

Improving your nonverbal performance in front of a jury

Your body language, especially your hand gestures, speaks volumes to your audience

By Anayat Durrani

Everyone has heard the oft-repeated stats: "communication is 93 percent nonverbal." When broken down, that means only seven percent comes from words. The rest comes from nonverbal communication: 38 percent from tone of voice and 55 percent from body language. While the jury is still out on the validity of this data, it does bring to light the importance of nonverbal communication for lawyers. How they incorporate nonverbal attitudes in their courtroom presentation can make a big difference in the outcome of a trial.

Some research suggests that people who gesture more are more persuasive. Hand gestures can be a powerful tool if used correctly or it can be a distraction and work against a person. In June 2012, a judge ordered a new trial for a case that produced a $212 million verdict against a Botox manufacturer due to hand gestures used by the plaintiff's lawyer in closing arguments. The lawyer, having agreed not to make reference to an official FDA "black box warning" regarding the dangers of Botox side effects, however, used his hands to demonstrate a box as he explained to the jury the need for a voluntary warning.

"Clearly the lesson here is for attorneys to be mindful of their descriptive gestures. These gestures are, in fact, language," said Cara Hale Alter, president of SpeechSkills, a San Francisco-based communication training company, and author of "The Credibility Code: How to Project Confidence and Competence When It Matters Most." "However, the mistake would be to restrict all gestures. Natural gestures help the attorney to create a relationship with the jury. Reaching an open palm in their direction or moving the hands back and forth as if to say 'you and me,' creates rapport on a nonverbal level."

Codes of conduct

In her book, Alter identifies 25 specific visual and auditory cues, "codes of conduct" for posture, gestures, vocal skills and eye contact. Five cues she recommends starting with include: 1) Keep your head level, 2) Keep your hands in the gesture box (at navel level), 3) Speak with optimal volume, 4) Hold eye contact for three to five seconds, and 5) Listen actively.

Regarding gestures, Alter said they fall into two categories: natural or descriptive. She said natural gestures are more fluid movements with the hands, while descriptive gestures "cross into the realm of language." Examples of natural gestures include using hands to reach forward, circling movements, or moving back and forth. Descriptive movements include waving hello, a "thumbs up", or as a visual aid to draw a picture in the receiver's mind.

"Bottom line, the attorney would do well to be generous with natural interactive gestures and be cautious when using descriptive gestures with sensitive content," said Alter who works with companies ranging from Facebook and Google to Harvard Medical School and UC Hastings College of the Law.

Alter said there are exceptions to the rule, and rules for hand gesturing can be broken. She said interactive gesturing can help establish relationships. "If your primary goal is to look formal, polite or immovable, you might do well to keep your hands still. If you'd like to look interactive, fluid, and connected, get your hands moving."

There are some types of hand gestures that should be avoided altogether. An Austin attorney spent time in jail for making a lewd gesture in court and is on three years of probation related to his law license, though still eligible to practice during his probation. The attorney completed a 90-day sentence for contempt because of his 2008 gesture simulating masturbation before a judge while representing a client. The attorney said the gesture was only meant for the prosecutor.

"When I teach presentation skills to lawyers I always tell them that hand gestures are like booze," said Stuart I. Teicher, a professional legal educator who focuses on ethics law and writing instruction at Rutgers Law School and Rutgers University, an ethics investigator, and practicing attorney. "They're okay in moderation. Gesturing too much can be distracting, but remaining completely still is a distraction as well because it looks strange."

As "the only CLE performer," Teicher covers many topics to help lawyers at every stage of their career. In his video, "Why you should be mindful of hand gestures," he mentions a big no-no for attorneys – finger pointing – which he says looks judgmental. He cited the example of "master finger pointer," former president Bill Clinton, during the Monica Lewinsky scandal. In one of the most overplayed sound bites in history, Clinton is shown pointing his finger while adamantly expressing, "I did not have

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sexual relations with that woman, Ms. Lewinsky." Teicher instead recommends attorneys use hand gestures in moderation, a strong and tall posture, use of a clear and loud voice and good eye contact.

"The key is for lawyers to speak and act as conversational as possible," said Teicher. "Moderate gesturing allows a lawyer to seem natural and conversational. That allows the lawyer to make a personal connection with their audience, and that's a critical part of persuasion."

Mastering the art of communication

One company has taken a unique approach to working with lawyers and witnesses for the past 36 years. The founders of the Los Angeles-based Act of Communication come from a background of film, television and theater. They have taught more than 30,000 lawyers in self-sponsored workshops, continuing legal education colleges, and various other programs. They apply the skills they've learned from the acting world to help trial lawyers in the courtroom. They view the attorney as the producer of a live event who has multiple roles as a writer, director and actor in the courtroom theater. A common problem, they say, is that lawyers have only been trained in the rules and procedures of the law.

"The most important lesson actors can teach lawyers is to be yourself," said founding director Alan Blumenfeld, who has played a lawyer many times on TV, appearing in over 200 roles on television including Cheers, L.A. Law, JAG, NYPD Blue, The Mentalist and Grey's Anatomy. "Learn to be your authentic, honest self in the courtroom. Jurors look for credibility, likeability and sincerity. And you can achieve this only by being sincere, likable and credible."

The company offers a workshop called, "What can lawyers learn from actors?" The program teaches that both attorneys and actors share the same goal, which is to captivate their listener's attention and "convince him or her of the story's desired outcome." This can be accomplished by using persuasion skills through language, body and human emotion.

"All gestures which follow organically from your genuine, sincere effort to communicate with the triers of fact will be effective, real and credible," said Blumenfeld. "The goal is to access all of your intellect, emotions, voice and body in the pursuit of advocating for your client. Actors, modern actors, learn to strip away artifice and reveal their authentic self. This is a process and well worth the effort."

Principles for success

Dr. Janet Larsen Palmer is co-founder of Communication Excellence Institute, a training and consulting organization in Los Angeles since 1986. Dr. Larsen has consulted on communication with individual executives, universities, healthcare organizations, corporations and countless law firms. Palmer has identified several key principles to inform all good hand gestures in the courtroom. To begin with, Dr. Larsen Palmer said it is important that lawyers make their hands visible to the judge or jury at all times when seated at the table. She said this has to do with trust and that if a lawyer's hands are hidden or "even gently placed in your lap, others see you as less forthcoming."

She also suggests that one hand not touch the other, whether seated or standing, adding, "When you touch your hands together, you create a barrier between yourself and the jury or the witness or judge." Instead, she recommends that lawyers keep the front of their body "open and gesture out toward your audience."

Dr. Larsen Palmer said lawyers should be careful to avoid the "fig leaf" gesture where the hands are folded in front of the genital area; or the "CYA" gesture where hands are clasped behind their back.

"Both of these classic gestures diminish your presence and tie up your hands, which are two of your most important communication assets," she said.

Lawyers should make sure that their hand gestures emanate from their shoulders and not the elbows. She said if the upper arms are tight against one's side, "then you are probably gesturing from your elbows, which is awkward and disempowering." She said lawyers should always have the palms of their hands upturned when addressing a witness, jury or judge, saying it "gives a strong impression of openness and honesty."

It is also a good idea to make gestures as expansive as comfortably possible, "to the extent that you can easily and gracefully manage making broader gestures. More powerful people always take up more body space around them," she said.

Lawyers should try to stay away from hand gestures that carry "baggage" like pointing a finger, placing hands on the hips, or waving fists in the air. Instead, she said to use a whole open hand, palm up, for any of those negative gestures.

Also, whether a witness or an attorney, she said touching one's face is a bad idea, especially around the mouth area because hand-to-mouth gestures imply the person is withholding information.

"You will always look more confident if your two hands are gesturing in different planes, one from the other. That is, try not to be symmetrical in your gesture patterns," Dr. Larsen Palmer said. "One hand can be up, while the other is slightly down. Avoid the impression that a mirror is between both hands, causing you to gesture identically on both sides of the mythical 'mirror.'"

Finally, she recommends that you avoid placing hands in your pockets, saying it makes a moment more casual and "could trivialize the importance of your arguments." She said to only do so if the gesture could reduce tension, but only one hand at a time and only for 10 to 11 seconds.

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Dr. Larsen Palmer believes that gesture patterns can be powerful tools in the courtroom. She said she and her partner were recently invited to assess the body language of a criminal defense attorney as he made his closing argument.

"The facts of the case were against his client. There seemed to be little opportunity to create 'reasonable doubt,' but the attorney gestured very gracefully with open palms and outreached arms to the jury," explained Dr. Larsen Palmer. "He told his story with comfortable gestures reaching broadly out to the jury members."

Then it was the turn of the female district attorney who was "dressed beautifully and powerfully." Dr. Larsen Palmer noted however, that she committed almost every gestural "sin" possible.

"She covered her body with tightly clasped hands, literally bouncing from the "CYA" gesture to the "fig leaf " to "barrier hands" in front of her waist. At the climax of her impassioned plea for a conviction in this case, she faced the jury squarely, put her hands on her hips, and then wagged her finger in the jurors' faces. '*You must convict this man! Do not shirk your duty. He is guilty and you know it*!'"

Dr. Larsen Palmer said it was at that point she knew that the district attorney had badly hurt her chances of a conviction because of her gestures. The verdict came back later as a hung jury. She said members of the jury explained later that they didn't appreciate being told what to do by the prosecutor.

"They felt they had been chastised by a bossy woman who shook her finger at them, and they resented it," said Dr. Larsen Palmer.

Body language advantage

Beverly Hills-based Dr. Lillian Glass is a world-renowned body language expert, popular media personality and author of numerous books including, The Body Language Advantage. She said it's crucial that lawyers know how to stand, how to look at the jury and a witness, and how to use the right body language to achieve the desired outcome from a jury.

"Recently I used my body language analysis skills to help a criminal attorney with a sexual harassment case," said Dr. Glass, who is known as "the First Lady of Communication."

"Based on my analysis of the plaintiff 's body language as well as analyzing her deposition tapes, we were able to see multiple signals of deception, which resulted in the defendant being acquitted. That combined with the attorney's exceptional communication skills, verbal and nonverbal skills contributed to a legal victory."

Dr. Glass said that those who gesture more are not necessarily more persuasive. Rather, it is people who "gesture appropriately with the gestures matching their verbalizations" that will have a stronger impact on what they are trying to relay to a jury or others. Dr. Glass has also used her body language techniques for jury selection and in witness preparation.

"In a case against the Los Angeles Police Department, the witness was deemed unlikeable in a mock jury trial. After training the witness how to effectively use his verbal and nonverbal skills the jury found him extremely likable and credible and awarded him an over $50 million verdict."

While it may not be heavily taught in law school, lawyers should be mindful of their appearance, movement, and vocal presentation in the courtroom. Whether communication really is 93 percent nonverbal has long been dissected and debated since UCLA professor Albert Mehrabian completed research and made the statement in 1967. Either way, his findings do put an emphasis on an area lawyers should be wary of – the effective use of nonverbal signals during trial.

Dr. Glass believes body language and communication skills reflect what is in a person's mind and heart and shows in how a person moves, acts and speaks. For attorneys, the right body language and communication skills can make the difference between winning and losing.

"Whether they like it or not, juries do judge the client's attorney. Judges judge the client's attorney," said Dr. Glass. "If an attorney does not have the right speaking skills or body language, they are at a big disadvantage in terms of how they are perceived."


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