

## Showing Up — for Clients and Colleagues

Everybody keeps on listening in / Nobody's listening up  
James Murphy, LCD Soundsystem

Every morning, I take my kids to school. Not long ago, I was running late in the morning. We got to school and my son (four) refused to get out of the car. I wanted him to get out of the car and get to school and firmly suggested he do so. He, on the other hand, refused based on an injustice caused by his brother and sanctioned by me: confusing whose bouncy ball was whose. I only wanted everyone to get to school and myself to work. My son (four) explained that I gave him the wrong ball and his brother took his. He wanted to be heard and have a wrong righted. He experienced an injustice about a prized reward earned for behaving himself at the dentist. I was hearing him; I wasn't listening to him.

How often do I do this professionally? I scream the refrain that defendant breached their duty of care. Meanwhile, defense counsel iterates my client failed to mitigate damages and has had low back issues for years. Then it is left to mediators or finders of fact to knock sense into us or force resolution.

Since Covid, and particularly in dealing with younger lawyers, I notice that communication is often limited to e-mail or Zoom. In my experience, these forms of communication are deficient. They lack tone, body movement, personality and the full attention of either party. Did my voice raise or sharpen as I said something or was it flat? Was either party smiling, winking or stone-faced? How long was my pause between statements. In law and particularly negotiations, there are legions said in between words. Pick up the phone and say things person to person. Everyone has screen confidence; avoid it. I can say or type with all the confidence in the world whatever I want. Yelling into a void isn't helpful. Speaking directly to a person face to face is a whole other ball game.

In his recent book, "The Anxious Generation," social psychologist and professor Johnathon Haidt posits that in the age of the smart phone we are always elsewhere. With constant notifications and alerts, we are not focused, even on those in front of us. How many of us sit in depositions and draft and file motions to compel or trial dates or e-mail attorneys in other cases? How well do those motions and e-mails turn out? How often do we text someone while speaking to and standing physically in front of someone else?

Around five years ago, a lawyer with only a year or so of practice told me to stop trying to intimidate him by calling him on the phone. I was dumbfounded. How else could we negotiate, schedule depositions and work out discovery disputes? He found it threatening and told me so. And he said I was "weird" for calling him unscheduled. All I could think was, "answer the freaking phone."

Even over-the-phone communication is better than e-mail. It is in real time and restricted to engaged and focused participants. It is not directed to third parties or ccd or screened audiences, read at a future time unknown. In phone or face-to-face communication, people can interpret tone and are much less likely to throw up an obstacle. They can also ask follow-up questions right then and there ensuring they more fully understand the speaker's meaning.


Humans are wired to get along when we're together. Our species' greatest strength is cooperation. Yuval Hari, author of "Sapiens," notes that when you put thousands of humans together in an arena, you end up with government and economic systems. When you throw thousands of monkeys in an arena, you get bedlam.

At a recent LBA event, Judges Haner, Smith and Bellows graciously gave their time to those who attended to explain how they see it from the bench. The event was amazing. The LBA facilitated a judicial forum for all members that resulted in a near private sit down with me, a few other participants and three judges to explore whether we were doing things right. It was an amazing opportunity, and for every litigator with five years of experience or less, it is a must-attend. (Plug for Bar engagement!) I can't remember which of them said it, but the consensus was clear: show up live to court.

I took the judges' advice and attended motion hour live. What knucklehead wouldn't follow the judges' preferences? While waiting for a motion for a trial date, I sat next to defense counsel. As we waited for the motion to be called, we exchanged pleasantries and a few jokes. Disarmed, we also comfortably discussed the case. In person and face-to-face! And we discussed a settlement range. We did not settle it on the spot, but the defense attorney and I agreed on a range he said he would push the adjuster to accept.

In addition to pushing the case towards resolution, we engendered trust in each other. We have never worked together. And yes, together is the correct word. One way or another, litigators and transactional attorneys are working together toward resolution.

At the end of the day, my 2<sup>c</sup>: pick up the phone.



Bryan R. Armstrong  
LBA President



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