Communication Training for Legal Professionals

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Reflecting back upon his career, a prominent lawyer observed, "I realized just how much of a lawyer's work involved dealing with people—listening to clients, developing rapport with them, handling them, educating and persuading judges and opponents. . ."(Goodpaster, 1975, 5.)

His observation serves well as a prelude to the topic which is the focus of our paper. It is becoming increasingly apparent that speech communication professionals possess a growing body of knowledge and insight which could assist lawyers to pursue more effectively important aspects of their practice which deal with instrumental people: their clients, important witnesses, judges and other attorneys.

Numerous investigations have documented that communication skills are highly important if a lawyer aspires to succeed. Perhaps the most fundamental indicator of this importance is the fact that much of a lawyer's time is spent communicating with others.

The observation of Shaffer, that 90% of a Lawyer's time is spent in talking and listening (Hunsaker, 1980, 423), is supported by an observational study of lawyer's rated as "good general practitioners" by their Dallas colleagues. These observations revealed that the lawyers studied did, indeed, spend a major part of their workday in interpersonal contact: transmitting information, interviewing, rapport building, advising, explaining, negotiating, and consulting (Decotiis and Steele, 1977, 30-32.)

This paper examines the importance "to lawyers" of four types of communication skills: advocacy, cross-examination, interviewing and interpersonal. It also explores specific types of knowledge and skills which communication experts could teach lawyers to use or to use more effectively. Finally, consideration is given to how professionals in communication might go about attempting to market their expertise to the legal community.

Importance of Skills

Advocacy

Advocacy skills are essential as a lawyer approaches the task of attempting to meet the needs of a client. Initially, these talents must be applied in establishing the necessary rapport with a client, so that the client will trust the lawyer and, as a result, will be cooperative (Nizer, 1980, 21.) Successful building of trust is what one legal expert terms the **matrix of meaning** (a realization of how the lawyer's abilities are suited to fulfill the client's needs), which he suggests is **critical** if a lawyer hopes to gain the necessary information to be able to handle the case effectively (Willett, 1985, 250.)

If the case is taken to trial, **vior dire** is another time the lawyer must rely upon effective advocacy skills. Not only does the attorney use these skills to obtain the needed information from a prospective jury member, but advocacy talents should be employed in a manner which will foster a positive image with the jurors who are chosen to hear the case. The **accuracy** of information obtained in **voir dire** to determine which persons should sit on the jury depends, in part, upon establishing a comfortable relationship with the persons being questioned during jury selection. As a result, one in three admitted that they deceived the lawyer during voir dire (Bennett and Ciampa, 1981, 33.) Another reason to utilize advocacy skills to foster an amicable relationship during **voir dire** is suggested during **voir dire** by an experienced legal observer: a negative impression created during **voir dire** may adversely influence the jury member's acceptance or judgment of a lawyer's information during a trial (Givens, 1981, 16.)

During a trial, advocacy skills are probably going to be particularly influential during both the opening and the closing statements. The opening statement has potential to be an important message for several reasons. This speech comes at a crucial point in a trial: at a time when the jury is the most relaxed (and, perhaps the most receptive, to information) and at a time when the jury is probably looking for someone to make sense out of what the case is all about (Swanson and Wenner, 1981, 17.) The opening statement is a key message because it is delivered while the jury is beginning to make an important decision—a judgment about whether the attorney is trustworthy. This assessment will undoubtedly influence their view of the merits of the lawyer's arguments, evidence and questions. Finally, the opening statement is a significant message because it usually influences how the remainder of the trial will go. Some lawyers indicate that a good opening statement sets the stage for all that follows (Givens, 1981, 16.)—that if the opening statement goes well, evidence flows into place more fluidly and it is easier for the jury to make sense out of the evidence presented (Swanson and Wenner, 1981, 17.)

A closing statement also requires application of advocacy skills. In this speech, attorneys attempt to help the jury make sense out of the information they have heard and to determine what that information means, in terms of the innocence or guilt of a client. It is important that the attornies project an aura in their style which suggests that they have confidence that the jury realizes the merrits of their case. It is equally important that the advocates adapt their

messages to the needs of the jury, avoiding an information overload, employing advocacy skills in a manner that important points are emphasized, and phrasing ideas in simple terms (Givens, 1981, 56.)

The lawyer also needs to consider the potential impact of the advocacy skills of their witnesses. The witness ought to use advocacy skills effectively to project **credibility** (Stano and Reinsch, 1982, 198.) and they should be able to express their thoughts in a manner which facilitates comprehension of information by the jury (Nizer, 1980, 23.) As one lawyer puts it, the best witness is one who is humble (Golab, 1986, 31.)

The increasing use of expert witnesses has generated a need for lawyers to assist such witnesses to employ positive advocacy skills. Utilization of expert witnesses is so extensive that lawyers can easily locate them in the yellow pages of many cities (Lynch and Mitby, 1985, 21-22); they are as common in the court room as the lawyers themselves (Rossi, 1985, 18.) Legal authors indicate, however, that such witnesses often generate a negative image to a jury. They typically need assistance from the lawyer using them to present an effective demeanor and attitude, to make their testimony more appealing for a juror to digest and to accept; often, by verbalizing extensive qualifiers for their observations, they may project a lack of confidence in their opinions. (Daniels, 1985, 52.)

Even the placement of a lawyer's witnesses during a trial may have substantial impact upon the jury. One seasoned lawyer recommends that a wise attorney will place witnesses with the strongest advocacy abilities first and last. A strong initial witness, he reasons, may predispose the jury in a favorable manner to less impressive witnesses who follow, while a strong final witness leaves the jury with a powerful last impression (Nizer, 1980, 20.)

Recent studies have verified that lawyers acknowledge the importance of possessing strong advocacy skills. Surveys of lawyers in California (Schwartz, 1973, 325-333.) and in Kentucky (Benthall-Nietzel and Nietzel, 1975, 12.) revealed that strong majorities of the lawyers surveyed perceived the abilities to construct and present strong oral arguments, to negotiate, and to speak persuasively as important and essential to their practices. The California lawyers also indicated that these advocacy skills are valued more strongly the longer the lawyer has been practicing. A more recent national survey discovered that trial lawyers assessed four advocacy skills as extremely important: sounding sincere, generating a credible image, convincing a client that the lawyer is acting in the client's best interest, and fluent speaking skills (Thorpe and Benson, 1983, 11.)

The significance of advocacy skills in a trial are, indeed, substantial:

> A trial is a contest judged largely upon the persuasive ability of the two litigants. . .the intrinsic merits of any case are mediated by the persuasive impact of the messages which present the case and the persuasive skills of the individuals who present them (Parkinson, Geiser and Pelias, 1983, 16.)

Cross-Examination

Cross-examination skills also are important "lawyering" talents. In a trial setting, an attorney is dependent upon cross-examination talents to cast doubt upon the testimony of opposing witnesses, to raise questions about the credibility of a witness, and to make a jury aware of inconsistencies or essential admissions in the comments of a witness.

The impact of cross-examination upon a trial is estimated by one experienced lawyer as extremely substantial—90% of an attorney's cases are won by cross-examination of witnesses of the opposition, rather than by the direct testimony of one's own witnesses. (Nizer, 1980, 24.)

It is critical for an attorney to realize **when** to use cross-examination. Examination of a witness whose testimony is not damaging is a waste of time; examination of a witness whose comments are irrefutable can actually damage one's position in a trial.

A lawyer also must be able to utilize **productive techniques** in cross-examination. For example, careless eliciting of information may allow an opposing witness to repeat damaging information; an inappropriate method of questioning may arouse jury sympathy for your adversary's witness; and unwise selection of cross-examination questions might allow the person being questioned to withhold the admissions you are seeking or to ramble and confuse the issue (Stano and Reinsch, 1982, 197-211; Gottlieb, 1986, 134-157.)

Knowledge of effective cross-examination techniques is also an important consideration for the attorney's witnesses. A witness can generate credibility and a desirable image by using the right communication techniques. They can also undermine the impact of their information if their communications suggest uncertainty, deception or an unfavorable image to the judge or jury. Expert witnesses often need to be coached to utilize communication styles which enhance the latent credibility their testimony should contain; they also should be trained to communicate in a manner which suggests an appealing demeanor and which emphasizes clear expression of technical information (Lynch and Mitby, 1985, 48.)

As one might expect, practicing attorneys agree that cross-examination skills are essential to their careers. Over 90% of a national sample of trial lawyers indicated that cross-examination abilities are extremely important to their practice (Thorpe and Benson, 1983, 9.) In fact, more lawyers rated cross-examination as an extremely important skill than any other communication skill which was examined in this study.

Interviewing

Although successful handling of a legal case requires extensive reliance upon the ability to conduct effective interviews, many lawyers, several of whom have practiced for years, indicate that they do not possess high levels of skill in four essential interviewing skills: the ability to phrase effective questions to obtain the desired information,

skill to ask effective follow-up questions to elicit more in-depth replies, listening skills, and being able to use techniques to determine whether information provided by their clients is honest (Thorpe and Benson, 1983, 8.) For each of these same skills, these trial lawyers indicated that few of them feel that they were trained well by their undergraduate or law school to interview:

Skill	Percent feeling well trained	Percent saying little or no training
Asking effective questions	8.3	29.7
Asking effective follow-up questions	8.3	30.9
Listening	17.1	23.2
Methods to determine honesty of information	1.2	63.1

(Thorpe and Benson, 1983, 13)

Other researchers have found data which attests to the importance of interviewing skills; general practice lawyers report that they spend a major part of their workday in interviewing encounters (Decotiis and Steele, 1977, 30-32) and a variety of types of lawyers rate interviewing among the most important skills which they use (Baird, 1978, 265-268; Schwartz, 1973, 325; Benthall-Nietzel and Nietzel, 1975, 12.)

Two of the most important uses of interviewing talents occur when the lawyer interviews a client and when they participate in jury selection.

Interviewing is critical for the lawyer to gather the information needed to handle a case effectively (Willett, 1985, 250.) It is essential that the lawyer's interviewing methods generate a feeling of trust in the client—what Miller suggests to be the **ultimate** factor in an interview (Miller in Willett, 1985, 251.) Engendering trust requires appropriate use of techniques to show interest in one's client, to establish rapport with them, to ascertain an understanding of the client's information and to determine when the client may not be telling the truth. The importance of these factors is suggested by Smith's study, which indicated that communication behaviors exert more influence upon the outcome of such interviews than does the length of the interview (Smith in Willett, 1985, 249.)

A lawyer also depends upon interviewing skills to make judgments about potential jurors during **voir dire.** Effective interviewing techniques enable the attorney to project a positive and favorable image to the jurors selected, with the goal in mind of making the jurors more receptive to the information of the lawyer during the trial.

The importance of interviewing skills to effective cross-examination is obvious. Knowing which type of questions to use with a particular type of witness, how to phrase questions to control the cross-examination session, and knowing appropriate interviewing behaviors for a given situation equip a lawyer to make cross-examination efficient, effective and productive.

Sadly for the lawyer—but happily for the communication expert—interviewing skills have largely been ignored by law schools (Stevens, 1973, 551-707; Galinson, 1975, 355.)

Interpersonal

Utilization of interpersonal communication abilities permeates virtually all aspects of the lawyer's handling of a trial. Seasoned lawyers indicate that effective use of nonverbal communication techniques, for example, helps them and their clients to project positive images (Peskin, Summer, 1980, 7.) and enables them to establish rapport with a jury (Givens, 1981, 16.) They also use nonverbal communication to facilitate recognition of and retention of important ideas by the jury (Givens, 1981, 15), as well as to control, distract, or intimidate the opposing lawyer (Nizer, 1980, 22; Givens, 1981, 15.)

The ability to interpret correctly the nonverbal communication of others is essential to processing information from one's client, to select jurors wisely (Bennett and Ciampa, 1981, 30), and to know when to proceed with or abandon a line of cross-examination (Stano and Reinsch, 1982, 208; Nizer, 1980, 23.)

Reading the nonverbal communication of a jury or a judge can indicate when they do not understand the lawyer's information, whether their disposition toward you and your case is positive or negative, or whether it is necessary to make adjustments, such as when a jury is fatigued.

Being aware of one's own nonverbal communication can prevent counterproductive generation of meaning, such as unintentionally lending significance to a point of the opposing attorney by taking notes during his or her speech (Stano and Treinsch, 1982, 208) or calling undue attention to a minor mistake by your witness by appearing anxious (Nizer, 1980, 23.)

Although the importance of interpersonal communication has long been recognized by the Speech Communication profession, it has not been given similar recognition by law schools (Stevens in Benthall-Nietzal and Nietzel, 1975, 375.) It should not be surprising, then, to learn that lawyers are not skilled in using interpersonal communication techniques (Decotiis and Steele, 1977, 31; Thorpe and Benson, 1983, 11) and that they report little or no training in many of the interpersonal communication skills in undergraduate and law schools (Thorpe and Benson, 1983, 13.)

Training Opportunities in Communication

Advocacy

The previous section established a variety of ways in which use of communication skills is important to a lawyer for advocacy, cross-examination and interviewing purposes. This section examines types of training which a communication expert might provide to lawyers.

While a host of basic skills might be provided to lawyers by persons in communication (such as training in public speaking, persuasive strategies, listening, message organization), our attention is focused upon specialized types of training recommended by findings of studies and by observations of legal professionals.

A series of studies by Michael Parkinson and his associates (Parkinson, 1981, 22-32; Parkinson, Geisler and Pelias, 1983, 16-22) have examined language variables which are associated with successful and unsuccessful verdicts in civil and criminal trials. Their findings are perhaps best interpreted in relation to what these researchers identify as the rhetorical roles assumed by the main participants in a trial. The **plaintiff's** role is to establish that they have been wronged. To fulfill this role, the plaintiff must present substantial information to prove their claim, they must demonstrate to the jury how they were wronged, and it is probably important that they provide a great deal of specific information about how the wrong occurred. Content analysis of excerpts from transcripts of trials illustrated significant variance in language use among plaintiffs who won their case and those who lost. Successful plaintiffs spoke more (were more likely to present specifics and to give large amounts of information to the jury) and they used more adverbs and adjectives (commonly employed to assign motives to the acts of others.) Unsuccessful plaintiffs, on the other hand, were prone to use more abstract language (increasing the likelihood that claims of harm or the act in question might be vague or unclear to the jury.) (Parkinson, Geisler and Pelias, 1983, 16-22.)

The **defendants** in trials have the rhetorical role of casting doubt upon the evidence of the plaintiff. To do this, one would expect them to use abundant specific information, to use language which would disassociate themselves from the alleged wrongdoing, and to use language in a manner which projected a favorable image of themselves. In a nutshell, that is what distinguished successful from unsuccessful defendants in both civil and criminal trials. Those who won their civil cases used more specific descriptions (nouns with physical referents) and avoided associating themselves with the wrongdoing by using significantly more third-person pronouns. Their unsuccessful counterparts in civil trials used substantially more first-person pronouns and verbs which referred to themselves, both of which tended to associate themselves with the wrongful act. In criminal trials, successful defendants used substantially more grammatically correct sentences and more polite language (projecting a pleasant image), while unsuccessful defendants distinguished themselves with significantly more references to themselves (association with the alleged wrongdoing.) (Parkinson, Geisler and Pelias, 1983, 16-22.)

The **plaintiff's attorney** assumes the rhetorical role of successfully creating the impression of injustice to his or her client and of establishing that the defendant should be held responsible for the act. To do this, one would assume them to present substantial information to verify their claims, to emphasize the suffering and injustice their client has suffered, and to focus the jury's thinking about how the sitiatuion ought to be rectified. Analysis of the language usage of successful attorneys indicated linguistic choices which addressed this role. They spoke more (presenting more information); they used more emotionally laden language (such as honor and justice); they focused more upon the future (how things should be); and, in criminal cases, they exhibited a more aggressive style (reflecting, perhaps, a concern about the injustice.) The unsuccessful attorney's language in civil trials tended to focus more upon the present (rather than past harm or future justice) and presented a more complete description of events (verbs with subjects and predicates), rather than description of the abstract concepts of justice and honor. In criminal cases, the language of these attorneys was more conditional (expressing less certainty) and more hyper-correct, grammatically (perhaps suggesting a carefully planned strategy.) In short, the language of the successful plaintiff attorneys seems to be more suited to their rhetorical role in a trial than is the language of their unsuccessful counterparts (Parkinson, Geisler and Pelias, 1983, 16-22.)

The role assumed by the **defense attorney** is that of encouraging the jury to weigh the facts and to be objective. One could expect them to raise questions about the accuracy of the description of past events and to remind the jury of the legal precepts which should be used to determine guilt or innocence. Successful defense attorneys in civil cases used more language which was specific, rather than abstract (relating to the concept of objectivity), while in criminal trials they used language with more references to abstract concepts (like justice and honor), more questions about past events (challenging the veracity of the charges abainst their client) and more legal jargon. Language variables associated with failure in civil trials were the use of more abstract language (nouns without physical referents), more negative language, and more present-tense language (reflecting, perhaps, less exclusive attention to questioning the accuracy of the description of past events.) (Parkinson, Geisler and Pelias, 1983, 16-22.)

A second linguistic approach to legal communication is equally intriguing. Swanson and Wenner posit the theory that use of the appropriate **sensory language** may be a key to success in the courtroom. Persons in the Western culture, they suggest, tend to rely upon one of three sense modes to process information: visual, auditory or kinesthetic. The different manner in which these three types of persons process information is illustrated in the following responses to the question, "Please describe what you observed:"

Auditorily-dependent: "I was walking along Sunset, *listening* to my radio, when all of a sudden I *heard* a piercing *screech* followed by a *loud crash.* I saw a woman *screaming.* Just then I *heard* the windshield shatter."

Visually-dependent: "I had a *clear view* of the accident. I saw a *blue Plymouth* with *black smoke* coming from the tailpipe run the *red light* and hit the *yellow* car broadside. At that point I *saw* a woman who *looked frantic* searching for a way out of the car. Yes, I *saw* a *bloody mess.* That's what I *saw.*"

Kinesthetically-dependent: "Oh, I *felt* just *terrified* when I *sensed* that the Plymouth was going to hit the other car. *I felt so helpless* when I *realized* that that woman was *trapped.* Yes, I saw the woman *struggling* and was *shocked* when I heard that *terrible* man in the Plymouth *scream* in *pain.*" (Swanson and Wenner, 1981, 14.)

The theory suggests that a lawyer who adapts his/her language to the sensory mode of the jurors is most likely to establish positive rapport with them and to have maximum effectiveness, since the information is being presented in the mode which is easiest for the receiver to process. One discovers the sensory mode of jurors during voir dire by listening to the predicates, nouns, verbs and adjectives; one can also determine the sensory mode by asking purposeful questions during **voir dire**—questions which elicit descriptions by the jurors. One's witnesses can be directed to use the appropriate mode during cross-examination via the questions asked by the lawyer. In opening and closing remarks, the lawyer can couch thoughts in the appropriate sensory mode of the jury. As the authors put it: "paint a picture" for a visual person, "orchestrate the testimony" for an audit heart" of the kinesthetic individual (Swanson and Wenner, 1981, 18.)

Although one of these linguistic concepts is based upon analysis of selected portions of trial transcripts and the other is a theory, the implications of the two concepts are fascinating. If validated, the ideas imply ways to apply content analysis in a practical fashion. The speech professional could assist a lawyer in understanding the language concepts, could provide analysis of the lawyer's language styles, and could consult in a trial situation, helping a lawyer to ascertain the sensory modes of a jury and to utilize the appropriate sensory mode in his or her cross-examination and speeches of advocacy. In similar fashion, assuming the Parkinson findings are valid, assistance could be given to assure that the lawyer and their client use language styles associated with success and avoid styles which are linked with failure.

Nonverbal communication appears to be another fertile area for advocacy assistance. although lawyers may rate the importance of these communication modes as less important, seasoned and successful lawyers indicate that they use nonverbal communication for several predetermined purposes in a trial. They use it to establish credibility; they employ kinesics to mark the structure of a message, to emphasize main ideas, and as a mnemonic device to assist jury recall of key arguments (Nizer, 1980, 23; Givens, 1981, 16, 55-56.) They employ proxemics to help them relate to a jury and to convey authority and confidence (Givens, 1981, 55)—and they even use nonverbal communication in deliberate ways to control opponents who are trying to distract a jury while they are talking (Nizer, 1980, 22.) Lawyers also use haptics, to show concern for their client by touching them or to indicate the lawyer's intense feeling by touching their own chest (Givens, 1981, 56.)

The potential for application of communication theory and skill to enhance advocacy presentations of witnesses is equally rich. Studies of witness communication have found that linguistic traits can assist a witness to project a desirable image (using courtesy markers and avoiding powerless rhetoric, for example), to generate credibility (use of correct grammar and avoidance of hedge words), and to avoid connecting oneself with the injustice being contested (avoidance of self-references)—all of which can have a bearing on the outcome of a trial (Parkinson and Parkinson, Conley in Stano and Reinsch, 1982, 200.)

Lawyers suggest that teaching a witness how to use kinesics to visually suggest a positive image can make the witness more appealing to a jury (Peskin, Summer 1980, 7) and that a lawyer's positioning when cross-examining a witness can either aid the witness to portray self-confidence and sincerity to the jury (if they are looking toward the jury while answering cross-examination) or can encourage the jury to perceive an undesirable image of the opponent's witness (Givens, 1981, 55.) A unique strategy, like having the client deliver the opening statement, is an advocacy tactic which is credited with substantial influence upon the success of an American Indian trial (Bennett and Ciampa, 1981, 33.)

Cross-Examination

The most obvious transfer of communication expertise to legal cross-examination would be to provide training about **when** to cross-examine witnesses, about **how** to select appropriate questions so that one controls the witness and also elicits the desired information, and the **techniques** of effective cross-examination, such as aiming to get small admissions, knowing how the respondent is likely to answer before asking a question, asking for facts rather than interpretations, and realizing when to abandon a line of questioning or how to jump question sequences when you suspect that the witness is canned or is lying.

Application of language concepts to cross-examination training may prove fertile, as well. Loftus, for example, found that a cross-examiner who used immediate [e.g., Did you see **the** (versus **a**) headlight?] who used **vivid** language (e.g., the auto **smashed**, rather than **collided**) obtained higher estimates of auto speeds and greater estimates of damage from witnesses (Loftus in Stano and Reinsch, 1982, 204.)

Communication experts could also train cross-examiners to phrase questions in a manner to elicit responses which were consistent with the sensory language modes of jurors.

Nonverbal expertise could be used to train lawyers to use proxemics effectively to assist in cross-examination. One such use would be to employ proxemics to make deception by a witness more uncomfortable (Peskin, Spring, 1980, 8); another would be to use proxemics to heighten the anxiety of a witness whom the attorney suspects may be ready to make an important admission (Peskin, Spring, 1980, 9.)

The training of communication skills to witnesses who will be cross-examined—a task which many authors indicate lawyers frequently neglect—is another application of the communication expert's talents. In addition to preparing the witness in terms of what to expect during cross-examination (Phillips, 1984, 274) training is needed in areas like using effective language strategies, employing nonverbal techniques like eye contact (to suggest credibility) and kinesics (to project a calm, confident image), as well as the reading of nonverbal communication, so that the witness understands when a judge or jury member does not understand what the witness is trying to tell them (Lynch and Mitby, 1985, 48.)

Interviewing

One needed skill which the interviewing expert can contribute to many legal professionals is the art of using a variety of types of questions purposefully. One legal observer laments that lawyers tend to use too many closed questions in their interviews of clients and of prospective jurors (Bonora in Dancoff, 1981, 29.) The importance of using a variety of open and closed questions to project a favorable image upon those one is questioning, to avoid intimidating jurors (who, in turn, may deceive the lawyer), or to discover the sensory language mode of jurors is apparent from discussions earlier in this paper.

You will recall that lawyers in one national survey indicated that discerning whether one's client is telling the truth is a problem for them—and a skill which they feel they lack. Techniques such as use of mirror questions, open questions and the reading of the nonverbal during responses to questions are skills which educational communicators teach students every term.

Perhaps one of the most valuable skills which interviewing training develops is that of listening. Two legal observers lament that listening skills are **trained out** of lawyers (Bennett and Ciampa, 1981, 32.) Given the potential benefits which a lawyer can accrue from careful listening—ranging from detecting a lack of trust on the part of their client to a chance to determine the sensory language mode of a juror—there are probably few more important abilities for a lawyer to possess than the ability to listen well.

Rapport is vital to a successful relationship with the lawyer's client. It is also a relationship which many lawyers have difficulty fostering:

> No formula and no form book exist for client interviewing and counseling. It is more like a painting than an equation. Unfortunately, that has lured many lawyers into giving it little consideration. As a result, they do it poorly, haphazardly, and in a fashion calculated to produce client dissatisfaction, poor business and poor practice. (Howarth and Hetrick, 1983, 63.)

Understanding how to use nonverbal communication techniques like those embodied in Wassmer's acronym, SOFTEN (Smile, Open your posture, Forward lean, Touch, Eye contact, and Nod) (Wassmer, 1979, 32-34) to facilitate mutual trust and to build rapport can be provided from lecture notes in practically any interviewing class.

Potential for Consulting or Training

Since the mid to late 1970's, the legal profession has made tremedous use of experts in a number of ways. First and foremost, they are relying more and more upon the expert witness. Jan Golab calls this the age of the expert witness:

> ...the last twenty years have seen enormous growth in the abundance and complexity of legal matters, especially in the technological details that litigations concern. (Golab, 1986, 28.)

Of particular interest to our discipline is one expert witness, Marilyn Lashner, a Ph.D. in communications from Temple University. While writing her dissertation in the 1960's, Lashner turned her content analysis expertise into a methodology to analyze the quality of news coverage. She now conducts scientific analyses of news and other communication, measuring statements, implications and innuendos. She uses this analysis to provide legal advice on malice and injury to reputation in suits which involve libel or invasion of privacy (Golab, 1986, 75-76.) The function which Lashner addresses is one which might also be assumed by other communication experts who have skills in content analysis.

To be realistic, few of us can probably foresee a career as an expert witness. However, we might consider providing market research for legal firms. One of the best known companies providing such service is comprised of experts in human behavior, rather than legal professionals. Litigation Sciences, a Palos Verdes, California, firm, specializes in product liability, antitrust, breach of contract, corporate criminal defense and major tax dispute litigation. They help an attorney define the behavioral component of overall trial strategy; their business is essentially to understand people and to understand the social and psychological processes that take place during a jury trial. The concept for Litigation Services was born in 1977 when Donald Vinson, a University of Southern California professor, was hired by IBM in a $300 million antitrust case to recruit a shadow jury which sat in the courtroom and provided daily feedback. Complying with IBM's wishes, Vinson formed a surrogate jury, matched demographically to the actual panel, which observed in the courtroom daily and was available each evening for detailed interviews. (Dancoff, 1981, 22.) For those of us trained in audience analysis, debate and argumentation,

interviewing and interpersonal communication, the possibility of using our expertise in this fashion, although perhaps highly ambitious, does exit. People with backgrounds similar to ours are working as trial behavioral consultants for a relatively new organization, The Association of Trial Behavior Consultants. Such an organization might provide the first step in pursuing consulting opportunities.

However, for a majority of us in the academic environment, time may not permit such extensive consulting work. Perhaps the most practical suggestion for us comes from Mr. Gary Hunt, Associate Director of Continuing Legal Education for the Tennessee Bar in Nashville (Hunt, October 26, 1986.) Mr. Hunt confirms the fact that lawyers do not have adequate skill training in communication, even though a recent survey indicates that law schools are placing increased emphasis upon communication training (Nobles, 1985, 21.) Hunt suggests that the most practical place for the academic specialist to begin is with the local bar in his or her community. Mr. Hunt suggests that every local bar generally meets at luncheon meetings and that they are always eager for speakers. He recommends that those who are interested in training/consulting offer their services as a luncheon speaker, usually for free. From this opportunity, workshops and training sessions can be offered at a future time. The ultimate goal of such volunteering to speak for free is to provide a one-hour workshop at an annual meeting of a group like the state meeting of the American Bar Association. The key to obtaining such workshop invitations seems to be through networking and building credibility at a local level, Hunt feels. He also indicates that a fee of $1000 for three workshops at a state association meeting is not unrealistic.

One might also offer workshops independently, of course. Curtis offers ten valuable tips for one who desires to market such workshops:

1. A private or closed seminar often produces a better turnout than an open seminar, which is aimed at a general audience.
2. Having the workshop at a well-known hotel or country club may increase attendance by 10-20%.
3. Scheduling morning sessions (8:30-11:00), which reduces room, food and beverage expenses, can achieve a better turnout because of lowered costs to participants.
4. Currently, one of the most successful promotional techniques is the three-way seminar. For example, a law firm, accounting firm and a bank jointly invite their clients to a private seminar. This means exposure to 30 to 100 qualified prospects at one time. You gain credibility by associating with other professionals. Three-way seminars also spread the costs and work load and generally guarantee a good turnout.
5. An effective program will provide useful and "how-to" information. The program should include support material, such as an outline, reprints of articles, or a workbook. People will forget what you told them, but they can refer to reference materials (with your name) later.
6. Since the most successful seminar requires 10 to 12 weeks to prepare, design your program so you can repeat the seminar with minimal effort.
7. The most important part of the seminar is the follow-up. Allow enough time to answer questions after the presentation. People have personal concerns which they do not want to disclose in a group.
8. Print your name, address and phone number everywhere on your workshop materials. People will refer to the material later.
9. Send people who attended the workshop a follow-up letter, encouraging them to communicate with you in the future. Also send them articles with your business card attached.
10. Do not hide from participants during breaks in the workshop or at the end of the workshop. The more accessible you are for discussion, the better you can build rapport. (Curtis, 1986, 62-64.)

Cathy Bennett, a human relations consultant who makes her living counseling lawyers in trial techniques, and John Ciampa, a trial lawyer and professor of interactive telecommunication at New York University, provide inspiration for many of us. They are creating a videodisc game which they hope will revolutionize legal instruction. The purpose of their videodisc is to help lawyers become intensely aware of verbal and nonverbal communication occurring at any given moment in a trial: from the subtle, nervous leg movements of a juror reacting to a question during **voir dire**, to the obvious stammer of an expert witness who is challenged on a crucial point of testimony. The videodisc helps the lawyer to become aware of the communication being expressed. At this point, the disc stops, and the lawyer is asked to determine how they would interpret the communication and how they would react to it. They then can view how other legal experts would interpret and respond to the communication episode. (Bennett and Ciampa, 1981, 30.)

Lawyers need to be excellent students and practitioners of communication. Who is equipped to train them more effectively, more efficiently and more thoroughly than teachers of communication and specialists in advocacy, like the debate coach? Echoing a suggestion made by Tom Willett a year ago:

> A(n)...area for improving communicative skills for lawyers is through convention programs, seminars and workshops. As public school teachers have developed "in-service" instruction, so could the legal profession. (Willett, 1985, 254.)

Perhaps all that needs to be done is for the communication specialist to make the first move.

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