



Listening

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President 2005-2006

"I know that you believe you understand what you think I said, but I'm not sure you realize that what you heard is not what I meant."

— Robert McCloskey

One of the most memorable compliments I've received in the thirty years I've been a trial lawyer came as a result of a case I felt compelled to turn down. I was gentle as I told the prospective client the case was not actionable. Nonetheless, she expressed her deep appreciation and gratitude that somebody, somewhere was willing to truly listen and hear her story. What I did is called "witnessing" and when it is done right, that simple act can sometimes help to heal hearts and lives and broken spirits.

As lawyers, we are often very self-assured in terms of our professional demeanor and ability to put on our best "Yes, go ahead and tell me all about it," face when in fact we are listening with only one side of our brain. The other side is engaged in a myriad of other thoughts about what needs to happen later that afternoon, tomorrow or the next day.

This is all not only understandable, but one might consider it inescapable, considering the world in which we move and live and have our professional being.

There is virtually no other profession where one is required to become so immersed in profound trauma and the dark side of human tragedy. Doctors might balk at this statement, but they are generally in that shared place of damage and its consequences for a far briefer time than we are. Psychologists see a patient for an hour, on their own time, on their own turf.

In order for us to do our jobs, we have to slog right into the quicksand alongside our clients. To really understand, we need to sit in their kitchens, travel to the sites of the incidents, stand watch in hospital rooms as figures who used to be active people, remain motionless and inert.

Sometimes just having a cup of coffee at someone's home, talking about their lives, and leafing through photo albums allows us to share our humanity before we have to dig into the tough stuff.

We are surrounded by broken pieces of people's lives often for long periods of time, so it is necessary, to some degree, that we create appropriate psychological boundaries. The issue is one of timing.

When as lawyers, we are gathering the facts of the case, it is imperative to remember that our most powerful tools are compassion and attention. We are the ones who know how to get the answers we seek. We all know this from our own lives. I recall times when I was relating an important moment and aware that I was being given short shrift, and I also remember the times when a compassionate friend kept pace next to me as I traveled through a really rough time, helping to keep me sane.

In addition to the humane aspect of that crucial interaction is the reverberation of your radar. Being fully present when a child shows you his teddy-bear that is now wearing a pair of jeans made from the one's that her deceased daddy used to wear, or standing in a nursery that has become a microcosm of a ghost town, there are clues and questions that will form in your subconscious that may inform the case and your ability to win recompense for your clients.

Because the relationship in many of our cases continues for years, there is a very particular intimacy that is forged with the family, their friends and colleagues. Through using single point-of-focus attention when listening to them through time, we metabolize their stories in ways that will allow us to utilize our skill-set as lawyers on their behalf. The kind of vulnerability that the defendant's negligence creates in clients reverberates for years. The bond that we have created and our ability to act as a champion on their behalf is not just a job, it is an honor.

We carry that deep understanding about who these people are and what they go through each and every day. Even though when proceedings begin, we may need to detach from the sorrow and despair, it has come to be part of us and impacts our performances at depositions. It is evident through our conviction at pretrial conferences, it underlies our discussions with our adversaries and, importantly, it is a very real piece of who we are when it comes time to communicate with judges and juries.

As a father, husband, friend, and now grandfather, there isn't one moment throughout the crazy, sometimes manic, lead up to a case I don't think, "There but for the grace of God." However, before the case actually goes to trial, it is important to shift the focus. It isn't about us lawyers. In order to make that transition complete, I go through a small ritual to help me ground myself and remember what is truly at stake.

If it is a death case, I will go and visit the grave. If it is a life-damaging injury, I will visit the individual, and, if that is not possible, I will sit and contemplate their photographs.

When we perfect the art of listening and understanding, of forming a unique bond with the people we represent, we elevate our profession to the highest degree. This commitment to caring is why we are so often able to achieve the justice our clients truly deserve.