

Do attorneys really listen?

Elisa Reiter and Daniel Pollack | January 19, 2024



David Brooks' 2023 book, "How to Know a Person," provides not only an interesting read, but insight as to how many of us—attorneys included—fail to listen to our clients, to other professionals, and to others.

Technology has arguably impacted our social skills, further undermined by what could have been years of isolation occasioned by COVID. How can we improve our listening skills? As attorney Bill Underwood of Dallas succinctly says: "Talk less. Listen more." Learn to pause. For loquacious lawyers jaded by years of practice, particularly those who

have had the discipline to specialize, how can we revamp, refocus and learn to listen more?

Brooks contends that “[o]ur social skills are currently inadequate to the pluralistic societies we are living in.” He argues that in every group, there are “Diminishers” and “Illuminators.” Diminishers are belittling and mark their territory by using others. For those of us whose practice directly or indirectly involves psychology, not too many days pass without hearing a client characterize a business partner or a spouse as a narcissist.

Narcissists gaslight; they are takers, who use others to their own advantage. By contrast, Illuminators want to know more about others and tend to “... know what to look for and how to ask questions at the right time.” Brooks indicates that Diminishers have a propensity to size others up with a first impression, being too “self-centered” to look beyond themselves. Diminishers are so busy talking, they fail to listen.

They focus on the impression they are making, rather than the person standing before them. Brooks characterizes Diminishers as being caught in the throes of “naive realism,” such that a Diminisher’s ego leaves them convinced that everyone sees the world the same way that they do. Diminishers must reach beyond a natural proclivity to objectify those they meet, and instead dig deeper. We cannot presume that being involved in the same practice group, firm, or networking group necessarily means that everyone in the group is the same. Moreover, people change over time. How many attorneys have nodded benignly as the client sitting in their office bemoans that the client’s business

associate or spouse is simply “no longer the person I partnered with/married”?

At the other end of the spectrum, according to Brooks, is Illuminationism, which he argues includes offering “a gaze that says, ‘I’m going to trust you, before you trust me.’” In the words of Joel Bloom, immediate past president of New Jersey Institute of Technology: “How many people really look one another in the eye when they first meet? How many people shake hands [at a first encounter] looking down at their shoes? Haven’t you often wondered what was so interesting about their shoes?” Illuminators like Bloom are more than networkers or peacemakers.

They know how to make each person feel like that person is at the center of attention. Illuminators are capable of “tenderness.” Illuminators are open to sharing others’ experiences, and to explore ideas. Brooks shares the story of Dr. Ludwig Guttman, a German Jew who escaped Nazi Germany. Guttman changed the way paraplegics were treated. He stopped heavily sedating them. Instead, he coaxed them to get out of their beds and to exercise. Guttman’s work, Brooks notes, led to the development of the Paraplegic Games in 1960.

Illuminators are open to a holistic approach. How can we help families who are enmeshed in dysfunction, put their children’s best interests first and foremost? It is not just about listening. How can we improve our ability to converse? Brooks’ subtitle is “The Art of Seeing Others Deeply and Being Deeply Seen.” Lawyers who are highly skilled at cross-examination have not only taken the time to organize their case and pull their exhibits and scripts together—they listen. They are fast on their feet. They may be Diminishers to the extent they have been taught to

never ask a question to which they do not already know the answer, but they have learned to listen and to pivot when they strike gold. And, they know the importance of simply not talking. Many witnesses love to fill a vacuum. Intrepid, illuminating lawyers let witnesses do just that.

Do we need to be students again? To prepare questions to facilitate drawing out others on “flashcards” on the path to listening? Good lawyers analyze their cases using flow charts—often attaching the applicable statutes that impact their case, and then charting what exhibits and witnesses can help them prove the essential elements in their case, as driven by law. The case is their muse.

Good attorneys are like good writers and journalists. Writers develop a lede. There is a beginning, middle and end to every story. Good writers ask “who, what, when, where, how and sometimes why.” Not everyone is innately equipped to ask good questions. Cross examination works in the context of legal questions. In cross examination, we try to ask closed questions, to which a witness can respond with a “yes” or “no.” The impact can be resounding, as we recently observed by the excellent skills of Congresswoman Elise Stefanik. Simple words. When the witness cannot answer the question asked, it tends not to play well. Certainly, some questions cannot be answered with “yes,” “no,” or “I don’t know.” Yet many questions call for a simple response.

We live in an era of remarkable polarization. While social media allows for immediacy of contact and freedom of expression, we are subjected to verbal assaults as never before. It is easier to “unfriend” someone, figuratively and literally, than to be open to listening to someone with an

opposing viewpoint. Change comes in listening and being open to other viewpoints.

Brooks questions whether the polarization we are experiencing is the result of “loneliness” and “meanness.” To find out, we need to really listen.

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