

Listening for lawyers: An introduction to the Interpersonal Neurobiology perspective with a case study and annotated bibliography

© Mark Baumann, September 7, 2013

mark@markbaumann.com

Listening is a complex and multi-level process. Mindfulness and attachment-personality-brain hemisphere theory provide two valuable pieces of the puzzle: *how to listen and what to listen for*. Most of the materials in the bibliography below are centered around the Interpersonal Neurobiology perspective, which includes fields such as psychotherapeutic client-centered concepts, neurobiology, mindfulness, psychology, attachment, neo-cortex hemisphere theory. The latter four topics are summarized in this article and then tied together with a case study.

How to listen

Mindfulness has exploded with scientific research and theoretical articles. For lawyers, we can gain value from the insights into *how* to listen, or in mindful terms –gain awareness of what our clients are asking for or needing even if they cannot say it directly. Mindfulness is a complex topic and difficult to define, perhaps because the definition depends on the needs of the person defining it. For me, I believe the essential elements common to all mindful approaches are: being **Calm, Understanding, Present**, while engaging with **Care, Observation, Curiosity, Openness, Acceptance, Reflections, awareness of NonVerbal (share a CUP of COCOA in Reno, NV)**. These concepts, none of which are easy, form a core of how to listen and provide respect to the person you are working with. The larger goal is to help the person integrate their neural functions so they can make the best choices given their circumstances.

Caring includes concepts such as empathy, sympathy, and compassion, as well as being warm, kind and taking delight in the humanity of the person you are working with. Observing, often emphasized and elaborated in mindful traditions includes being present, attentive, intentional, fully experiencing the moment, describing and labeling feelings with words, and being genuine and authentic. Robert Altman expands observing to Intentionally Centering Attention Now (ICAN). Curiosity involves being interested, playful, leaning into the emotions and feelings, and exploring. Openness and acceptance may be the most challenging for lawyers trained to spot issues and evaluate claims and issues. Openness involves being nonjudgmental, non-attached, willing to fully see someone else's experience, being free from one's own internal evaluation, transparent, and appropriately sharing of your experience. Accepting involves being non-evaluative, expressing unconditional positive regard, validating without necessarily approving or agreeing), being affected by the other's experience with awareness and reduction of reactivity, and accepting thoughts and feelings of the other without being "hooked." Lawyers need to critically evaluate cases, but this may be better done *after* fully understanding the client, and this especially true for high conflict type clients.

Reflections involve reflecting back the other's feelings, experiences and needs with frequent micro-reflections ("I see," "uh huh") and micro-summaries, and less frequently global summaries. These also involve reflecting on oneself and one's own feelings that arise from sharing the experience of another. NonVerbal and unverbally expressed awareness is critical as most communication is not verbalized, but rather expressed through prosody (tone, pace, intonation, etc.), and facial and body gestures.

What to listen for

Another aspect is *what* to listen for. We all have needs, and in conflict psychological and

neurobiological drives can obscure what people think they need and express as needs. Divorce lawyers know all too well that people can fight intensely over things that others may not think are important. But they are important and knowing why helps lawyers connect with clients and negotiate with the opposing party. Attachment, personality and brain hemisphere theory combine to provide holistic, simple, and robust insights into “hearing” what may be important to a party, because it describes the types of relationship strategies people utilize when they are unsafe, or more specifically, when they are faced with a subjectively perceived danger.

Attachment theory, particularly described by Patricia Crittenden, takes a perspective based on information processing and protection/comfort from danger, and identifies only three basic approaches to relationship strategies which people will express. In childhood, these strategies are simple. In adulthood, they can be complex, however the range of strategies narrows when stress increases, and there is typically only one basic style expressed in the face of danger. One key is to understand that danger is far broader than relationship loss. Danger can be particularly intense when it involves a subjectively and significantly felt interpersonal rejection (Leary, 2006).

Brain hemisphere theory is elucidated by Iain McGilchrist. Often referred to as left-brain right-brain theory, it may be better to think of it as describing “hemispheric specialization” or “Hemispheric Utilization Bias” (HUB). From this approach, each hemisphere has a dominance in how and to what it focuses attention. The right tends towards breadth and flexibility in apprehending the unpredictable and as yet unknown, where the left tends towards a focus and precision required to grasp and use what is familiar and has already been prioritized as of interest (McGilchrist, 2010).

Personality and psychotherapy theory offers a rich body of language describing and categorizing human behavior and client management techniques. Research on the effectiveness of therapy confirms that the professional relationship is the single most important factor, and that clients will not be able to hear us, until we have heard, acknowledged and addressed their needs. The DSM IV’s observable behaviors perspective offers some easy to use lists to describe the more extreme personalities, including those for narcissism and borderline personality. Researchers are now working to connect personality theory with adult attachment theory.

Combining elements from all three theories, and using the language of attachment theory’s ABC model, we can see four basic types of strategies that people utilize when confronted with danger. The first type, attachment Type B, describes a “secure” person who can easily access both sides of their brain for integrated, cooperative and flexible problem solving. These are not people who typically present difficult challenges for lawyers.

The Type A self-protective relationship strategies are dominated by a cognitive, rational, sequence-based, rule-based, left brain approach that tends to focus on things and details in the immediate present, and which is less concerned, or even dismissive and avoidant of emotion and relationship. Narratives are factually thin, oriented around a limited and self-focused sequence of events, meaning is distorted and idealized, and have a focus on what is already known. Conflict is processed rigidly, but ultimately in a fragile way, sensitive to authority. In the broad range of Type A strategies, an entitled and grandiose narcissistic personality constitutes one extreme slice.

The Type C relationship strategies are quite the opposite, dominated by an affective, emotional, relational, context-based, right brain approach that tends to focus broadly across time, space and possibilities, and which tends to be unconcerned with details or authority. Narrative details are absent and loosely connected, significant and irrelevant points are confused, the past

with the present are intertwined, and are rich with context and possibilities. Chaos and ambivalence are elements of their conflict experience, so we see “come close, why are you coming close” or “I love you... I hate you” type behavior. Emotional and jealous borderline personality constitutes one extreme slice of the Type C strategies.

Type AC (or D in some models) have some sort of mix of the other two. Antisocial personality, with a deep desire to be in relationship, yet also a deep fear of being dominated, and gross flaunting of rules and exceptional deceitfulness constitutes a slice of this narrower range of self protective relationship strategies.

Briefly, it is worth mentioning the incredibly significant neurobiological circuits of the Fight-Flight-Freeze and Social Engagement Systems. Both of these systems reflect fundamental human drives and needs, operate on the same never circuit (vagus nerve), and are designed to avoid danger *and* be in relationship. Dr. Stephen Porges (below) describes these systems.

Case study

If we can recognize the one primary strategic orientation of how a person responds subjectively to perceived danger (including rejection in relationship) we can respond with greater effect. Failing to understand the basic orientation, we risk provoking the person into further escalation, risk ourselves becoming frustrated and acting less than optimally, or worse, risk an ethical complaint.

For example, a client* of mine was told by an authority figure that her self-centered and interrupting behavior was unacceptable. The client wanted me to make the authority figure see it her way. Because I didn't initially empathize and understand her needs, or see the Type A strategies and dynamics at work, my initial response was to explain to the client that the best course of action was to do nothing, she should not spend money on legal fees, and we should promptly terminate the consultation. This caused a temper tantrum and the client raged at me in an effort to make me see things her way and do what she wanted me to.

In response, my body experienced an intense internal reaction that drove my fight/flight instincts and in a flash I visualized physically throwing the client out of my office while I told her off. Perhaps because my instinctive reaction was so strong, and because of my practice and experience of being aware of my own body reactions and the personality styles mentioned in this article, I was able to catch and reflect on my reaction. As I did so, I realized that my own feeling was a reflection of the client's feeling –I was being dismissed just as she felt she had been. In a flash, I now understood that she was laboring under Type A self-protective strategies, and I could broadly, and privately, conceptualize her as having a rigid but fragile approach to the problem of her feeling of being controlled by an authority.

I realized that while this client was empathy/relationship-avoidant, she desperately needed to be in relationship, and be heard and validated. So, instead of grabbing *her*, I calmed myself, grabbed a yellow pad and said “wow, it sounds like that (authority figure) is not treating you with *any* respect, and you are extremely frustrated. Tell me more about that.”

For an hour I opened my mind to her experience, I was fully present, and accepting without judgment. I listened and took notes as I worked to find her needs and understand the problem as she did. With innocent and genuine curiosity, I compassionately “suffered with” her, using micro-reflections along the way. After she was able to fully tell her version of the events without interruption, and I was able to repeat them back in a broad summary, she knew I

understood the problem and that she did not stand alone against the experience of domineering authority she suffered from—she was now able to experience a sense of protection from danger. Then, I wrote the best demand letter I could write, which was wholly satisfactory to her—“Exactly what I want!”. Only then could I finally ask the client this question: “what do you think the authority figure will do when he receives this letter?” Because she was safe in the experience of my office, she could finally tolerate an exploration of an alternative approach.

Conclusion

These ideas and resources I am sharing here are the heart of my thesis for my graduate certificate program in Interpersonal Neurobiology at Portland State University. There is a lot of material here, but I think that anything that grabs your attention should be highly worthwhile in your efforts to learn more about how to listen, and what to listen for.

*To protect client anonymity, this example is combination of several clients

BIBLIOGRAPHY

(Formal citations are in APA style.)

- Altman, D. (2010). *The mindfulness code: Keys for overcoming stress, anxiety, fear, and unhappiness*. New World Library. One of many excellent books on mindfulness, oriented around an interpersonal neurobiology perspective. This book tends to center more on the centering attention now aspect of mindfulness, rather than the observing aspect of mindfulness. See also anything by Jon Kabat-Zinn, including many YouTube lectures. See also Dan Siegel’s materials on interpersonal neurobiology, below.
- Barkai J. L. & Virginia O. Fine V. O. (1983). Empathy Training for Lawyers and Law Students, *Southwestern University Law Review*, 13, 505-528. This article can be found on the internet. “Empathic listening skills are valuable to practicing lawyers in establishing rapport with clients. Rapport is crucial to the professional relationship between a lawyer and his client. It assists in developing cases factually, improves the counseling of clients and increased the efficiency of the lawyer’s business” at 528.
- Behary, W. (2008). *Disarming the Narcissist: Surviving & Thriving with the self-absorbed*. New Harbinger Publications, Inc. This easy to read non-academic book has good descriptions of narcissism, and excellent suggestions for how to “listen” and communicate with this very challenging group of people. Behary’s communication techniques work well for anyone who demonstrates some level of Type A self-absorption, even if it is only in the moment or in the context of the conflict.
- Brown, B. (2012). *Daring Greatly: How the courage to be vulnerable transforms the way we live, love, parent, and lead*. Gotham Books. Brene Brown has done amazing research and work centered around vulnerability, which I would argue is an essential element of listening, empathizing, and allowing others to be (or feel) in control. She has numerous Youtube lectures available.
- Crittenden, P. M., & Landini, A., (2011). *Assessing adult attachment: A dynamic-maturational approach to discourse analysis*. New York: W. W. Norton & Company. See also www.patcrittenden.com. For addressing “what to listen for,” Patricia Crittenden’s

attachment work and theory is excellent, and provides multiple benefits to family law practitioners, such as recognizing “self-protective strategies” and also advising parents on parenting time schedules and what lies at the heart of parenting. Her website, with her attachment circumplex and several articles, is a great place to start. As with others such as Mary Main, she relies heavily on the Adult Attachment Interview (AAI), a simple question and answer interview to listen to and understand a person’s story. Her 2011 book provides amazing insight and detail into what to listen for, although it is written for the psychological expert and not simple. Adult attachment theory, particularly Patricia Crittenden’s conceptualization, describes how adults develop four basic approaches to conflict, three of which tend to increase conflict and make resolution much more difficult. By understanding a basic “personality-in-conflict” theory (my term), or as Crittenden describes, self-protective relationship strategies, you can much more finely tune how you listen and communicate with parties. Personality disorder theory is similar, but perhaps less accessible and less thorough.

- Crittenden, P. M. (2006). A Dynamic-Maturational Model of attachment. *Australian & New Zealand Journal Of Family Therapy*, 27(2), 105-115. A nice overview of her attachment based theory. Available at www.patcrittenden.com.
- Decety, J. (2011). Dissecting the Neural Mechanisms Mediating Empathy. *Emotion Review*, 3(1), 92. Excellent research review by a leading empathy researcher of the complex topic of empathy, which is just one piece of the listening puzzle. He points out that empathy can be used for pro or antisocial purposes. Empathy can be learned and managed by doctors (and presumably lawyers) for optimal health and professional functioning.
- Dutton, D. G., van Ginkel, C., Starzomski, A., (1995). The Role of Shame and Guilt in the Intergenerational Transmission of Abusiveness. *Violence and Victims*, 10(2), 121-131. If you are not convinced that respect, listening and empathy are important for productive relationships, try this article. Dutton is a prolific writer on domestic violence, including his book *The Abusive Personality*. Shaming and guilt are the antithesis of understanding, attunement and client centered counseling.
- Eddy, W. (2003, republished in 2005). *High conflict personalities: understanding and resolving their costly disputes*. Janis Publications. This is the classic book on understanding and managing high conflict people, and is an excellent place to start for practicing in high conflict work. Also excellent for clients to read. Similar to attachment, hemisphere and client-counseling perspectives described above, Eddy offers a personality based approach to the problems that interfere with client “hearing,” and a very comprehensive set of solutions for managing high conflict cases. Like all other theorists, “bonding,” or connecting, is described as the essential skill. Eddy is an author, speaker and mediator, and worked as a lawyer and MSW counselor. See also: www.highconflictinstitute.com, for free articles and a list of Bill Eddy’s numerous books.
- Fitzgerald, F. T. (1999). Curiosity. *Annals of Internal Medicine* 130, 70-72. Also available online at http://courses.washington.edu/hmed665i/ACP_Curiosity.pdf. Curiosity, “the urge to investigate, to discover * * * converts strangers (the objects of analysis) into people we can empathize with.” It takes time, but increases patient and doctor satisfaction.
- Front, J. (2008) A Quiet Revolution: Therapists Are Learning a New Way to Be with Clients.

Psychotherapy Networker, January/February. Online with other mindfulness articles at <http://www.psychotherapynetworker.org/populartopics/mindfulness>. Front references the neuroscience research and articles on mindfulness and the explosion of its use by therapists. He relays his experience in therapy processing the loss of his father and offers a nice summary of the elements and effect of listening. "Again and again, I experienced the moment-to-moment miracle of being both soothed by, and visible to, this unassuming man. Gradually, Dr. Burke's unwavering attunement and empathic attention nourished my own ability to attend to the intensity and nuances of my emotions, and to stay with them long enough to become more patient and sympathetic toward myself." In my experience this works just as well in the law office. I believe that client-centered legal counseling, Transformative and Narrative mediation theories utilize the same concepts (even if they don't understand why it works).

- Ginott, H. (1965). *Between parent and child* (revised and updated, 2003). Three Rivers Press. A classic parenting book that is easy to read, has good examples, and is based on respect and listening. An excellent book to recommend to parents.
- Gordon, Thomas. <http://www.gordontraining.com/>. 50 years of listening and respect focused training for conflict resolution, leadership and parenting. Numerous good parenting articles and a leadership blog. See also: Blog post on active listening referencing Carl Rogers, <http://www.gordontraining.com/free-workplace-articles/active-listening/>
- Iacoboni, M. (2009). Imitation, empathy, and mirror neurons. *Annual Reviews of Psychology*, 60, 653-670. Mirror neurons are a very recent discovery, and considered highly significant for listening and communicating. When we see people drink water for example, neurons in our own brains that in the area of the brain that directs motor functions "light up", priming us to take a drink. It is thought that seeing empathy, and careful listening may prime others to do the same through the mirror neuron system (although this has not been proven as the mechanism for empathy priming).
- Leary, M.R., Twenge, J.M. & Quinlivan, E. (2006). Interpersonal rejection as a determinant of anger and aggression. *Personality and social psychology review*, 10:2, 111-132. One of my favorite articles for providing a practical and accessible approach to understanding rejection. It highlights the danger of not listening. You will have a relationship with everyone involved in the conflict, even opposing or hostile parties. Whatever the relationship, when they *subjectively* perceive you significantly rejecting them, there is a greatly increased chance they will act aggressively. This may explain things like domestic violence and domestic violence murders. Any rejection, such as terminating the relationship (amorous or professional), must be done with an eye to avoid rejection.
- McGilchrist, I. (2009). *The Master and His Emissary: The Divided Brain and the Making of the Western World*. New Haven and London: Yale University Press. For shorter and more accessible article, see his 10,000 word essay *The Divided Brain and the Search for Meaning: Why are we so unhappy?* Yale University Press (Kindle Edition, 2012) Iain McGilchrist re-worked and revived left-right neocortex hemisphere theory. McGilchrist's theories are very new. While there are currently no academic articles connecting his descriptions of how the two hemispheres approach and understand the world, they are, in my opinion, quite congruent with Crittenden's adult attachment theory, at least for what

conflict resolvers need to know about relational neurobiology. McGilchrist's ideas nicely emphasize the Interpersonal Neurobiology concept of working to help people integrate all the different functions of their brain for optimal cognition, behavior and emotion management.

- McGilchrist, I. (2010). Reciprocal organization of the cerebral hemispheres. *Dialogues in Clinical Neuroscience*, 12(4), 503-15. Accessible and short article summarizing McGilchrist's theories. Introduces concept of Hemispheric Utilization Bias to describe a developed preference for utilizing one side of the brain to view and process the world.
- McGilchrist, I. The Divided Brain. RSA Video at <http://www.thersa.org/events/rसानimate/animate/rsa-animate-the-divided-brain>. The Royal Society for the Arts presents TED type lectures. This delightful 12 minute video densely and succinctly summarizes McGilchrist's view on the differences between the left and right hemispheres. This video is complimented with an RSA animation.
- Moore, R. J. (2010). Narrative empathy and how dealing with stories helps: Creating a space for empathy in culturally diverse care settings. *Journal of pain and symptom management*, 40(3), 471-476. Written for doctors, replacing the word "doctor" for "lawyer" does not affect the value of this well written article, talking in part about resonating with high context and low context communication. "Narratives are valued across all cultural groups, as one method of promoting mutual understanding." At 472. "Narrative empathy is not just something 'nice' or some laudable aspect of human goodness. The resonance of empathy is energizing and pushes participants beyond more isolated perspectives into story lines that are mutually constructed and mutually beneficial." at 474. "Consideration of the another person's story requires suspension of purpose—trying to get one's way in the conversation—and requires an honest search for the "sense" within the other's narrative, even if on the surface it appears to be nonsense. One does not have to agree with this "sense," but far too often, we cut ourselves off from even trying to understand that there is an internal logic to others with whom we disagree." At 474.
- Porges, S.W. (2003). "Social engagement and attachment: a phylogenetic perspective". *Annals of the New York Academy of Sciences*, 1008, 31-47. Overview of the Social Engagement System. Stephen Porges is a neurobiology scientist and developed the "Polyvagal Theory" (PVT) This complex theory is a cornerstone in the field of Interpersonal Neurobiology and explains how the Social Engagement System works. Humans are wired to be both in relationship and sensitive to danger. PVT and attachment theory are intimately connected. Lawyers/mediators/judges, I suggest, sit at the nexus of relationship and dangers posed by relationship. PVT describes the fight, flight and freeze systems as the three primary neurobiological responses to danger, which pushes energy away from the frontal lobes.
- Porges, S. W. (2004). Neuroception: A subconscious system for detecting threat and safety. *Zeroto Three: Bulletin of the National Center for Clinical Infant Programs*, 24(5), 19–24. Also available at <http://www.frzee.com/neuroception.pdf>. Porges also coined the phrase neuroception, which describes the body's unconscious system for detecting threats and safety, which in turn communicates through the human vagus nerve (polyvagal system) to drive the FFF behaviors. Neuroception (similar to interoception) is another way our body "perceives," above and beyond the 5 basic senses. Listening, which involves soothing and

- being "heard" deeply affects the vagus nerve, neuroception and neurobiological systems. The goal in listening is to resonate with these system circuits.
- Porges, S. W. (lecturer) CcareStanford (poster) (2012, July 20). The origins of compassion; A phylogenetic perspective [video at The Science of Compassion: Origins, Measures and Interventions, conference]. Retrieved from http://www.youtube.com/watch?v=MYXa_BX2cE8. This Youtube video is excellent, but dense and moves quickly. Porges explains why compassion is essential to listening and working effectively with clients, from a neurobiological point of view.
- Rheem, K. (2012). Connecting with the shut-down client: helping a combat vet face his vulnerability. *Psychotherapy Networker*, May/June, 34-59. Nice suggestions for how to open up communication and participation when the client is “shut down” doesn’t seem able to listen, be heard, or engage in dialogue.
- Schafer, M., Clark, S., & Jeglic, E. L. (2009). The role of empathy and parenting style in the development of antisocial behaviors. *Crime & Delinquency*, 55(4), 586-599. One of many research articles detailing the negative consequences when parents do not relate to their children with warmth and empathy.
- Siegel, D. J. (2010). *Mindsight: the new science of personal transformation*. Bantam Books. See also Siegel, D. J. (2012). *The developing mind: How relationships and the brain interact to shape who we are*. New York: W.W. Norton; and see Siegel, D. J. (2010). *The mindful therapist: A clinician's guide to mindsight and neural integration*. Norton: New York: New York.. Dan Siegel was a founder of the field of Interpersonal Neurobiology. He has written many books and articles, and has many lectures available on Youtube. He talks about many topics, including the fundamental brain-mind-relationship triangle, and the need for people to integrate all of the many aspects of each part of the triangle. He digs into and beautifully elucidates the nuances of how to be in a relationship that fosters optimal human behavior.
- Siegel, D. J. (2012). *Pocket guide to interpersonal neurobiology: An Integrative Handbook of the Mind*. New York: W.W. Norton. “Studies of those with mindful awareness using a broad application of these features [such as CUP or COCOA mentioned above] reveal that it is of benefit to the health of the mind in terms of balanced emotional regulation, flexibility, and approaching rather than withdrawing from challenging events. Being mindful makes you more empathic and improves the health of relationships” at 41.
- Siegel, D. J. & Payne-Bryson, T. (2011) *The whole brain child: 12 revolutionary strategies to nurture your child's developing mind*. Delacorte Press. This is another great parenting book centered on respect, connecting and listening. Very easy for parents to read with very specific strategies and examples. An excellent book to recommend to parents.
- Turman, P. D. (2007): The Influence of Athlete Sex, Context, and Performance on High School Basketball Coaches' Use of Regret Messages During Competition. *Communication Education*, 56(3), 333-353. This is one of several articles examining coaching styles. Using “power over”, shame, or guilt language is not an effective coaching strategy.
- Zhang, L. (2006). Your money or your self-esteem: threatened egotism promotes costly entrapment in losing endeavors. *Personality & social psychology bulletin*, 32(7), 881. Nicely confirms why people spend money they can’t rationally afford on litigation.