

All interactions are combinations of *facts* and *feelings*. Because of client needs and economic realities, trust and estate lawyers often focus rapidly on the *facts*. But *feelings*, especially during grieving, can inhibit the client's ability to hear and understand the lawyer's recommendations.

Thus, trust and estate lawyers must attend to clients' feelings before moving to the facts. Although counterintuitive, this approach actually saves time in the long run. Hood, in the 2004 *ACTEC Journal*, warns that prematurely directing the interaction to legal and tax issues could result in "bottom-line" ill effects such as client procrastination or litigation. At the very least, the lawyer risks the client choosing another advisor.

Lawyers are not trained nor do they wish to be therapists. Nevertheless, using rapport-building skills and armed with insights into the signs and symptoms of grief, the lawyer can create a "therapeutic" interaction. To do otherwise might be perceived as being insensitive and reduce the efficacy of the interaction.

Fortunately, rapport-building skills are few in number, conceptually simple, and never too late in one's career to learn and employ. This article begins with practical approaches to addressing both facts and feelings in the context of grief and concludes with a scenario illustrating appropriate rapport-building skills.

Background

Grief is the psychological, social, and physical reaction to a loss closely tied to a person's identity. Clients may begin grieving in anticipation of a loss as exemplified by a terminal illness in the family or the expectation of a divorce. Even without death, the people we care about may not be physically or psychologically available, resulting in what Boss terms "ambiguous loss." P. Boss, *Loss, Trauma, and Resilience: Therapeutic Work with Ambiguous Loss* (2006). Examples of ambiguous loss include a loved one physically missing after a natural disaster or mentally absent because of Alzheimer's Disease.

Manifestations of grief can differ from individual to individual and from time to time. H.J. Lunche, *Understanding Grief: A Guide for the Bereaved* (1997), and *The Dougy Center Training Manual: Grief Indicators*, as abstracted in the *Bo's Place Training Manual* (Spring 2003). Examples include, but are not limited to, the following:

- *physical*—fatigue, low energy, appetite changes, and tightness in chest and/or throat;
- *emotional*—numbness, emptiness, anger, resentment, guilt, regret, and a desire to join the lost one;
- *social*—hiding feelings to "take care of others" and friction with others over advice;

Gary Globber, M.D., a leadership and communication skills consultant based in Houston, Texas, is a member of the Section's Committee on Psychological and Emotional Issues of Estate and Financial Planning.

How to Effectively and Efficiently Interact with Grieving Clients

By Gary Globber, M.D.



- *behaviors*—profound dependence, “staying busy,” and avoiding situations and locations that arouse grief; and
- *spiritual*—questions to and about God.

These reactions can come and go without warning—like “being on an emotional roller coaster.” Not always knowing what “triggers” these symptoms can be very frustrating. Common “triggers” include anniversaries such as the day of the loss, birth, or wed-

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ding; family celebrations; and questions or statements from others about the loved one.

The Kübler-Ross “Five Stages of Grief”—denial, anger, bargaining, depression, and acceptance—come to mind when thinking about the natural progression of bereavement. Not every grieving individual exhibits each stage or in an orderly progression, however. P.K. Maciejewski et al., *An Empirical Examination of the Stage Theory of Grief*, 297 JAMA 716–23 (2007); Robert A. Neimeyer, *Lessons of Loss: A Guide to Coping* (1998).

A constant refrain of the bereaved is that friends, family, and co-workers either treat them as “lepers” or “fragile glassware” or pressure them for “closure.” Fortunately, most people suffering a loss are resilient. George A. Bonanno, *Loss, Trauma, and Human Resilience: Have We Underestimated the Human Capacity to Thrive After Extremely Aversive Events?*, 59 Am. Psychol. 20–28 (2004). Although

resilient individuals may experience transient perturbations in normal functioning such as several weeks of sporadic preoccupations or restless sleep, they generally exhibit appropriate functioning across time. Indeed, some reports indicate that grief interventions may impede the natural resilience processes and inhibit adaptation by increasing rumination about the loss. Robert A. Neimeyer, *Searching for the Meaning of Meaning: Grief Therapy and the Process of Reconstruction*, 24 Death Stud. 541–58 (2000); Margaret Stroebe et al., *Who Benefits from Disclosure? Exploration of Attachment Style Differences in the Effects of Expressing Emotions*, 26 Clinical Psychol. Rev. 66–85 (2000).

Rapport-Building Communication Skills

Open-Ended Questions

During the early weeks and months, grieving individuals might find it difficult to respond to routine questions like: *How are you?* Instead, after shaking hands and sitting, make an empathic statement such as: *I appreciate your coming. I imagine that these days have been difficult for you.*

When the client enters the office, your staff should simply greet him or her with a gentle smile: *Good morning/afternoon, Mr., Mrs., Ms _____.* *Please make yourself comfortable and I will let _____ know that you are here.*

Attention to nonverbal details throughout the interview is important. For example, keep your eyes at the same level or just below those of the client and use more eye contact with the client than with files and notes. Avoid imposing mechanical barriers such as a large desk. Instead, consider interacting around a small round table or place yourself somewhat at a right angle to the client. Have a box of tissues nearby. After a pause, continue with an open-ended question: *How do you hope that I might be of assistance today?* Or: *What would you like to talk about today?*

Then, because clients want their lawyers to *really* listen, avoid interrupting too quickly to focus, for example, on “fact-finders” and educational aids

such as graphic projections. Hood cautions us to avoid thinking, while listening to the client, about the details involved in issues such as transfer of wealth, avoidance of taxes, and the establishment of property management mechanisms. If abruptly interrupted on a regular basis, the client rapidly assumes that the lawyer prefers fact-oriented questions and wants to avoid his or her feelings.

Listening Skills

- *Silence*—Being quiet can be difficult given the lawyer’s predisposition to move quickly to facts. Because *nature abhors a vacuum*, however, silence is a very powerful communication-stimulating skill.
- *Minimal Verbal Encouragers*—Examples include: *I see. Go on. What else? Please tell me more.*
- *Follow-up Questions*—*What did that mean to you? What concerned you the most about that?*
- *Reflect/Clarify*—*Please tell me what you meant by feeling in a fog. I would like to hear a little more about the experience you mentioned of not being understood by your family.*
- *Explore Feelings*—*Tell me what went through your mind when I emphasized the need for a timely decision.*

If you sense inconsistencies between verbal and nonverbal behaviors, make an “educated guess” such as: *You say that you are coping well, but I get the impression that you are struggling.* Even if the guess is incorrect, the attempt shows clients that you are trying to further your understanding of their emotions. Often, clients will tell you what they are really feeling.

Barriers to Effective Listening

- *“Yes/No” Questions*—For example, if you ask, *Do you have anything else that I should know today*, it would be easy for a grieving client to distractedly answer, *No*. Instead, you will obtain more useful information by asking, *What else do you want me to know today?*
- *Why Questions*—Asking “why”

seems to question a client's motivation. Thus, instead of *Why did you hesitate when I suggested that you incorporate this new approach into the planning?* Say *What reasons did you have in hesitating to incorporate this new approach?*

- **Trite or Canned Expressions**—For example: *I understand how you must feel.* Such statements increase the risk of the client saying or thinking: *How can you understand? Have you ever had a husband killed by a drunk driver?*
- **Professional Jargon or Legalese.**
- **Premature Advice**—*How about seeing a grief counselor?*
- **False Reassurance**—*Don't worry. I will take care of everything.*

Handling the Feelings

While listening, stay alert for the client's verbal and nonverbal expressions of emotions. If feelings are not acknowledged empathically, the lawyer runs the risk that the client will keep repeating ("re-cue") the emotions and be unable to interact effectively. The use of empathy demonstrates to the client that the lawyer does understand and, thus, helps to get the interactions back on track by stopping the "re-cue."

Empathy is a brief phrase that attempts to identify verbally the speaker's emotions. One does not have to experience personally the patient's feelings to be empathic.

Lawyers are often concerned that being empathic will "open Pandora's box." Actually, empathy does the opposite by greatly increasing the likelihood that the client will feel heard and understood.

Empathic examples: **Sadness**—*I can sense that this experience has been very troubling.* **Anger**—*You appear irritated about my urgency for you to complete these forms.* **Apprehensive**—*The forgetfulness that you report must be scary.* **Dispirited**—*Hiding your grief to protect your children must be a drain on your energy.*

In addition, the life of the grieving client is full of potentially guilt-inducing *shoulds* and *what ifs*. For example: (1) *I should* be strong for my loved ones.

(2) *It should* have been me instead. (3) *I should* have told my father that I loved him. Now, he doesn't even recognize me. (4) *What if* I had insisted earlier that she go to the doctor? (5) *What if* I forget what my wife looked like?

If the bereaved expresses a *should* or a *what if*, employ an empathic "educated guess" such as: (1) *That must be very draining, always having to be strong.* (2) *The idea of forgetting your wife must be depressing.*

Chunking & Checking

When interacting with clients, lawyers tend to talk and talk and talk and talk, especially when a lot of feelings are in the room. Unfortunately, the client usually is still thinking about the first few sentences and does not hear the rest. To be efficient, give information in small "chunks" with pauses to "check" for

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the client's emotions and his or her understanding of the facts.

Personal Awareness

The grieving client challenges the lawyer to stay focused. Although most of his or her communications are appropriate, occasionally the lawyer might experience (1) anger toward the client as expressed in thoughts such as *why doesn't he just follow my advice?*, (2) being bored, (3) excessive bluntness, or (4) being overly pleasant.

These feelings may be secondary to (1) identification with a client's appearance, age, personality, or ethnicity; (2) having a seriously ill family member or a history of loss; (3) malpractice concerns; or (4) counter-transference.

Sometimes, the lawyer experiences sensations of anger, hopelessness, and sadness when talking with the client. What may be happening is that he or she is unconsciously mirroring ("counter-transferring") the client's feelings.

Equally important are the lawyer's *shoulds*: (1) *I should* always remain professional ("Even though Jim is agonizing about the murder of his brother, I must control my emotions"); (2) *Mary should* be grieving more about her husband.

Closing the Interview

Summarize what you and the client said: *Let's go over the main points to be sure that we are both on the same page.* Then, screen to find out if any major points or concerns were missed: *What did I not address that you hoped we would cover today? Or: I hope that I have not left something out that is important to you.*

Illustrative Scenarios

The following scenarios demonstrate two approaches to a challenging interaction.

Estate planner (EP) has been trying for several months to have Bob, whose wife recently died of cancer, complete necessary papers but to no avail. During each office visit, Bob looks morose, moves slowly, and has difficulty concentrating. EP, aware of rapidly approaching deadlines, becomes increasingly frustrated.

Scenario #1

EP: *Bob, please come in. How are you?*

[EP looks up briefly and then returns to shuffling documents on a large desk that is between him and the client.]

Bob: *Wish I were better . . .* [Voice trails off a little.]

EP: *Bob, I hate to keep harping on the need for you to complete the papers I gave you two months ago.* [Ignores the feelings and moves to facts.]

Bob: *I know I have to do it, but . . .*

[Looks sadly down at the floor, which represents a nonverbal "re-cue"]

EP: *I realize that you lost Betty not very long ago, but, as your lawyer, I feel obligated to point out that the legal clock is*

ticking. I would hate for you to have financial complications. You would feel much worse if that happened. [Factual statements, but EP said too much at one time—did not chunk & check. Also, did not acknowledge the “re-cue.”]

Bob: [Sadly] *I can't feel any worse than I do now.* [Second “re-cue” as the EP is still avoiding his feelings.]

EP: *The sooner you sign the documents, the quicker you can get on with your life.* [False reassurance.]

Encourage your staff to express to you in private their feelings about the grieving clients with whom they interact.

Bob: *I know, but it's damn difficult even to get up in the morning.* [Third “re-cue” plus a hint of irritation.]

EP: *I understand how you feel, but here are copies of the same forms that I sent you last week. I need to have them back by Friday.*

Bob: *Okay.* [Brusquely takes the packet, extends a limp handshake, and leaves while thinking, *How in the hell can he understand?* Hence, the chances that Bob will quickly return the signed forms are slim.]

Scenario #1 illustrates how rushing to facts, avoiding the client’s “re-cues,” and not chunking & checking led to frustration and further delays.

Scenario #2

Please note in this revised scenario how the use of silence, specific clarification of Bob’s emotional statements, chunking & checking, and empathy move the process forward more efficiently and compassionately:

EP: *Bob, please come in. How are you?*

[EP stands up, shakes Bob’s hand and then sits at right angles to him.]

Bob: *Wish I were better . . .* [Voice trails off a little and looks down at the floor.]

EP: [Instead of speaking, the EP leans forward a little but remains silent.]

Bob: [Sighs. First “re-cue.”]

EP: *Bob. These past two months have been very challenging for you.*

[Acknowledges the “re-cue” by using empathy.]

Bob: *I'm either crying my eyes out or walking around in a fog.*

EP: [As the client still is “re-cueing,” the EP remains silent.]

Bob: [Brightening a little, now makes eye contact with the EP.]

Thank you for being so patient with me. I know that I've been procrastinating.

EP: *In my experience, most clients in your situation have difficulty focusing even when having to meet important deadlines.* [EP validates/legitimizes Bob’s emotions.]

Bob: *I feel torn . . .*

EP: *Torn.* [Reflection as Bob is still not emotionally ready to sign.]

Bob: *I can't help feeling that when I sign the papers, she's really gone.*

EP: [Silent. The EP avoids false reassurance that might inhibit Bob’s reflection about why signing the papers was difficult.]

Bob: [Sighs deeply and straightens up in the chair.] *Thank you for hearing me out. I don't want to, but I have to take the bull by the horns. Please give me a pen and the forms.* [Signs the documents.]

EP: *Bob, thank you. It's been difficult because of what you just said about the*

signing and Betty. [Pauses, and then, observing that Bob still appears positive, shakes his hand warmly and escorts him out.]

Additional Considerations

As you gain trust with the client, ask if he or she is presently under the care of a medical physician and is engaging in potentially rejuvenating activities such as regular exercise, meditation, yoga, and community activities.

Given the physical and emotional drain of interacting with grieving clients, please consider (1) sharing, from time to time, the challenges of professional life with trusted and insightful friends, family, and colleagues; (2) one-on-one coaching to continue learning and practicing, with feedback, communication skills tailored to your needs; and (3) regularly scheduled quiet time and exercise.

Also, encourage your staff to express to you in private their feelings about the grieving clients with whom they interact. Use the same rapport-building skills with them as with your clients.

Final Thoughts

Estate planning and administration is one of only a few professions that must continually address both facts and feelings to be effective and efficient. This obligation is made more difficult during interactions with a grieving client. The author hopes that the practical rapport-building skills—open-ended questions, reflective listening, empathy, and chunk & check—will assist the lawyer to efficiently provide accurate and compassionate expertise. ■

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