



Relational tensions and professionally optimal listening in the legal communication context: Finnish judges' perceptions of their own listening



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ABSTRACT

The study examined 25 Finnish judges' perceptions of professionally optimal listening and tensions related to it. These themes were approached from the perspectives of professionalism and relational dialectics. The data were gathered using semi-structured interviews. In the data analysis, some strategies of grounded theory methods were applied. The results suggested that the professionally optimal listening of judges is strongly task-oriented and that the relational tensions that challenge their professional communication competence exist both within a listener and between the communication partners. Professional communication competence of the judges was a factor that enhanced their listening.

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1. Introduction

Professionalism and professional competence has aroused interest in scholars for decades (e.g., Saks, 2012; Torstendahl, 1991; Waters, 1989). However, professional communication competence has not gotten a lot of attention among the scholars in the field of professionalism even though it can be assumed to be an important part of the professional competence in most professions as differences in efficiency and fluency of communication situations can have a significant impact on how competent a professional is perceived by others. This can be seen, in particular, in the legal context, the professional context of this study, where most of the work is done in interaction with people, and the result of the interaction, for instance, a verdict, can have a significant impact on the lives of the clients. Therefore, in this study, communication is seen as tools that the professionals use to do their job and as the framework within which the work takes place (cf. Julkunen, 2008).

This qualitative study, approaching listening from the standpoint of professionalism, positions itself in the theoretical framework of relational dialectics theory (Baxter, 2010). It focuses on professional listening situations as listening has reportedly not yet been studied from either of these perspectives. Enhancing our understanding of the professionally optimal listening and the

tensions related to it in the legal context is important for numerous reasons. First, it is reasonable to assume that the listening competence of legal professionals is linked to their professional communication competence. Second, it is safe to assume that in many professions, the better the listening competence is the more likely are professionals to be able to achieve professional goals, which brings them professional satisfaction. Third, this previously unexplored professional perspective allows the theoretical concept development of relational dialectics theory as it examines tensions related to professionally optimal listening. Fourth, this study introduces a new multidisciplinary approach to the research of professionalism as it combines the perspective of listening with the goal of increasing understanding of various communicational aspects of professional competence.

2. Professionalism and professional communication in courtrooms

The definitions of professionalism have been under a lot of debate during the last decades (Brante, 2013; Saks, 2012; Waters, 1989) as scholars have approached the concept from various standpoints. This study leans on the tradition regarding the definition of professionalism as skills practiced in knowledge-based occupations in which knowledge is seen as abstract, systematic, and esoteric (Brante, 2013; Siegrist, 2002, pp. 12154–12160; Torstendahl, 1991). In this study, the perspective to professional competence is similar to the key attributes of the legal profession that McCallum (2014)

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discusses both the classic and practical definitions of the legal profession are taken into account. According to him, a profession is a varied set of specialized knowledge and skills that only a limited amount of competent people have an access to, and it is subject to self-imposed rules of ethical conduct in order to serve the interests of people and the public. In addition, the ABA (1980) Model Code of Professional Responsibility states that legal professionals are guided by personal conscience and must exercise sensitive professional and moral judgment.

However, in addition to the knowledge of the code of law and ethical code of the profession, other specific parts of what professionalism consists of can be observed through the tasks that judges whose professional communication is examined in this study have in the courtroom. According to the U.S. Bureau of Labor Statistics (2008), a judge hears allegations of the parties, listens to witness testimony, decides the admissibility of evidence, informs defendants of their rights, instructs the jury, questions witnesses, and rules on motions presented by counsel. In criminal court, judges also determine the guilt or innocence of criminal defendants and impose sentences on defendants found guilty, and in civil cases, a judge may determine liability or damages. Most of these tasks are performed through communication and listening. Therefore, it is argued in this study that communication and listening competence of judges in particular form an important part of their professional competence.

In courtrooms, the justice must not only be done but also undoubtedly and manifestly be seen to be done. In the courtroom context, the asymmetric relationships between parties are formal, distant and exist because of the legal system. One participant, a judge, has the power to determine the content and length of the speeches made, as well as the willingness and the timing of when the parties participate in the interaction (Välikoski, 2004). Justice is made visible only through communication. Often, participants of the communication situation are both professionals or one of them is a professional and the other one is a lay person. Their interaction consists of professional communication. The term *professional communication* refers to communication in which professionalism is being constructed through the task that actualizes in the interaction (Gerlander & Isotalus, 2010). Therefore, for legal agents, communication is both a professional tool that is used to reach this goal and a result of parties' action (Välikoski, 2004).

In Finland, the interaction in courtrooms, and therefore, also the importance of listening, has increased only during the last 20 years. The reform of judicial proceedings aimed at increasing orality and changed the nature of trials as interactional situations, so that it became meaningful to study courtroom communication (Ervasti, 1997; Haavisto, 2002; Välikoski, 2004). After the reform, every trial has had to meet the principles of concentration, immediacy, and orality, meaning that all the material presented in trials has to be presented orally, continuously, and in the same tribunal assembly (Criminal Procedure Act of Finland 689/1997). The court decisions may be based solely on material presented orally in the main hearing.

Prior to the reform, most courtroom communication, especially in the main hearing, consisted of reading written documents aloud. Only after the reform did courtroom communication become interesting from the communication relations point of view, because the interaction in which the communication relationship actualizes began to have an interactive nature. The reform gave judges an active role: in order to express their professionalism, they are expected to participate in the interaction instead of just taking information in. From the standpoint of professional communication, the change has been remarkable as the communication process turns into interaction only when there is a functional connection between the content of the message and how it is communicated (cf. Gerlander, 2003). Currently, the primary goals of the

work of judges are reached in interaction; thus, to meet the requirements of their profession, their communication competence must be on par with their legal expertise.

3. Listening as a part of a professional communication relationship

Communication goals guide listening (Wolvin, 2010). This is particularly true in professional communication, in which the professional goal for listening intertwines with personal goals of the speaker. As justice is made visible through communication, judges actively use their listening competence to achieve the goals they have set for a communication situation. Thus, it can be argued that listening competence is a fixed part of their professional competence.

In this study, listening is understood as “the process of receiving, constructing meaning from, and responding to spoken and/or nonverbal messages” (ILA, 1996). This definition indicates that listening is a complex process and thus, a good *listening competence* requires a range of cognitive skills, adaptive affective capacity and a wide selection of applicable behavioral models (Wolvin, 2010). Thus, in order to fulfill their part in the communication process, listeners should be aware of what they are doing, interested in being engaged in the communication, and ready to behave in a way that makes the communication relationship meaningful (Wolvin, 2010). Traditionally, when the importance of the role of listening in the professional communication was not fully understood, this area of the professional competence was neglected also in the field of professional competence research. Particularly, the research of the legal profession has focused on other important parts of the professional competence such as acquiring a sufficient amount of theoretical and practical knowledge (Spiegel, 1986; Wilkins, 1994), ethical responsibility (McCallum, 2014), various communication strategies of legal professionals (Atkinson & Drew, 1979), and the education of legal professionals (Sullivan, Colby, Welch Wegner, Bond, & Shulman, 2007). Therefore, this current study about the professionally optimal listening and tensions related to it can be seen as a response to the lack of research regarding the professional competence of legal agents as the previous studies have not acknowledged listening to be a part of what legal professionalism is constructed of.

Professional listening always actualizes in a professional communication relationship (cf. Gerlander & Isotalus, 2010). In communication research, the term *communication relationship* refers to the relationship that exists between the participants of the communication situation and actualizes in interaction (cf. Baxter, 2004). Even though the speaker has often been the focus of research in the field of professional communication (Drew & Heritage, 1992; Ruusuvuori, Haakana, & Raevaara, 2001), the role of a listener is as important as the role of the speaker in the communication relationship: A listener shares the responsibility for the outcome of the communication and engages in the behaviors that support that outcome (Wolvin, 2010). Especially in the legal context, communication relationships are strictly defined by different degrees of formality and different hierarchical structures. Thus, in order to follow courtroom discourse successfully from a professional perspective, listeners should be specialized in language that is guided by clear institutional rules.

Ehrlich (2001) has stated that the defining character of legal discourse is its interactional asymmetry as differential speaking rights are assigned to participants depending on their institutional role. From the standpoint of a judge, the primary function of courtroom interaction is the display of information (cf. Drew, 1992; Lakoff, 1990). However, different interactional situations during a trial present a variety of discourse types which correspond to the

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