



# Good Listening Is Good Lawyering

By Lloyd Liu

Like Stein once wrote of the attorney–client privilege: “In its present form the privilege is sterile. It gives protection only if the client seeks legal advice.”

“People in real trouble need more than strictly legal advice,” Stein continued. “They need someone to hear them out, in private, with the comfort that what is said will never be revealed. The religious privilege gives this. The attorney–client privilege should have the same breadth.”<sup>1</sup> He advised, with a dry wit, that perhaps lawyers should obtain doctorates in divinity.

Stein’s general point is an important one for any attorney who counsels individuals under duress. After all, there is a danger that lawyers “view their role in the attorney–client relationship as that of a paternalistic captain charting and asserting his solution to the client’s problems.”<sup>2</sup>

Virginia Kling, a founding partner at Brody Kling PLLC and former legal director of the DC Volunteer Lawyers Project, understands the importance of listening and understanding one’s limits as a lawyer. Kling’s practice focuses on family law in the District, though her background is unusual for most practitioners in that area. She went from WilmerHale to Baach Robinson & Lewis PLLC, where she represented Lloyd’s of London and other London Market insurers. Then, while staying at home to raise her kids, she began studying for a master’s degree in social work at the University of Maryland. From there, she pivoted to family law.

“At the beginning, I was doing a lot of guardian ad litem work. While it is still practicing law, to say that there is a human element is an understatement. You’re working with people, and especially [in] domestic violence cases, you’re

working with people during the most vulnerable and difficult periods of their lives,” Kling says. “It was just really rewarding, even though at first it didn’t seem to have the same kind of intellectual challenge as complex civil litigation.”

Domestic violence and family disputes are perhaps some of the most emotionally infused conflicts in litigation. The legal problems are bound up with a host of other factors — emotions, personal history, psychological forces. “Even if there’s not physical violence, there are control issues. There are emotional abuse issues. There are a lot of dynamics even in ‘normal’ divorce or custody cases,” Kling says.

Kling offers a simple yet effective starting point: “You take your client where they are. You don’t come in trying to fix them or say, ‘This is where you should be.’ Listening and respecting how they feel — it’s so simple, but it goes so far.”

“Be a good listener” seems like banal advice, but it also happens to be incredibly important, Kling says. “I can’t tell you the number of times I’ve met with someone who tells me that she has counsel but she feels like she isn’t being heard, that she can’t get a word in, that her attorney is just telling her what to do. That’s not really helpful because there’s this emotional piece of it. Sometimes a person just needs to tell her story. Also, ultimately, it’s the client’s life.”

Listening requires more than showing some veneer of empathy. For Kling, it also means restoring agency to someone who may have been subjected to physical or emotional abuse. “You don’t want as a lawyer to be another force taking control away from them. They need to have their autonomy protected by their lawyer so they can begin to assert it on their own.”

Restoring agency doesn’t always lead to results you as an attorney agree with — where a client who has been abused decides to move back in with the abuser, for example. So, how should

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lawyers think about those circumstances? How does a lawyer continue to support a client even when the client is making a decision the lawyer finds difficult to swallow?

“Ultimately they have to make the decision. I can advise them about what I think a judge will say. I can advise a client about what I think would make sense or what other people have done,” Kling tells me. “I find that sometimes the things that are most important to the client are not what’s most important legally. I have to respect that. I have to tell them, ‘I want you to understand how a third person, whether it’s a judge or a mediator or the opposing party, might view this.’”

Domestic violence and divorce cases are filled with such stress, uncertainty, and acrimony that, for the most part, Kling says her clients “are just incredibly grateful to have someone to hold their hand” through the litigation process. “I feel that emotional part is as much a part of the job as the advocacy part.”

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## NOTES

- Stein, Jacob A., *Eulogy of Lawyers: Written by a Lawyer* at 147 (2014).
- Bastress, Robert M., “Client Centered Counseling and Moral Accountability for Lawyers,” *Journal of the Legal Profession* at 97 (2009).