

The Lawyer's Mind: Curiosity



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The important thing is not to stop questioning. Curiosity has its own reason for existing.

Albert Einstein

As a first-year student at orientation in a large room filled with hundreds of other aspiring lawyers, one thing stuck with me. The dean explained that the foremost important thing to frame our thinking and conduct was to be skeptical, because skeptics make the best lawyers: They are rarely fooled or taken advantage of by clients or other lawyers.

I filed it away in the deep recess of my mind. After several years in practice, I realized my inherent nature was to trust people until proven otherwise. Some would say I was gullible. Of course, I was burned a few times, thankfully never seriously. My cousin Dukie had an expression; "Cousin Bobby, sometimes we get beat." I adopted this with a shrug, learning to move on.

After decades of lawyering, I finally reconciled and integrated the admonishment to be skeptical by framing it in more positive terms. Be more curious. Curiosity is integral to being skeptical. They are two prongs on the same fork. When we are skeptical, we are doubtful. Skeptics challenge the status quo. Doubt is another word for uncertainty. We address doubt and uncertainty most effectively with ... well ... curiosity. Curiosity launches the quest to reduce doubt and uncertainty. New facts, arguments and insights make us less skeptical and allow more confident decision-making. Had the learned law dean framed it that way years ago, I would have embraced the concept sooner and easier. I may have even gotten "beat" less often!

The Nature of Curiosity

Academic literature is clear that curiosity is key to learning. We all are more likely to retain information when motivated by curiosity. Curiosity is the mind's doorway to learning. Our brain is rewarded when we solve a problem or accrue knowledge.

The nature of curiosity as a trait, emotion and tool has been researched in a variety of contexts. In 2018, a group of researchers published an article in the Harvard Business Review collating research on curiosity. They proposed a five-dimensional model of curiosity summarized as follows:

- Deprivation sensitivity — seeking relief by filling a gap in knowledge.
- Joyous exploration — a pleasurable state exploring the diversity of the world and humanity.
- Social curiosity — talking, listening and observing others, which may include snooping, eavesdropping and gossiping.
- Stress tolerance — a willingness to accept and even harness the anxiety associated with novelty.
- Thrill-seeking — a willingness to take physical, social and financial risks to acquire varied, complex and intense experiences, with the anxiety of confronting novelty as something to be amplified, not reduced.

Research has identified some key benefits resulting from the triggering of curiosity:

- Deeper and more rational thinking
- More creative solutions
- Fewer decision-making errors
- Reduced group conflict
- Less defensive reactions to stress
- Less aggressive reactions to provocation
- More open communication
- Improved team performance
- Earned trust from asking questions
- Others viewing us as more competent, not less, by us listening to their responses
- The promotion of more creative outcomes through listening.

It is challenging to reframe and apply the research, theories and concepts of curiosity to the practice of law, but, in my view, when we embrace curiosity, we become better lawyers.

It is a miracle that curiosity survives formal education.

Albert Einstein

Undermining Curiosity

Harvard University professor Francesca Gino has studied curiosity and its value to learning and leadership. In a 2018 article, she states: "A body of research demonstrates that framing work around learning goals (developing competence, acquiring skills, mastering new situations and so on) rather than performance goals (hitting targets, proving our competence, impressing others) boosts motivation. And when motivated by learning goals, we acquire more diverse skills, do better at work, get higher grades in college, do better on problem solving tasks and receive higher ratings after training."

One view of law school is that the Socratic method, other teaching formats and the emphasis on detailed rules of procedure and precedent stifle creativity. Curiosity drives innovative thinking and optimal decision-making. Instead, law students and young lawyers are often criticized for "not thinking like a lawyer."

Likewise, novice lawyers are indoctrinated into an existing structure of practice formats, forms and computerized data entry involving box-checking rather than thinking outside the proverbial box. I believe we get "boxed-in" as young lawyers to the ways and means of our positions and mentors. With the almighty billable hour, there is little incentive to deviate from the repetitive tasks that undermine critical and creative reflection. Clients, rightfully so, do not want to pay lawyers to go off the beaten path to a dead end. There are enormous structural pressures that suppress curiosity. Exploration and innovation are sacrificed on the altar of efficiency.

In addition to concerns that time is precious, Professor Gino notes that people refrain from asking questions due to fear of being judged incompetent, indecisive or unintelligent.

We run this company on questions, not answers.

Eric Schmidt, Google CEO, 2001-11

Curiosity Applied

Prominent scholars long ago recognized the importance of curiosity for negotiators. University of Pennsylvania Wharton School professor Richard Shell noted that negotiators should develop "relentless curiosity about what is actually motivating the other side" He also cites the book *Difficult Conversations*, in which the authors recommend negotiators engage in "learning conversations," which involve "changing our stance" to a position motivated by curiosity.

Social research contends that one of the common challenges facing professionals is feeling self-conscious and wanting to appear confident and demonstrate expertise. Following two years as a corporate in-house attorney, I started my own practice across the street from my elementary school and I had no experience with the issues of the people who walked through the door to the very short distance to my desk. I lacked lawyer-confidence.

When Dee, the dog groomer, and Ann stood before me as my first clients, they told me how they recognized me from my years on the school playground across from where they lived and were thrilled that I came back to my hometown to practice. This boosted my self-esteem. Ann explained that the two were a couple and that she wanted her ownership in the house to pass to Dee if she died first. She handed me the deed and some tax records. I reciprocated her candor with my own, "I have never drafted a deed and I do not know if your unique personal situation has any bearing on what to do." She smiled and said, "I knew we could trust you as an honest lawyer — go figure it out and call us when you do." I accepted and completed one of my first tasks as a solo lawyer. As a child, I always marveled at the faded dollar bill displayed by local merchants commemorating the first sale. There was no similar way for me to publicly honor Dee and Ann for believing in me. So, there was a steep fee discount for their other legal matters. As each matter was concluded, they would present me with a gift of clothing or other useful item. Ironically, when Dee retired, I moved my law office into the space vacated by the dogs. Although the contrary was true, Cousin Dukie would tease me that my office had gone to the dogs.

I learned that being open about what you do not know can produce good results. When representing clients in new substantive areas of the law, which was basically everything, I developed what I believed was a disarming approach to opposing counsel. I would contact them by phone (blissfully, no fax, email or texting in my early years of lawyering) to introduce myself as a new practitioner lacking experience and context in the practice area. I would start by saying I worked alone and quickly followed that saying something like: "I am curious how you handle a matter like this; how you think we should proceed?" Sometimes there was a pause while the other attorney thought about whether I was a trickster disguised as a lawyer or just stupid. Almost always, counsel came back with a positive suggestion or productive comment that eliminated much of the unnecessary dancing and hostility. The call ended usually ended with my saying that I was "just a storefront lawyer," so he or she should try not to take advantage of me. Many of my lifelong relationships with other lawyers started in this manner.

The role of dedicated or zealous advocate may trap our thinking. Lawyers take on the goals of the client and perceive that effective representation mandates navigating a narrow path to achieve client objectives. Unfortunately, this may result in tunnel vision, with the tunnel narrowing more and more as the representation progresses, until counsel finds him or herself battling with weaponized slogans in the shadows of the law. Curiosity as a tool or skill is important because sometimes the small, obscure information can be the difference between winning or losing a case. Effective lawyers pursue a line of inquiry when unsatisfied with accepting surface information or to just dig deeper into the unknown.

What To Do Better

The research by Professor Gino shows that people prefer to talk rather than listen with an open mind. My experience with lawyers supports this exponentially. She notes that empathy and curiosity are connected. Empathy involves listening thoughtfully to see issues or decisions from another person's perspective. Curiosity extends below the surface, including the disciplines and perspectives of nonlawyers. What if we consciously give space to curiosity as a best practice integral to our daily practice and lives? Research by Randy Kiser into the attributes of successful lawyers identified the desire for perpetual learning as a common trait of leading lawyers. Kiser concludes that expert lawyers are perpetual learners with a "beginner's mind" arising from the cauldron of enthusiasm, humility, receptiveness, and diverse personal interests. Client advice comes from critical thinking informed by curiosity and flexibility.

Senior lawyers and leaders should include curiosity as a core trait in hiring and promoting and when assigning legal matters. Leaders should model inquisitiveness by asking questions and genuinely listening to the responses. Young lawyers should be encouraged to explore and broaden interests beyond a narrow area of substantive law: Avoid telling them to "stay in their lane."

Law leaders should give time and space for perpetual learning beyond CLEs and skill enhancement. Formulate a goal around the holistic improvement of the lawyer as a human being and not as a technician. Professor Gino notes that leaders may promote the value of learning through the positive reinforcement of ideas that may be mediocre in themselves, yet serve as springboards to better ones. She describes how employees of the film company Pixar are trained in a technique called "plussing" that in some ways parallels the concept of the "positive no" developed by Roger Fisher and William Ury in their book *Getting to Yes!*. This approach builds on ideas without using judgmental language. For example, instead of simply rejecting a sketch,

a director might find a starting point by saying, "I like Woody's eyes, and what if we ...?" Gino contends that "plussing" and encourages people to be curious, keep exploration open and to respect other ideas and methods.

Curiosity fuels intellectual exploration across disciplines and experiences, enhancing our own knowledge and insights. But we must carefully listen to the responses to our questions to discover interests, motivations, values, fear and risk tolerance as we learn about the stakes and, more importantly, the stakeholders. We do not know what we do not know, so we must inquire with an open mind and let the responses provide new information and insights. Curiosity propels the best line of questioning at the opportune time.

Curiosity is a dynamic and an attribute that experienced lawyers, judges and mediators must strive to integrate into our core competencies. Humility, coupled with the shining star of child-like wonderment, may lead us to become our better selves.

You see things; and you say "Why?" But I dream things that never were; and I say "Why not?"
George Bernard Shaw, *Back to Methuselah*

Summary

It is OK for curiosity to lead you out on a limb, if you stay within the ethical and cultural rules of the legal profession. If you fall, you will heal from your bruise and likely pick a stronger limb next time.

Takeaways

- Talk less, hear more.
- Cross over lanes of interest and thought.
- Unconventional forays are healthy.
- Embrace novelty.
- Wonder why. And why not.

Notes

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