

Don't just talk about trust — earn it

Richard Zitrin

A client's trust in a lawyer's judgment may be the most valuable currency the lawyer has — more than legal skills, experience, intelligence or knowledge. And yet a few months ago, when I wanted to share with my ethics students some thoughts about developing trust between client and lawyer, I

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couldn't find a good, commonsense article that summed it up for them. So I decided to write something myself.

We are all the products of our own experiences. In my case, my first law job was working on a prison case where our client

was accused of several counts of murder and aggravated assault. I was a total newbie, but even then I knew that I couldn't very well go into San Quentin State Prison, visit our client in a tiny, roach-infested visiting "room" smaller than a water closet and say to him, "Trust me!"

I was lucky to be in a situation where it was so obvious that trust had to be earned. Trust is rarely earned easily, and almost never earned superficially. No matter who the client is, just saying "trust me" is not likely to work for lawyers any better than for politicians.

After all, most members of the public are skeptical of lawyers. Compared to other "learned professions," lawyers have long fared poorly when it comes to public perception. Why? First, as we know too well, there's the common view that lawyers have little adherence to truth or morality, cut corners and sometimes even cheat. Second, many individual clients who need lawyers are meeting an attorney for the first (and possibly last) time, while institutional clients, led by increasingly sophisticated in-house legal teams, have become more skept-

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tical of their outside counsel (and their fees).

So the lawyer who wants the client to develop authentic trust will have to earn it the old-fashioned way. How can we accomplish this? Let me set forth some ideas that have worked for me over the years, starting with recognition that developing trust takes time and patience. Here are a few others:

- Set ground rules from the very beginning that make it clear what you can do and can't do. Many years ago a criminal defense lawyer told me that she told her clients, "No matter what, you will *never* get back to even. I can't make it like this business never happened." This is good advice for any lawyer talking to a client.

- *Turn down* cases that really don't benefit the prospective client, because, as Abe Lincoln put it in his 1851 law lecture, "the nominal winner is often the real loser — in fees, experience and waste of time." You'll earn trust and a better case next time around.

- Communicate verbally in *plain English* (or whatever is the client's preferred language). Clients don't speak "legalese." The more you explain, the more they'll like it, especially if you're explaining something necessarily written in legalese.

- Be gentle but also *tough* and *honest*. Try to avoid telling clients what they want to hear, and focus on what they need to know. If the case is not going well, say so, and don't pull your punches. Clients need — and most want — to hear the truth, not "don't worry, it's under control." This is particularly true with clients who have unrealistic expectations, though this is preferably an issue you've dealt with on day one.

- Keep in mind your client's personal needs and emotions, not just the monetary ones. It is *not* all about the money. But it is sometimes all about the emotions. We lawyers measure most litigation and business deals in monetary terms. But there is almost always a bigger picture, often even for institutional clients.

- Approach your clients as intelligent decision makers, and remember: It's their case, not yours. And while they will appreciate your confident judgment, a dash of humility won't hurt.

- Perhaps most important, *never* presume to walk in the client's shoes. We all are

tempted to say, "I know exactly how you feel." Don't, because you *don't* know. You can empathize, "get it" intellectually, and appreciate their circumstances and their pain. But you have not been where the client has been, and your acknowledgement of this truth will serve you well in gaining your client's trust. Trust me! (Wink, wink.) My first client was in prison lockdown, and thank goodness I didn't make this mistake.

In short, building client trust is all about relationship-building, not quite like a close personal friendship, because having clear boundaries between attorney and client is also necessary. This relationship is perhaps more like one with a business partner, coworker or weekend golfing or jogging buddy. So practice your listening skills before you do the telling.

Why, anyway, is trust so important? Because when push comes to shove and the client has a crucial decision to make and needs your advice, you will be able to call on your "trust reserves." Your client will have confidence that your advice is both wise and respectful of the client's needs. You will not have to say "Trust me!" if you have built your relationship of trust, because having earned the client's trust, your insight and perspective will speak for itself.

A final thought: With trust comes considerable responsibility, because trust can be a double-edged sword. When a client says she trusts you, you have the power of persuasion readily at hand. But you also have a heightened responsibility to not abuse that trust. The more vulnerable the client is, the more the client may tend to rely on your sound judgment, but vulnerable clients may be more easily swayed by what you say no matter its validity. Perhaps the worst thing a well-meaning attorney can do with a trusting client is to persuade without being confident about what is actually in the client's best interests.

Trust is a powerful tool, and the more powerful it is, the more wisely and judiciously it must be used.

The Recorder welcomes submissions to Viewpoint. Contact Sheela Kamath at skamath@alm.com.