overly critical or detail-oriented, minimizing the value of irrelevant information. Time-oriented listeners value time, communicate clear deadlines with others, and get impa-

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175 Id. at 21-24.
176 Id. at 24.
177 Id. at 24-25.
178 Id. at 25-26.
179 Id.
180 Id. at 26-27.
181 Id. at 27-28.
tient with speakers who are not efficient. They tend to interrupt others and rush speakers to meet time deadlines.

Listener Preference Interpretation

You now have four scores, one for each of the four listener preferences: People, Action, Content, and Time . . . . Now identify the types of listening preferences for which you have the highest scores. These scores say a lot about your preferred style of listening.

To interpret your scores, use the following guidelines:

1. Preference strength is indicated by the number of scores in each of the listening preference types.
   4 and 5 responses: high preference
   3 response: moderate preference
   2 and 1 responses: low preference
   0 response: no preference.
2. High scores (4 or 5) in two or more types suggest multiple listening preferences.
3. Zero scores in all the types suggest potential listening avoidance.

A self-assessment exercise like this can be an appealing way for students to reflect on their individual listening styles and the significance of listening. However, self-assessment is generally subject to bias, usually in favor of the person doing the self-assessment and, additionally, awareness of a person's strengths and weaknesses as a listener does not necessarily lead the person to improve. Feedback from another person can both provide information that is more objective and encourage reflection and follow through to make the self-assessment more effective. For example, in the exercise above, a student or prac-

182 Id. at 28-29.
183 Id. at 28-29.
184 Id. at 23-24.
185 See supra note 170 and accompanying text.
187 See Rosenberg, supra note 83, at 1250.
188 See id. at 1244.
ticing lawyer could ask one or two other people who know the test taker well to assess him or her on these same questions and discuss the differences in perceptions to help the student or attorney identify a course of action to strengthen missing skills.

2. Role-Play

Role-play is a second category of exercises, and it provides students opportunities to practice listening skills as well as help students become aware of their strengths and weaknesses as a listener. Role-play also gives students experiences on which to reflect. Typically, these exercises are most effective in groups of three: two take the roles of active speakers in dialogue with the third person, who plays an observer. The participants can rotate through each role. The neutral observer provides constructive feedback on the other participants’ listening skills and can illustrate potential strengths or weaknesses the active participants might have missed while participating in the dialogue. Small group exercises are generally more effective than a lecture format if they are carefully planned and feedback is provided to participants.

**Example Exercise 3: Listening Triads**

Form groups of three people. The people in each triad should face each other and be far enough from other triads to carry on a conversation. Each triad decides on a topic for discussion such as a current event. It must be a subject all three participants want to discuss. Let participants in each triad designate themselves as [One], [Two], or [Three].

[One] begins the conversation on the selected subject with [Two]. . . . [Two] must summarize what [One] has said [before

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189 See infra notes 190-94 and accompanying text.
190 See Juergens & McCaffrey, supra note 1, at 142.
191 JOHN A. KLINE, LISTENING EFFECTIVELY: ACHIEVING HIGH STANDARDS IN COMMUNICATION 64-65 (2003).
192 Id.
193 Id.
194 COOKE ET AL., supra note 91, at 93.
195 This exercise is largely adopted from KLINE, supra note 190, at 64-65.
Two can respond. After [Two] has finished [responding], [One] must summarize what [Two] has said. The conversation continues this way for 5 to 10 minutes. . . . [Three] must keep silent except to intercede if either [One] or [Two] do not follow the rules or do an inaccurate job of summarizing what the other person has said.

After 5 to 10 minutes, change roles. [Two] initiates a conversation with [Three]; [One] keeps silent except to intercede if necessary. . . . [s]witch roles [a third time, now with Three] initiating [the] conversation with [One and Two staying] silent unless intercession is necessary.

Have each group of three then discuss the following questions:

1. Did you have difficulty listening to the other person?
2. Did you have difficulty formulating what to say and also listening?
3. Was it difficult not to participate in the conversation when you were in the intercessory role?
4. What would it be like if you always had to summarize [your understanding of what the other person said] before you could speak? In what ways would it help communication and listening? In what ways would it be a hindrance?
5. What other active or passive-listening skills were useful?
6. Which active or passive-listening skills not used might have been useful?

If this is a class setting, select one person from each group to share the triad’s answers and reactions with the rest of the class or a larger group.

Example Exercise 4: Emphatic Listening Practice

Have students work in pairs as a speaker and a listener to discuss a topic. Ask the listener to alternate between summarizing the content the speaker shared and assessing the perceived feelings of the

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196 See Bruneau, supra note 58, at 197.
197 See id. at 198.
speaker while expressing the information.198 After the speaker completes the topic, the listener debriefs the content and perceived feelings and gets the speaker’s reaction to the listener’s perceptions.199 This is known as “empathic code switching.”200 An alternative method is to have students assess both thoughts and feelings of speakers at determined intervals during live or taped presentations and debriefing the assessments with the speaker or the instructor.201 The success of these activities depends on the participants’ genuine willingness to contribute and partake in the exercises.202 Some students may experience some anxiety or reservation toward role-playing.203 Participants in these situations tend to be apprehensive and withdrawn due to an increased self-consciousness and fear of embarrassment.204 Additionally, without a system of assessment that holds students accountable and provides feedback on their listening skills, students may disengage from the activity.205 For these exercises to be successful, the instructor must foster an environment in which students can participate openly without fear of humiliation, and students should receive concrete feedback as to whether or not their listening skills are improving.206 Moreover, students should be reassessed at various points throughout the course, allowing them to be actively engaged in a progressive-feedback process over a period of time.207

Another approach to providing feedback in a role-play situation is the use of “standardized clients.”208 This technique is borrowed from medical education, in which “standardized patients” are used to assess

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198 Id. at 197.
199 Id.
200 Id.
201 Id.
203 Id.
204 See id.
205 See Curcio, supra note 100, at 903.
206 See Bowyer, supra note 202, at 384 (giving advice on how to structure role-playing in law school courses).
207 COOKE ET AL., supra note 91, at 67-68.
208 See infra notes 209-22 and accompanying text.
the development of professional skills in future physicians. An inter-disciplinary team from the Glasgow Graduate School of Law (GGSL) and the Dundee Medical School, both in Scotland, and the Georgia State University College of Law developed standardized-assessment techniques to provide research-validated assessment of law students’ lawyer-client communication skills through role-playing interviews. Beginning with the 2006-2007 academic year, GGSL adopted this approach for its mandatory-interview assessment. The assessment involves mock initial-client interviews between the law student and a “standardized client.” In this study, the “standardized clients” were a group of fifteen, mainly retired individuals with backgrounds in education and connections to GGSL. Law professors created factual scenarios and identified key legal issues that were distributed to the “standardized clients” to learn. This learning process involved careful analysis of a script, discussion regarding the clients’ factual and emotional concerns and situations, and practice role-playing that other “standardized clients” observed. The clients were also trained in assessing the students’ abilities in a variety of competencies, including listening. Below is the assessment tool used by the “standardized clients” to assess the students’ abilities.

Client Interviewing Assessment Marking Sheet:

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<tbody>
<tr>
<td>1. The greeting and introduction by the student lawyer was appropriate.</td>
<td>5</td>
<td>4</td>
<td>3</td>
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<td>1</td>
</tr>
<tr>
<td>2. I felt the student lawyer listened to me.</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>3. The student lawyer’s approach to questioning was helpful.</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
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Id. at 1-2.

Id. at 50.

Id. at 3.

Id. at 30.

Id. at 5.

Id. at 31.

Id. at 5.

Id. at 60.
4. The student lawyer accurately summarized my situation. 5 4 3 2 1
5. I understood what the student lawyer was saying. 5 4 3 2 1
6. I felt comfortable with the student lawyer. 5 4 3 2 1
7. I would feel confident with the student lawyer dealing with my situation. 5 4 3 2 1
8. If I had a new legal problem I would come back to this student lawyer. 5 4 3 2 1

Professors distributed a criteria chart to each of the “standardized clients” assessing the students that further specified the scale of 1 to 5 for each skill.218 For our purposes, the assessment criteria for number 2, listening, is included below:

**I felt the student lawyer listened to me.**219

This item is designed to assess the degree to which the lawyer can listen carefully to you. This entails *active* listening—where it is necessary for the interview structure or the lawyer’s understanding of your narrative, the lawyer will restate or feed back elements of the story to you; the lawyer will not interrupt, cut you off, talk over you or rush you in conversation. The lawyer will take notes where appropriate without losing much eye contact with you . . . .

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218 *Id.*
219 *Id.* at 61.
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<tr>
<td>Lawyer prevents you from talking by interrupting, cutting off, talking over, rushing you. [Takes few notes, or spends most of the interview head-down, collecting; little or no restatement or feedback to you.</td>
<td>Lawyer limits your opportunity to talk by interrupting, cutting you off, etc. You are [given time] to answer specific questions but are not allowed to expand on topics. Little or no restatement back to you; few notes or rarely looks at you.</td>
<td>Lawyer rarely interrupts or cuts off or rushes you. Little restatement, but you are [given time] to tell [your] story to some extent; [lawyer is] more interested in [taking] notes than in eye-contact with you.</td>
<td>Where lawyer interrupts, it is because you are wandering in your narrative. Lawyer restates your narrative to check understanding or where otherwise appropriate. Lawyer does not provide opportunities for you to lead the discussion where appropriate. [Lawyer takes notes.]</td>
<td>Lawyer gives you the opportunity to lead the discussion where appropriate. Lawyer uses silence and other non-verbal [prompts to allow you to expand]. Lawyer restates or feeds back [information to check understanding]. Ample notes taken and used where appropriate in the interview.</td>
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These criteria break down the elements of “listening” to manageable components and provide a structure through which students can improve their listening in a concrete way. 220 This “standardized client” exercise could be adapted to focus even more specifically on listening skills by including more specific learning outcomes 221 regarding the student lawyer’s listening than “I felt the student lawyer listened to me.” 222

3. Observational Activities

The final exercises are Observational Activities, collectively. 223 These exercises require observation of real-life situations, followed by a debriefing of the observations and critical reflection. 224

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220 See id.
221 See id. at 53.
222 Id. at 60.
223 See infra notes 229-37 and accompanying text.
224 Sullivan et al., supra note 37, at 9-10.
of this approach is that the student is not actively performing the task. In Observational Activities, many students can observe listening skills in a practice setting. For example, students can observe an attorney’s listening skills at court hearings, mediations, depositions, and client interviews. Educational theory suggests that students meet with an experienced professional after their observation of an experience to debrief, provide feedback on the student’s observations, and give time for reflection. During this meeting, the student can ask questions and probe multiple perspectives to see how the active parties felt about the listening that took place during the observed experience.

**Example Exercise 5: Observe Deposition**

Observe a trial, deposition, or other courtroom proceedings. “Listen carefully to lawyers when they question, or cross-examine, the other side’s witnesses. Do the attorneys ask questions [that] relate to statements the witnesses have previously made, or do they follow a prepared set of questions?” Do you observe any of the attorneys using any active- or passive-listening skills? Does the attorney who uses active- and passive-listening skills seem: (1) “more flexible and effective than attorneys who do not”, or (2) more curious to dig out information? What other observations can you make about the attorneys’ listening skills based on nonverbal cues of both the speakers and the attorneys, such as body language and eye contact? What specific listening skills would you employ in the same situation?

Do your best to describe briefly the emotions of the various witnesses and attorneys and the basis for your description of the emotions.

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225 See Bebeau, supra note 160, at 390-91 (stating “effective instruction” consists partly of “active learning and opportunities for practice”).
226 See Victor & Victor, supra note 83, at 294 (suggesting that students observe trials or other courtroom proceedings as listening training).
227 Cooke et al., supra note 91, at 98-99.
228 See Sullivan et al., supra note 37, at 9-10.
229 Victor & Victor, supra note 83, at 294.
230 Id.
231 See id.
232 Id.
Compare your observations about emotions with an experienced attorney observer.233

**Example Exercise 6: Client Reflection**

Observe a meeting with a client.234 Write down "what the client communicated both factually and emotionally."235 For example, what would you say are the client’s greatest fears? What is fundamentally driving the client in this matter? Write down the active- and passive-listening skills the attorney used or did not use. Given your own strengths and weaknesses as a listener and the context of this client, what would you have done differently in terms of listening to develop your sense of the facts and the emotions involved and to generate a successful and trusting relationship with the client?236 Debrief your observations with the attorney who did the interview.237

These observational exercises can be even more effective when they provide the student with feedback as part of an action-feedback-reflection loop for skill improvement.238 The techniques used for assessment of ethical sensitivity in the training of dental professionals at some dental schools can provide an action-feedback-reflection loop.239 The Dental Ethical Sensitivity Test (DEST) involves a student listening to a prerecorded video or audio interaction between a dentist and patient and then identifying the issues (particularly the ethical issues) in the scenario.240 Students then must answer what course of action they would take in the scenario.241 In a debriefing with an experienced pro-

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233 See Sullivan et al., supra note 37, at 9-10.
234 See Riskin, supra note 101, at 54.
235 Id.
236 Because this exercise is to be completed with a client, it is best used by practicing lawyers or by students who are in a live-client clinical course.
237 See Sullivan et al., supra note 37, at 9-10.
238 Bebeau, supra note 161, at 387-90.
240 See generally Mary M. Brabeck et al., Increasing Ethical Sensitivity to Racial and Gender Intolerance in Schools: Development of the REST (Racial Ethical Sensitivity Test), 10 Ethics & Behav. 119 (1998) (describing a test based off the DEST that can be used in a variety of professions).
241 Id. at 122-27.
fessional, the student responses are then compared to those of veteran exemplary professionals. In this way, the student can understand what a veteran professional with good listening skills can pick up from the same conversation. In the law school context, students could listen or view recorded attorney-client interviews and respond to what they see or hear. Responses might include identifying key facts in the client’s situation, noting the client’s emotional reactions, identifying what information is still necessary from the client, and noting what questions should be next. Similar to the DEST, students can compare their responses to those of exemplary lawyers to see what client information and emotions a good lawyer should be able to pick up from effective listening.

This type of observational exercise could also translate to a computer program. Students could view videos of recorded attorney-client interactions and answer questions regarding what they saw and heard. Moreover, computer-adaptive programs could respond to student input. For example, if a student’s responses were not entirely complete or a student did not identify an important piece of information that the client shared, the program could ask follow-up questions or replay portions of the recorded conversation to highlight what the student missed. Computer-adaptive technology, in which the questions that a test taker encounters adapt to his or her performance on previous questions, is widely used in graduate school admissions exams, such as the Graduate Record Examinations (GRE), Graduate Management Admission Test (GMAT) (business), and National Council Licensure Exami-

242 Id. While this approach to developing ethical sensitivity has been criticized as a tool in developing ethical sensitivity as it only identifies a student’s ability to identify issues and does not foster an ability to respond to these issues, it provides a model for assessing listening skills in law students.

243 Id. at 127-28.

244 Id.

245 Id. at 122-27.

246 Id. at 122-28.

247 See infra notes 248-54 and accompanying text.


249 See id.
The 2003 LSAC study proposed using this approach to assess listening skills as part of the law school admission process. The study recommended using both monologues and dialogues that were informational, persuasive, argumentative, and cooperative in nature. After listening, the test taker would respond to a series of multiple-choice questions that would ask the test taker to use various skills involved in listening, including an ability to understand content, implications of that content, and the context of the interaction. The use of computer-adaptive technology in practicing and assessing listening skills has substantial potential to improve students’ listening skills.

VI. Conclusion

Stronger listening skills clearly will contribute to higher effectiveness in both the study and practice of law. A lawyer who is an outstanding listener will have advantages in diagnosing a client’s situation and solving the client’s problems more effectively. The lawyer will have stronger client relationships because he or she will be able to assure each client that the lawyer cares about the client. Former football coach Lou Holtz observes that when you consider your feelings about people with whom you interact regularly, the most important question to ask is whether the person cares about you. Effective lis-
tening sends a message that the lawyer cares about the client.\textsuperscript{259} Improvement in listening skills is a simple way to increase the effectiveness and client-development capability of each law student and lawyer.\textsuperscript{260}

There is a great deal of room for legal education to explore and develop new approaches to foster and assess effective-listening skills.\textsuperscript{261} Stronger learning models with curricular engagements that flow from the learning models and assessment strategies to both help each student understand his or her listening strengths and weaknesses and evaluate the effectiveness of different curricular engagements to improve listening skills are all ways to improve student listening skills.\textsuperscript{262} The exercises included here provide a starting point, but “standardized clients,” a legal-ethical-sensitivity test, and computer-adaptive technology are promising next steps toward a stronger curriculum on listening skills with strong assessment capabilities.

\textsuperscript{259} Hamilton & Pieper, supra note 45, at 8.
\textsuperscript{260} Victor & Victor, supra note 83, at 293.
\textsuperscript{261} See Juergens & McCaffrey, supra note 1, at 169 (noting that law schools do not do enough to promote some skills, including listening).