

How to really communicate with clients



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and avoid malpractice claims

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It seems so simple and yet a primary reason for a client to proceed with a malpractice claim against his or her lawyer is the failure of that lawyer to communicate effectively. To successfully step into the lawyer-client relationship in a malpractice – or any – claim, one needs to understand certain underlying concepts about how communication functions most effectively.

First, communication is redundant

We are always communicating, even when we are not speaking. Our words carry only about seven per cent of our total message. The remainder of our message is contained in the way we say things (38 per cent) and in the visual components of what we say (55 per cent). Do we not watch carefully the expressions, vocal cues, dress and other non-verbal cues that accompany each word and sentence said by another, such as our client? We certainly read emotion and intent beyond and into words.

Second, meaning lies within the client

We often believe the impact of our message is in our words and our intent because we are the source of the message. The reality is that meaning lies in the recipient of the message and, most relevant to us, meaning is in the response to our messages. Therefore our messages must be prepared from (or perhaps for) the perspective of the recipient.

Put differently, people act and respond to their map of reality, not to reality itself. Certainly, two people can experience the same events or set of data, yet react differently and relate the events as though they are very different. This is because people take their view of the world into each situation. They rely on their view of the world to relate what will be reality and truth to them. Language skills are going to be essential to unmask what is known first-hand from what is assumed to be true simply because it fits the scenario.

Third, people make the best choice available to them at the time of decision

This is critical because clients sometimes see only one way to handle their concerns, or at best two options. Although there may be other options (perhaps known only in the client's unconscious), people do the best they can with what they perceive. When only one option for behaviour is available, there is no choice situation, and the decisionmaker is left in a robotic state. When there are but two options for action, the person may think he has a choice; but in reality he faces a dilemma.

For true choice to exist, a person must have at least three alternatives available to him or her. Think of the possible resolutions to problems or conflict that can result if only from the search for additional options!

Finally, there is no such thing as failure, only feedback.

Too many people seek to tell others what is wrong or right with their attitudes or behavior. The result is a perception that the information is criticism or implies failure. In reality, each time something does not work, we are presented simply with feedback from which future courses of conduct can be derived. People should study everything they do that does not produce desired results for the lessons learned and the new information that can be relied upon.

How people process differently

We can also improve our communication by recognizing the differences in how different people process information differently.

There are three primary processing modes: visual, auditory or sound, and kinesthetic or feeling. For example, many clients (and lawyers) are primarily visual processors. Their minds work like a Viewmaster, transforming input into pictures for interpretation; they describe events by describing the pictures that fly through their minds. Your interaction with clients, therefore, should tap into a use of visually-based words permitting that client to retrieve visual information.

Other people think and process information in words or sounds. These hearing-based people have a constant discussion going on in their heads; they react primarily to the sounds or voices that occupy their minds. They listen to and for details and can locate the logical connections between ideas; asking them to envision a scene or feel emotions presents them with difficulty. Your questions should guide them to process auditory information by concentrating on sounds, conversations, and what was said.

Finally, people who think in terms of feelings operate on an emotional level, rather than responding to what they see or hear. They rely on gut reactions and feelings. People who think this way convert external information into a feeling, then sense the feeling, and finally transform their feelings into terms they can communicate.

People provide “clues” as to how they are thinking at any given point in time. As lawyers, we need to learn how to tap into indicators such as posture, gestures, breathing and many others.

Start testing this today. Vision-oriented people use visual words, including “clear,” “picture,” “focus,” “see,” “foggy.” They use phrases such as “I see what you mean”; “Picture this for a moment”; “In my view...”; “He has a dark personality.”

Hearing-oriented people select sound-based words such as “hear,” “listen,” “say,” “talk” and “rings.” They use phrases such as “I hear what you mean”; “That sounds good to me”; “That rings a bell”; “I want you to explain...”; “That clicks with me.”

Feeling-based persons select tactile words, which include “comfort,” “feel,” “grasp,” and “handle.” They use phrases such

1 See Paul M. Lisnek and Eric Oliver, “Courtroom Power: Communication Strategies for Trial Lawyers,” PESI Publications 2001).

as “I’m uncomfortable with...”; “There’s a hot idea”; “That kind of talk is hard to handle.”

Keep notes on the words and phrases used by clients. Structure your questions to permit the client to process in a way most comfortable for him or her. Ask a vision-based client to “describe” experiences, a hearing-based person to “tell you about ...” and a feeling-based individual for “their sense of ...”

Developing rapport

It is the lawyer’s burden to develop rapport with clients; we can’t put this burden on the layperson who relies on the lawyer for expertise and guidance.

So, what is rapport? It is the commonality and alignment between lawyers and clients, and it is grounded in conduct, not interpretations. The more behaviors we have in common with another person, the greater the likelihood for rapport. With awareness and some training in behavioral cues, lawyers can build rapport both consciously and subconsciously with clients.

Lawyers typically think that rapport is created through language. The truth is that rapport develops underneath our words and in the world of body movements and other factors.

But before we get there, let’s reflect on language. The reality is that clients (and all people) communicate at two levels. The “lower” level of action or behavior (“I want \$50,000 to settle this claim”) and a higher or upper level called value or need (“that money represents my future security and safety and that’s what this lawsuit is all about”).

Most people communicate initially (and for quite some time) at the behavior/action level. It’s very easy to make demands or make our points in the form of an articulated concrete position. But getting to the level of value is not an easy task. We can get there by asking our client “What is important to you about that demand?” Answers such as “security,” “loyalty,” and “survival” are the kinds of upper level drives that propel people to make the demands they make. Once we understand what drives our client, we must recognize that the value is a part of them; not just underlying the particular position they have said to you, but it is an underlying value in their life. That value often explains other behaviors that you might otherwise be at a loss to explain if you did not know what that client’s value is (or if you do what most of us do, which is to impose our own values onto our clients and explain their positions in accordance with our personal values. This is not what we should be doing).

Be careful. Do not ask the client why he or she demands something. The use of the term “why” is an irrelevant inquiry about human behavior; it produces only fabrication and post-behavior explanation. Instead, ask your clients **what** is important to them. The word “what” does not put their demand into question. It simply acknowledges it and asks them to reflect on it. Once you have the connection between position and value,

you can also use that value to explore other components of their position by asking, “In addition to \$50,000, how else do you see our accomplishing the security you are seeking here?”

Since we don’t really know what a client’s behavior means, can we ever understand when a client is in agreement with us, or not? Yes we can. Every person has his or her own cues for agreement and rejection. The cues vary from person to person, but each person will always use the same cues to signal agreement or disagreement. Lawyers need to learn what each client’s cues are for agreement and disagreement. We learn this by asking simple “yes” and “no” questions at the start of our interaction with the client. Carefully observe the client’s nonverbal cues, as minute as they may be, and learn them because they will be the same every time that client agrees or disagrees, in your office, at lunch, and in every other setting.

In addition to understanding each client’s agreement cues, lawyers can work to develop rapport on an other-than-conscious level. Subconscious rapport develops through the appropriate use of mirroring and matching of gestures, vocal tone and word type selection. This conduct creates sameness between lawyer and client. The technique of mirroring and matching operates at the subconscious level because it occurs naturally. It can be a conscious tool of the master communicator. Humans will automatically follow and mirror the behaviors of others (just observe the position of the person next to you on the airplane; it’s just like yours). Lawyers can consciously match body positions and vocal cues.

To test for rapport:

- 1) carefully observe each client’s posture, body position, vocal tone, and breathing rate;
- 2) match the cues and observe the mirroring which naturally occurs anyway within 10 to 50 seconds; and
- 3) if the person mirrors back the new behavior, the lawyer will know that rapport has been established. If the person does not mirror back the shift, rapport does not yet exist.

The message for lawyers: Accept responsibility for establishing an effective communicative relationship with your clients. Do not expect clients to see your point of view. Be the professional they have hired, not just in the law, but as the person who will be sure that your working interaction is clear and understood. The result of your efforts? Likely fewer malpractice claims and increased efforts to mend even broken relationships over unfortunate glitches that are bound to happen as our practices grow in number and complexity.

Dr. Paul M. Lisnek is the author of 13 books including “The Hidden Jury and Other Secret Tactics Lawyers Use to Win” and the upcoming “Art of Lawyering,” to be published by Sourcebooks. He is CEO of Decision Analysis, a leading trial consulting firm (www.decision-analysis.com), host of “Newsmakers” on CNN Headline News on the Comcast Network in the Midwest, and a legal and political analyst for numerous television and radio stations.

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