

Chapter 3

COMMUNICATION: MAKE IT CLEAR

Key Topics

Clear Communication
Confident Communication Styles
Tentative Language Patterns
Personality and Communication
Techniques for Managing Conflict
Three Conversations in Conflict
Powerful Listening Skills
Conflict Communication Process
Competitive Tactics and Counter Tactics

I. INTRODUCTION

Clear and effective communication — both written and oral — is an essential skill in law. When communication is clear, fewer misinterpretations occur and there is a greater chance that you will be understood and succeed. Effective communication in the office allows your ideas to be heard and makes your contributions obvious. If you are not able to communicate well, others may not see your abilities and value. And for advancement in law, making your value visible is key.

To make your value visible, in addition to using clear communication, it is important to express the language of confidence, influence and authority. Language styles and verbal habits become established at a young age due to various personal factors, including generation, parents, ethnicity, personality and gender. And these styles and habits, when viewed by others with different styles, may be misinterpreted. Individuals who use a tentative or subordinate style may be viewed as lacking in confidence, while individuals who use a competitive or aggressive style may gain a reputation for being arrogant or feeling entitled. The key to becoming a skilful communicator is awareness of your preferred language style so that you can become fluent and versatile in other styles. This versatility allows you to select the style that best fits the circumstance and appear professional.

This chapter examines three broad arenas of communication integral to career advancement: first, how to speak clearly so that your ideas are easily conveyed and understood — a core competency for all lawyers; second, how to make your value visible by becoming aware of language styles and, in particular, those styles that may signal a lack of confidence; and third, how to manage interpersonal conflict constructively through effective communication approaches.

Technical communication skills such as legal writing and editing techniques are very important to advancement; however, as courses and training on these topics are abundant for both law students and practising lawyers, they are not covered here.

II. CLEAR COMMUNICATION

Clear communication is an essential skill in law. Being clear allows your ideas to be heard, and an important part of such clarity is making it easy for your audience to hear and understand what you are saying. In communication it is all about the audience. Listening is very hard, because our capacity for processing words far exceeds the rate at which words are spoken. As a result, our minds tend to wander and we lose focus.

Figure 3.1 below is a simple and standard communication guide¹ that can be used in a variety of situations, including face-to-face interactions (such as in boardrooms, partners' offices or hallways), as well as voice messages and written communications, such as emails or memos. The description of the elements below explains how to use the guide and how these elements, both the order and type, make it easy for the audience to listen and understand what is being said.

This structure works well for different personality preferences. For example, individuals with the Thinking and/or Judging preference on the Myers-Briggs Type Indicator ("MBTI")² will appreciate that the structure is logical, clear and concise. Figure 3.2 below is an example using this guide.

Figure 3.1: Communication Guide

The Opening:

The Subject:

Main Point:

The Body — statement about structure:

¹ This is a standard form of communication guide. For further information on clear communication, refer to Judith Humphrey, *Speaking as a Leader: How to lead every time you speak...from boardrooms to meeting rooms, from town halls to phone calls* (Mississauga, ON: John Wiley & Sons, 2012).

² For information on MBTI personality preferences, see section II.B, The MBTI, in Chapter 1 — Know Yourself: Personal Factors in Advancement.

(e.g., reasons, ways, chronological order, data, results, location)

- 1.
- 2.
- 3.
- 4.

Main Point (repeated):

Requested Response:

A. Description of Communication Guide Elements³

1. *The Opening*

Always begin with an opener or grabber, even if it's a simple "hello". Openings are opportunities to catch the audience's attention, build connection, establish your credibility, and get people thinking in the direction you want them to go. Don't fill this opportunity with words lacking intent or focus. Openers should be aligned in content and tone with the rest of your remarks. For individuals with the Feeling preference on the MBTI,⁴ the opening allows acknowledgment of and connection with the audience before the message is stated.

2. *The Subject*

This information provides a context for the information you are about to provide and tells your audience what you will be talking about. Examples include, "I want to focus on ...", "this is about why I think X ...", or "I have called you together for ...". This helps busy lawyers to switch mentally from the work they are doing and more easily follow what you are about to tell them.

3. *The Message or Main Point*

Keep in mind that time is literally money for lawyers, so don't waste time with delays or filler. Convey the main message or point of your exchange after you have connected with them and provided the subject of the communication. Tell the listener the "Big Picture Point" — the essence of your thinking. Think of it as a headline. To make it more memorable, try to create a Main Point that has energy and is concise. Keep in mind that being concise is viewed as confident and indicative of clear thinking.

³ Materials developed in part by the partnership of Fromm & Goodhand.

⁴ For information on MBTI personality preferences, see section II.B, The MBTI, in Chapter 1 — Know Yourself: Personal Factors in Advancement.

Putting the Message or Main Point at the beginning allows those with a preference for gathering information in a big-picture way (Intuitives on the MBTI⁵) or who are impatient listeners, to get the main point quickly. Have you ever been frustrated by a voice message or an email because the main message or point did not occur until the very end? This structure prevents that frustration.

4. *The Body*

After the Main Point, state the structure of your supporting points. This tells your listener where you are going and how you will elucidate the headline. Structures are varied and can include reasons, ways, chronological order, research results, statistical data, geographical location and procedure. So you might say “here are three reasons” or “here are five ways we could deal with this issue”. It allows for easier listening as the audience knows where you are going. Here is where you elaborate and support your Main Point with the ideas, reasons, details, evidence, proof, illustrations, facts, research data or stories. The structure you use allows your listener to hear the material in a coherent pattern, making it easier to understand. The supporting points immediately following the Message also satisfy detail-oriented individuals, such as Sensors on the MBTI.⁶

5. *Restated Message*

You may wish, depending on the context, to tell them your Main Point again to focus the conversation that follows.

6. *Requested Response*

If appropriate, tell them what you want them to do based on what you’ve said. Perhaps it is a discussion that you want to have with them. Perhaps it is a letter you want to have sent. Maybe it involves changing a draft opinion to include more material. Stating the requested response will allow them to more easily formulate a response to the request and to the information you have provided.

B. Example Using Communication Guide

Figure 3.2: Communication Guide Example

The Opening: Good morning. Is now a good time to discuss the lease you asked me to review?

The Subject: Several interests of the client are not being met in this current version. In particular, I want to discuss the HVAC clause.

⁵ *Ibid.*

⁶ *Ibid.*

Main Point: The clause needs to be totally redrafted as it can hurt our client in several significant ways.

The Body: There are at least three ways, including:

1. The cost for after-hour provision of HVAC is prohibitive given our client's 24/7 planned use of the premises.
2. The notice period provided for upgrading the system is very short.
3. The ability of the landlord to shut down the HVAC at any time with no notice required and with no responsibility for alternative HVAC arrangements will create huge problems for our client due to its extensive computer equipment.

Main Point again: Clearly the clause needs to be totally redrafted.

Requested Response: Do you want me to start? If so, do you have a precedent I can use that is more tenant friendly?

III. MAKING YOUR VALUE VISIBLE

The previous section dealt with making your value visible through clear communication. This section deals with making your value visible by moderating language styles and verbal habits that may be misinterpreted and, as a consequence, affect your image detrimentally. It is important to note that these styles are only detrimental if used habitually, without awareness; there is no absolute right or wrong style or habit. Rather, it is important to select the appropriate style based on the situation and the audience rather than using the same default style each time. Conscious selection allows for appropriate, contextual and strategic use of language, which will enhance your professional image.

An important factor in conscious selection is being aware of the misunderstandings that may occur when styles differ. As law still tends to be a very male-dominated profession, the masculine style is typically the norm. Thus, if the style you employ differs from this norm, inaccurate impressions about abilities, character, confidence and intention may be created. For example, individuals who use a tentative or subordinate style may be viewed as lacking in confidence. On the other hand, using competitive and aggressive styles with women partners and clients can be equally detrimental to your brand as a professional. So it is important to be aware of the style you may use habitually and where that style may differ from others. In communication, it is all about your audience.

The key to becoming a skilful communicator is awareness of your preferred language style so that you can become fluent and versatile in other styles. Being able to use other styles allows you to select the best style in the circumstance and to always appear professional. This versatility also allows you to be authoritative and assertive without being aggressive and deferential without being self-deprecating.

There are several ways to weaken image and message, including tentative speech patterns, the use of "I" inappropriately, the use of indirect style

with those who use a direct style of speaking, and use of the passive instead of the assertive voice. Each of these undermining speech habits is discussed below.

A. Tentative Speech Patterns

Set out below are patterns in communication that signal uncertainty and thus minimize authority and influence. These verbal habits suggest that the speaker lacks confidence, weakening the impact of her or his ideas, assertions and messages. These approaches are not wrong in all circumstances and may be used strategically to show deference or deflect aggressive stances. However, these advantages tend to be limited when compared with the image created by their use. If you want to create an image of confidence and solid ideas, be aware of these tentative speech patterns and limit their use to appropriate situations.

ADVANCEMENT TIP

Tentative speech habits tend to weaken the message and the speaker's image. Replace them with patterns and voices that signal confidence to make your value visible and expand your repertoire.

1. Undermining Starts

Undermining starts are phrases added to the beginning of sentences to signal uncertainty and are often misinterpreted as indicating a lack of confidence. They are also called hedges and prefatory qualifiers.⁷ When used automatically and frequently, they reflect uncertainty where none exists. Some common examples include:

Maybe it's just me but ...

This may be a dumb question ...

I feel this is about ...

I may not be right but ...

I don't have all the answers but ...

I guess my question is ...

I'm not an expert on that but ...

I kind of think that ...

I may be the only one that feels ...

⁷ Judith Humphrey, *Speaking as a Leader: How to lead every time you speak...from boardrooms to meeting rooms, from town halls to phone calls* (Mississauga, ON: John Wiley & Sons, 2012) at 162.

2. *Weakening Modifiers*

Using certain modifiers also weakens the impact of your message. These modifiers have the same effect as undermining starts — they make the speaker sound tentative and uncertain. I have had more than one lawyer describe other lawyers who are dead wrong on an issue but sound totally certain about their assertion. This is the reverse of that situation; there may be total certainty on the speaker's part, but the insertion of these habitual modifiers signals otherwise. Here are some common examples:

Hopefully we will be able to deal with this.

I just want to explain that ...

It's kind of normal for this ...

Basically the main issue is ...

Keep in mind that if you need to communicate real uncertainty, use these modifiers. Again, the key point is using them consciously rather than habitually in every statement.

3. *Diminishing Endings*

Diminishing endings are words added to the ends of sentences that signal uncertainty and diminish power. They are the equivalent of verbal “up-speak” — the tonal upswing at the end of a sentence that makes it sound like a question. When every sentence that is spoken has the lift at the end, the pattern becomes obvious and is distracting. I hear it more and more in seminars and individual coaching. Psychologically, it is used to connect with the other person — to signal that you want the other person to share in the conversation. Unfortunately, “up-speak” and “undermining endings” minimize the message and reduce the person's authority. Again, there is nothing wrong with these endings or “up-speak”, and the use is entirely appropriate with friends or others who speak in this manner. However, for a listener with a different, more authoritative style, it will often be viewed as indicating a lack of certainty, knowledge and ability. Here are some common examples:

... How does that sound?

... Isn't it?

... Right?

... Okay?

... Does that make sense?

... If it's okay with you.

One person at a communication seminar revealed that after a presentation she had been told by a colleague that she had added “Okay?” to every statement she made. Even more amazing is that she was totally unaware she had done so. This story reveals clearly how insidious and unconscious

speech patterns are, especially when you are stressed or nervous. Become aware by asking trusted colleagues if they have noticed any particular speech pattern that you use habitually. You may be surprised by the answer.

TRY IT OUT

Next time you want to use this phrase:

“Have you got a couple of seconds, I won’t take much of your time, I just thought we might take a look at this. *Okay?*”

Try this one instead:

I would like to discuss the opinion you asked me to draft. Is now a good time?

B. Misplaced Focus — “I” as Subject

Recent research⁸ analyzing approximately 400,000 computerized texts suggests that people who often use the pronoun “I” come across as more personal, warm and honest, while people who use fewer “I”s come across as more self-confident. This research also revealed that the person with the highest status tends to use “I” the least, while the person with the lowest status tends to use “I” the most. Thus, if you want to convey confidence, check your use, and possible overuse, of the word “I”.

Another inadvertent consequence of overusing “I” is becoming the inappropriate subject of a sentence; this minimizes the strength of the message and focuses a misplaced spotlight on the writer. Some experts suggest never starting a sentence with the word “I” unless you are specifically talking about yourself.⁹ Consequently, use “I” only if you intentionally want to be more personal, and convey warmth and honesty.

TRY IT OUT

Instead of these phrases:

I feel the research is complete.

I have a problem with my assistant; she is always late.

I am pretty sure that this project arrangement isn’t working.

I love this file.

I don’t have enough time to complete the work.

I estimate this to be a 50-minute presentation.

⁸ J.W. Pennebaker, “The Secret Life of Pronouns” (September 3, 2011) 2828 *New Scientist* 42; J.W. Pennebaker, “Word Choice Detects Everything from Love to Lies to Leadership, According to Psychology Research”, online: <<http://www.newswise.com/articles/view/579234>>.

⁹ Phyllis Mindell, *How to Say It for Women: Communicating with Confidence and Power Using the Language of Success* (New York: Prentice Hall Press, 2001) at 26.

Try these phrases:

The research is complete.

My assistant has a problem getting to work on time.

The project arrangement isn't working.

This file is very interesting.

The work cannot be completed on time based on this schedule.

It's approximately a 50-minute presentation.

C. Direct/Indirect Communication

The direct style of speaking requires the speaker to be responsible for the listener's understanding of the message or information. In contrast, with indirect style, the responsibility for understanding is on the listener, as this style of communication allows for multiple interpretations, enabling face-saving and diplomacy. Thus, when a direct speaker as listener is required to determine which of the multiple meanings the indirect speaker intended, misinterpretation and miscommunication typically result.

In the book *Outliers*,¹⁰ Malcolm Gladwell dramatically describes the difference between direct and indirect communication approaches. In South Korea, as in many cultures, individuals who are subordinate in status employ an indirect style with those of higher status, while those of higher status employ a direct style. Using the example of South Korean Air, where pilots spoke directly and navigators spoke indirectly, he examines various plane crashes that resulted from the dramatic clashing of these two styles. In one case, the navigator's indirect communication, "we have a fuel issue", was never interpreted by the pilot, a direct speaker, as an emergency. In reality, the communication meant "there is no fuel left". As a result of this miscommunication, the plane crashed.

Here are some examples of each style:

I The letter has not been sent.

D Please get this letter out.

I It would be good for you to see John about this matter while I am out.

D Please see John today about this matter.

I We have an issue with the opinion.

D The third paragraph of the opinion is wrong.

I Let's get the team organized to finish by the due date on the 12th.

D The summary is due on the 12th.

I It would be helpful if the deposition were scheduled at noon.

D Schedule the deposition for noon.

¹⁰ (New York: Little Brown and Company, 2008) at 177.

ADVANCEMENT TIP

Direct style is the most valued in North America and in business. If your style is indirect, learn to use direct style to avoid miscommunication and appear more confident.

There are advantages and disadvantages to each style. A huge advantage of direct communication is that it reduces confusion. The indirect approach often is not as clear, especially where the receiver is a direct speaker. After a discussion on these two types of communication, a lawyer left my seminar at the break to email her assistant. The night before, she had left a message for him which said, “it would be good if you see X about the Y issue”. Based on this discussion about the two styles, she realized that he would interpret this indirect communication as a choice and most likely would not do what she had asked. Her message, although diplomatic, was not clear.

Direct approaches may invoke push-back, particularly in contentious situations, and may be viewed as bossy or even hostile, especially when used with an indirect speaker. By contrast, indirect communication can reduce contention, smooth over conflict, and save face for others. In the legal world, direct speaking is valued and is the approach most often used. However, where diplomacy and face-saving is required, especially with clients and colleagues, indirect communication works best.

TRY IT OUT

Want to become fluent in both styles? Here is a simple exercise:

Direct: Write the opinion.



Indirect: It is important that this opinion be prepared by the lawyer who knows the area best and the client well.

Fill in at least three more statements in the range between direct and indirect. For example, immediately above, after direct, you might write, “**Please write the opinion.**” Under that and more indirect might be, “**You have the most knowledge about this particular area so please write the opinion.**” Next might be, “**Knowledge and experience in this area is important in writing the opinion and you have the most of any lawyer on the file.**”

Here is another example:

Direct: I need the merger file.

Indirect: I was looking in my office for the White merger file and recalled that you had taken it a few weeks ago to look at one of the contracts as a precedent. Am I recalling that correctly? Do you have it?

Now think about appropriate situations for the use of the two different approaches — direct and indirect at work. What would be your impression of the person who used the direct response above? The indirect approach? If the direct approach is common where you work, you are in an environment that values and uses direct style. You may find that those who have more influence and are more senior use direct style while others use variations of indirect style. What is important is that you are now aware of the styles used and valued. If you use a different one, be aware of how you are being viewed.

D. Passive, Assertive and Aggressive Voice

Lawyers and most legal professionals require a full repertoire to be able to use the right voice at the appropriate time. The *passive voice*, like the indirect approach, backs down from the encounter and allows the other person to save face. It can be less about being unsure and more about how the other person may receive the information. It can be used as a way to soften a request. It can also be used with a competitive person to reduce the aggression in the encounter and lessen tension. It is self-effacing, and typically a person who uses it will be viewed as subordinate. It tends to be used more by women than men and is more expected from women than men. *In a masculine workplace this voice can easily be misinterpreted as reflecting a lack of confidence.* As a consequence, you should use this voice sparingly, if at all. However, being able to recognize its use is important, when used both personally and by others.

The *aggressive voice* asserts dominance over the other, and when used in day-to-day communications can significantly damage relationships. In law it is the approach of choice when meeting aggressive opponents who are unwilling to change their aggressive approach. This stance indicates that you will not back down from the position you are advocating.

The *assertive voice* is the most solid and balanced stance, and as such is an excellent default approach for professionals. It stands its ground without retreating or pushing; the assertive voice respects others' boundaries while maintaining its own.

ADVANCEMENT TIP

The passive and assertive voices are generally used in business. Due to the nature of law and advocating for clients, the aggressive voice is also important for setting boundaries with aggressive advocates and to signal that you are unwilling to back down.

Below are some law firm examples of each of the three approaches. As you read them, think about where you might best use them.

Example 1: Documents Missing

Passive: I may have missed them and I will look through the file you gave me again, but I can't locate some important documents. I am sorry to interrupt, but could you tell me the place you typically put them.

Aggressive: I can't believe this! I have wasted two hours trying to find documents that don't exist. Next time you give me a file make sure all of the documents are in it. Better yet — don't give me any work in the future.

Assertive: The documents you asked me to review are not in this file. When you locate them, please give me a call and I will come and get them from you.

Example 2: Questions at Discovery

Passive: Perhaps it is a bad time to mention this, but some of your questions appear to be affecting my client and upsetting him. It may just be me, but would you mind terribly not asking those types of questions anymore?

Aggressive: This is ridiculous. Your questions are suggesting my client is in the wrong. You could not be further from the truth, so back off this line of questioning immediately.

Assertive: Your questions are neither relevant nor illuminating, but are all about provoking and upsetting my client. I want that noted on the record and I ask you to discontinue this line of questioning.

Example 3: Problematic Clauses in Draft Document

Passive: It may just be me, but it seems that some of the clauses I have marked in red are not as clear as they could be. If you could get those changed, that would be great.

Aggressive: What were you thinking? I thought you were smarter than this!

Assertive: There were a few clauses that were not as clear as they should be in a document of this type. I have marked the clauses that require changing. Please make the necessary corrections and get the document back to me.

TRY IT OUT

Using any **one of the following fact situations**, write out a response in each of the three voices:

1. A colleague always involves you in projects at the last minute and typically past the deadline.
2. You are in a secretarial share at work. Your assistant always completes the work for the other two senior people first, with the result that some of your urgent work is late.
3. The person in the next office likes to come and chat at least four to five times a day, typically when you are deep in concentration.
4. You are in a meeting and the other side starts to demean your ideas in front of your client.

Which voice would be most appropriate in each situation?

E. When to Use the Language of Subordination

After a recent communication seminar on the language of authority and influence, I was approached by a participant who was trying to understand this information in light of her very powerful boss, who typically used tentative and reducing language patterns. The participant explained that, despite the language patterns, her boss was very carefully listened to by others and well respected for her ideas and expertise. This story makes it clear that using the language of subordination alone will not prevent your value from being made visible. However, when you are starting out in a profession, the image you project should be one of confidence and competence. This image will allow your expertise to be fully appreciated and your ideas or messages not to be discounted.

Once you have attained a certain level, and have power and influence, you may wish to intentionally use minimizing language patterns to soften your image and signal connection with others. Using diminishing endings in particular allows for greater connection as it makes you more approachable. Such endings encourage others to disagree or respond in other ways and so, if you want to have a discussion about the point you are making and not make it sound like a done deal, use them. Recent research even suggests that superfluous apologies (saying sorry when you are not responsible, for example, “sorry about the rain”), a socialized feminine ritual, builds trust and liking.¹¹ The key, therefore, is not to completely drop habits, particularly those habits that signal subordination or reduced status, but rather to use language

¹¹ Alison Wood Brooks, Hengchen Dai & Maurice E. Schweitzer, “I’m Sorry About the Rain! Superfluous Apologies Demonstrate Empathic Concern and Increase Trust” (2013) 1:8 Social Psychological and Personality Science, online: <http://www.hbs.edu/faculty/Publication%20Files/Brooks%20Dai%20Schweitzer%202013_d2f61dc9-ec1b-485d-a815-2cf25746de50.pdf>.

skills and patterns consciously to align with the goals of your communication and ultimately your career advancement.

ADVANCEMENT TIP

Just as it is important to be aware of socialized language rituals learned as children, it is important to be aware of personality preferences that may interfere with effective communication and negatively affect our image.

F. Personality and Communication Styles

Personality preferences influence and inform communication styles. Although personality communication styles appear to be based more on innate factors than childhood learning, they are similar to learned styles in that they are habitual and difficult to perceive. As with all communication styles, there are no absolutely wrong or right ones. They are just different and provide various strengths and challenges depending on the context.

Individuals with the same preferences enjoy communicating with each other due to the similarity. With different preferences, however, misunderstandings can result. Figure 3.3 below set out the common communication characteristics for each preference. You may wish to use them to identify what you prefer and how you communicate. You can also use these characteristics to type others. By knowing another's type, you will be able to bridge to them using their preference to make them comfortable.¹²

Figure 3.3: MBTI Type Communication Characteristics

Extraverts (E) — *“Let’s talk about it”*

Rapid speech
Tend to interrupt others due to enthusiasm
Louder volume
Appear to think aloud
Learn and refine ideas through dialogue with others
Prefer face-to-face conversations over cooler media

Introverts (I) — *“Let me get back to you”*

Pause in answering or giving information
Quieter voice volume
Speak in shorter sentences

¹² For information on MBTI personality preferences, see section II.B, The MBTI, in Chapter 1 — Know Yourself: Personal Factors in Advancement.

Respond thoughtfully and carefully

Prefer cooler media such as email, instant messaging or texting

Sensors (S) — *“Details and facts please”*

Ask for step-by-step information or instructions

Ask “what” and “how” questions

Use precise descriptions

Are observant and attend to details

Intuitive (N) — *“Looking at the big picture”*

Ask for the purpose of an action

Look for possibilities

Ask “why” questions

Talk in general, abstract terms

Thinking (T) — *“Let’s be objective”*

May appear to be testing you or your knowledge

Provide honest and frank feedback

Are unimpressed by what others have decided

Are quick to analyze, evaluate and critique

May appear brusque due to objectivity

Feeling (F) — *“How will this impact others?”*

Strive for harmony in the interaction

Often talk about what they value

Enjoy cooperating and collaborating

Concerned how others will be affected

Are quick to affirm and show appreciation

Judging (J) — *“Let’s move on”*

Impatient with overly long descriptions, procedures

The tone is “hurry up — I want to make this decision”

May decide prematurely

Enjoy closure

Dislike rambling or interruptions

Tend to be concise

Perceiving (P) — *“Let’s explore this more”*

Seem to want “space” to make own decisions

Wants more information to consider, more options to explore
Slow to conclude or decide
Enjoy processing and easily sidetracked when speaking
Go with the flow and appreciate interruptions

Although there are no right or wrong styles in communication, miscommunication can arise and incorrect impressions can be formed when there is a mismatch in speaking styles. Figure 3.4 below sets out the various communication strengths and challenges of each preference, together with some tips.

Figure 3.4: MBTI Type Communication Strengths, Weaknesses and Tips¹³

Extraverts (E) — *“Let’s talk about it”*

Strength: Appear enthusiastic and easily connect with others.

Challenge: May intimidate others (especially Introverts) by rapid speech and interruptions.

Tip: Do not interpret a lack of facial feedback during a conversation as a lack of engagement. Introverts do not show the same level of external enthusiasm as extraverts.

Introverts (I) — *“Let me get back to you”*

Strength: Respond quietly and have a calming presence.

Challenge: May have trouble thinking quickly on their feet in response to unanticipated questions.

Tip: Make sure that you say what is on your mind — don’t expect others to read your mind. Ask that topics be tabled for comment and discussion after the meeting to allow for your best input.

Sensors (S) — *“Details and facts please”*

Strength: Are able to relay a great many facts and details about a topic. Are very practical and realistic.

Challenge: Due to their need to know the details of the topic, they may slow down discussions with questions and contributions.

Tip: Be aware that your need for useful details may shut down information exchange and creative discussion. Ask if input is wanted now or after the presentation. Be brief when giving content for your questions and comments.

Intuitives (N) — *“Looking at the big picture”*

Strength: Are able to see patterns in conversations and information that others miss.

Challenge: Tend to talk abstractly about topics and may omit details that make their contribution clear. May appear to others to be off topic or obscure.

¹³ For more information, see Jean Kummerow, Nancy Barger & Linda Kirby, *Work Types: Understand Your Work Personality* (New York: Warner Books, 1997).

Tip: Recognize that others need to test out or gain insight into your innovative ideas. Be aware that your natural leaps may confuse others — so flesh out the leaps where possible for your audience. Provide content for your leaps and don't assume others understand.

Thinking (T) — *“Let's be objective”*

Strength: Are easy to follow due to the logical structure of their communication.

Challenge: Will tune out when not on work topics or if the talker appears to be rambling, getting personal or becoming emotional.

Tip: Recognize the importance of personal connection in conversations and the need for acknowledgment and appreciation by those with a feeling preference. Learn to recognize those at work who enjoy personal connection and affirmation — most likely they have a Feeling preference.

Feeling (F) — *“How will this affect others?”*

Strength: Connecting with others and making it safe for them in conversations. Tend to be very diplomatic.

Challenge: Will tune out when others talk abstractly or when impact on people is not being considered.

Tip: Support your arguments or views with objective information and logical reasoning. Focus not only on the people involved but on the tasks and objectives. Recognize that those with the Thinking preference will compete, debate and challenge others in conversation in order to get information and clarity. Don't take it personally but understand that it is their style.

Judging (J) — *“Let's move on”*

Strength: Like Thinkers, individuals with a Judging preference use a clear structure. They are easy to follow in conversations and are very time-sensitive in their discussions.

Challenge: Will tune out when others ramble or are slow to make a point. Their need for structure and closure may restrict others and shut down information flow.

Tip: To avoid cutting off discussion, try leaving discussions open that can be left open. Recognize the value in “off-roading” versus always using the superhighway in conversations. Ignore the clock that is usually ticking in your head reminding you of the passage of time.

Perceiving (P) — *“Let's explore this more”*

Strength: Include a lot of information and divergent topics in their conversations that enrich and enhance the discussion. Information, process and exploration is more important than a conclusion.

Challenge: This type of conversation style may be hard to follow by others. It also keeps items open too long and avoids conclusions.

Tip: Recognize that your exploration style of conversation may sound like meandering to others and you may lose the listeners. Convey a general structure to them at the beginning and use the communication guide for logical structure and greater clarity.

My clients find it helpful to reflect on how their personal preferences provide communication strengths and challenges in their workplace. Chart 3.1 below is a worksheet to help you with these reflections. If you are basically comfortable in your work communication with others — in emails and memos, during boardroom meetings, at informal events, at client networking and with colleagues in the day-to-day — then you are most likely surrounded by similar types. And this is not unusual in law due to the overwhelming preference for six types on the MBTI.¹⁴

Where there is a disconnect and you find that you are misinterpreting others or your ideas are not getting heard, it would be wise to start to pay attention to others' communication patterns. You may find that you are surrounded by colleagues who have different preferences than yours.

Chart 3.1: MBTI: Type and Communication in Your Workplace

MBTI Function	Strength	Challenge
INTROVERT — internal focus and energized by being alone		
EXTRAVERT — external focus and energized by being with people		
INTUITIVE — big picture, likes possibilities, future oriented		
SENSOR — detail oriented, likes routines, asks “how to” questions, likes practical application, likes concrete examples		
FEELER — prefers harmony, uses tact, makes decisions based on personal values, likes appreciation		

¹⁴ For information about the six top MBTI types for lawyers and law students, see section II.C, Lawyer and MBTI Type, in Chapter 1 — Know Yourself: Personal Factors in Advancement.

MBTI Function	Strength	Challenge
THINKER — prefers truth, seen as objective and logical, likes achievement		
JUDGER — works first, plays later, likes to set goals and deadlines, makes “to do” lists		
PERCEIVER — prefers leaving options open, likes to keep perceiving new information, loses “to do” lists		

IV. CONFLICT COMMUNICATION

Lawyers and legal professionals deal with high-stakes legal conversations all the time. That’s what clients pay lawyers to do — and they do it well. However, handling sensitive or emotionally charged conversations, such as *giving a critical performance evaluation, letting someone go, discussing why work was not done or was done poorly and why significant firm changes need to be made that negatively affect an individual lawyer*, involves a different set of skills. Maintaining good working relations while dealing with difficult situations, difficult people and difficult conversations is a core leadership competency for everyone.

Lawyers may be at a particular disadvantage in this area of conflict management for the following reasons. First, legal training promotes advocacy and with it the belief that someone always wins and someone always loses. A collateral of this is that the most cogent and logical argument wins. However, in difficult conversations, hearing the other side’s view is as important, if not more important, than asserting your own. Second, due to professional training and personality preferences, lawyers are typically comfortable with confrontation on client files, but tend to avoid interpersonal conflict. This means that disagreements with colleagues or staff can fester and are not resolved easily or in a timely fashion. And assuming that conflict will simply go away or that someone else will deal with it is fallacious.

Finally, unlike leaders in the corporate world, lawyers are not taught conflict management skills in law school. Indeed, until very recently, leadership skills for lawyers were seldom even mentioned. Good conflict management skills not only allow for constructive resolution of disputes, but also provide the possibility to transform conflict situations into opportunities.

A. Tools and Techniques for Conflict Communications

Often in conflict communications, judgments and accusations run rampant and the conversation shuts down. To excel in these types of communication, it is important to allow the other person to feel safe and for information to flow. To assist you with this, this section sets out some valuable tools and techniques, including learning how you tend to respond to stressful situations, getting clear on your purpose, being aware of the different levels of conversation in conflict communications, and recognizing the perspective of others. Having a conflict communication process keeps you on track during the conversation and allows you to prepare effectively for the encounter.

1. Know Your Style under Stress

Often when people are under stress or feel unsafe, they react in two distinct ways. They either avoid dealing with the difficult subject or try to overpower the other person using verbal strategies. This is also known as flight or fight. These two styles are typically used without awareness; quite literally, when things become stressful you don't know what you are saying or how you sound. Lawyers tend to employ competitive strategies on files and avoidance in their interpersonal conflicts, and neither of these reactions allows information to flow in a constructive way. By becoming more aware of the two styles and the different forms each may take during a tough talk, you can discover which style you prefer. Through awareness you can stop using them habitually and start using them selectively and appropriately.

2. Know Your Purpose

One of the most important things in starting a “high-risk” discussion is to begin with the right motive and to stay focused no matter what happens. When you find yourself moving towards avoidance or overpowering reactions, ask yourself: “*What does my behaviour tell me about my motives?*” Sometimes it is all about being right or being in control. Once you are clear on your motive, clarify what you really want by asking: “*What do I really want for myself? For others? For the relationship?*” This will help you sort out how you would behave if these goals were your true aim.

3. Recognize the Three Conversations

In every difficult conversation there are three levels of concurrent conversation: facts, feelings and identity.¹⁵ Based on body parts that primarily deal with each of these levels, I call them the Head, Heart and Gut. Due to personality preferences shown by most lawyers and the nature of the practice of

¹⁵ For detailed discussion of “3 Level Conversations”, see Douglas Stone, Bruce Patton & Sheila Heen, *Difficult Conversations: How to Discuss What Matters Most* (New York: Penguin Books, 2010) at 3-20.

law, most lawyers would prefer to focus almost exclusively on the Head level of the conversation, that is, the facts surrounding the event or the content of the message that needs to be conveyed. This type of focus allows for logical and rational analysis of the situation in order to solve the problem. Indeed, so prevalent and exclusive is this focus that seldom is there any awareness of the other two levels, until emotions rage and surge into the conversation. Interestingly, when the less obvious levels of Heart and Gut are recognized and acknowledged, the Head level situation is more easily resolved. Figure 3.5 below sets out some key questions and statements for quickly identifying the different levels.

Figure 3.5: Identifying the Three Levels in Conversations

THE HEAD

What happened?

What are the facts?

What did you do?

How did you do it?

What process did you follow?

How do you know?

THE HEART

What are my feelings? Are they valid?

Should I raise them?

How will the other person react?

What do I do about their feelings?

What if they are angry or hurt?

THE GUT (CORE IDENTITY)

What does this situation tell me about me?

Is it consistent with my identity?

Am I competent? Incompetent?

Am I reasonable or not?

Am I good or bad?

Am I loveable or not? Fair or not?

TRY IT OUT

Want to become more aware of the three levels of conversation? Think of a difficult or tough conversation that you have had or will have with someone where the stakes are high and the relationship very important. Go through

the three levels, in any order, and reflect on the three different levels for you and for the other person as well.

The Head

Your View of the Situation Theirs (perhaps)

The Heart

Your Feelings Theirs (perhaps)

The Gut

Your Identity Theirs (perhaps)

Also consider:

- What do I (or did I) hope to accomplish with the conversation? What don't I (or didn't I) want to happen?
 - Is (or was) a discussion the best way to handle the situation? Yes or No?
 - What alternatives are there to having the Conflict Communication?
-

4. Recognize the Other Person's Perspective

In addition to recognizing and understanding the different levels of conversation set out above, a key aspect of conflict communication is being able to hear the other person's perspective. Typically, where there is a disagreement, people decide what the situation is about and never budge from that conclusion. It becomes the Truth. Indeed, it is human nature to only seek evidence for our rightness and ignore any facts or evidence that contradicts our conclusion. This is especially true where the lower two levels of conversation are affected — either our emotions, our identity or both. Thus, the other person has to be wrong. As suggested by Sheryl Sandberg in *Lean In*, effective communication begins with the understanding that there are two points of view — our own view and the other person's view.¹⁶ Rarely is any view the whole view or truth, so starting with your view as *the truth* in a conflict communication shuts down the other. A conflict is rarely solved without some sharing or understanding of the other's perspective, nor can communication be effective. Below are some tools and techniques for encouraging and learning about the other person's perspective.

(a) Don't Start with Your Perspective or Opinion

Often in conflict the tendency is to start a dialogue with the other person by stating personal judgments or opinions of what has happened. And these judgments and opinions are viewed as the "truth" of the situation rather than as what they really are — personal conclusions about what happened and why.

¹⁶ Sheryl Sandberg, *Lean In: Women, Work, and the Will to Lead* (New York: Knopf, 2013) at 79.

So instead, try describing the situation through the eyes of an objective third party. Thus, for example, “you never listen to my instructions” becomes “I asked you yesterday, while I was out, to file the materials for the Jones closing as that file needs to be closed out today and it is not yet done. I also asked that the letter that is still on my desk be sent out. Help me to understand why these things weren’t done.” The first approach would most likely result in defensive behaviour and explanations for the tardiness. The second approach opens the way for discussion and elicitation of information you might not have — such as other important matters your assistant had to deal with during your absence.

(b) Use Powerful Listening Skills

In law and business, it is often thought that speaking is power, due to the ability to control the flow of information in contrast to opening up the flow. As a consequence, listening is one of the most underrated skills in communication. Listening allows you to fully understand the other’s perspective and to gain important information for crafting elegant options for resolving the conflict. To keep the conversation flowing, use listening skills to allow the other person to open up. Move from certainty to curiosity. Avoid being judgmental and critical. Listen empathetically, even if you don’t agree. What perceptions and information does the other person have that you don’t? Ask others for their views and mean it. Acknowledge the feelings of others as they express them. Draw the other person out with questions. Use checks not only for clarifying the facts and your understanding of them, but also for feelings. Figure 3.6 below sets out five basic ways to enhance listening actively and fully.¹⁷

Figure 3.6: Five Listening Checks

1. OBTAIN

Purpose: You want facts. You want to explore further or discuss more fully.

Method: *Ask using a what, how, when question. You are trying to get the facts clearly and correctly.*

Examples:

1. Is this a problem for you?
2. What did you say then?
3. So you responded by ...

2. CLARIFY

Purpose: To check your listening accuracy. To let the other person know you grasp the facts.

Method: *Paraphrase what you have heard. Restate the person’s basic ideas.*

¹⁷ Developed in part by the partnership of Fromm & Goodhand.

Examples:

1. As I understand it, the problem is ... Am I hearing you correctly?
2. What I think you said was ...
3. To clarify, you then said ...
4. What I understand you to say by that is ... Is that right?
5. Have I got this right?

3. ACKNOWLEDGE

Purpose: You want to let the other person know you are listening and interested. This acknowledgment is non-committal.

Method: *Don't agree or disagree. Use non-committal words with a positive tone of voice. Note that acknowledgment may be taken as agreement by others, particularly men, so be careful how you acknowledge your interest and listening.*

Examples:

1. I see.
2. Uh-huh.
3. Tell me more.
4. I get the idea ...

4. EMPATHIZE

Purpose: To show that you are listening and that you empathize. Your recognition and acknowledgment of another's feelings will help reduce anxiety, anger or other negative feelings.

Method: *Reflect the other person's feelings. Paraphrase in your own words what the person has said. Note that for Thinkers on the MBTI, this skill might initially feel unnatural as emotions tend to be avoided. With practice it will become more comfortable. This level needs to be recognized and acknowledged, especially in conflict communications.*

Examples:

1. You feel that you didn't get the proper treatment.
2. It was unjust as you perceive it.
3. It's annoying to have this happen to you.
4. It seems to me you don't feel this position is reasonable.
5. I sense that you like doing this job but are uneasy about making mistakes.

5. SUMMARIZE

Purpose: To focus the discussion and move to a new level of discussion. To pull important ideas or facts together. To review progress.

Method: *Restate, reflect and summarize major ideas and feelings.*

Examples:

1. These are the key elements of the problem ...

2. Let's see now, we've examined these four factors ...
3. These seem to be the key ideas you expressed ...
4. To summarize — the main points are ...

(c) *Listen with Your Eyes*

One of the reasons listening is so hard is that there is a greater neural capacity to process words than the rate of human speech. Most of us speak at a rate of 125 to 160 words per minute, but the cognitive processing capacity for understanding speech is around 400 words per minute. The consequence? When listening to the average speaker, we typically use less than 50 per cent of our processing capacity. So, our minds naturally wander.

Monitoring non-verbal behaviour allows for more of this excess capacity to be used and provides us with important information. Watch for big shifts in the speaker's posture or position, or for smaller movements that may indicate nervousness. Watch for behaviour that contradicts what the person is saying. Recently I watched two separate televised interviews where the persons speaking shook their heads side-to-side, clearly indicating disagreement with their words. Important meaning can be obtained and the truth revealed when you also listen with your eyes.

Similarly, demonstrate attentive non-verbal behaviour as you listen. To appear receptive and curious, open your posture, lean toward the speaker and relax. Busy professionals sometimes try to multi-task as they listen. If this is a habit, try not to read emails or check the time. Also monitor your own non-verbal behaviour to help ensure that you are not becoming defensive or dominant in the exchange. One of the key aspects of conflict communication is keeping it safe for the other person so that he or she doesn't close down. This is of particular importance when dealing with staff and assistants.

(d) *Agree Where You Can*

Even when there is agreement generally, people focus on the small item of disagreement. They simply have not explored the issue deeply enough to discover their agreement or they obsess over the small differences. The Zen Buddhists call this the "cow's tail". Having gotten the cow into the shed, people tend to focus and obsess about the tail that is not fully in the shed. Recognize and acknowledge that the cow is in the shed, then think about ways of getting the short, small tail in. It is helpful to reduce the need to be right and instead look for points of agreement. Instead of saying "*That was wrong, you forgot to say ...*" you might say "*Absolutely. In addition I noticed that ...*". Acknowledge where you see the problem or situation differently from the other person, as opposed to seeing them as wrong and yourself as right. Phrases that express this approach are set out below in section IV.A.7, Being Agreeable While Disagreeing.

(e) Avoid the Two Choices Bind

Refuse to see yourself as having only two choices in each situation — such as winning versus losing, candid versus respectful and kind versus honest. They present simplistic trade-offs that prevent creative thinking and justify black and white thinking. Rather, ask yourself what you really want as well as what you don't want. Then ask yourself: *How do I get both? Is there a way to tell my peer my real concerns **and** not insult or offend him? Is there a way to talk to my assistant about his underperformance **and** motivate him to do better? How do I speak up **and** still maintain respect?* At the heart of using “how do I get both” is having a tough talk that solves problems while at the same time building relationships.

(f) Stay Calm

Conflict communication can create and foster strong negative emotions, especially where the stakes are high and the conversation involves identity — what you believe about yourself and what others might think about you. Most lawyers, with a preference for the Thinking function on the MBTI, are not aware of their emotions until they become overwhelming and may derail the conversation.¹⁸

ADVANCEMENT TIP

The most important features of successful conflict communication are ensuring that you don't fall back into a habitual style under stress — silence or aggressive pushback — and keeping it safe for the other person.

5. The Conflict Communication Process

It is never easy to deal with those tough conversations where the stakes are high and the views conflicting — important conversations with the people you work with, where you know you are absolutely right and the other person is absolutely wrong. By using and mastering the skills of conflict communication and developing the attitudes suggested in this section, such conversations will become less difficult and the opportunities more obvious. The process will allow you to better understand the conflict from both sides, recognize your possible contribution to the conflict and come to a satisfactory resolution. Putting it all together may seem daunting at times, but having a process to follow will make it easier. The process preparation sheets and guides below will help you.

¹⁸ For information on dealing with strong emotions, see section IV.D, Dealing with Strong Emotions, in Chapter 10 — Resilience: Bounce Back to Advance.

6. *Description of the Process*¹⁹

The various stages in the conflict communication process are described below in chronological order. Using these stages in the order provided will allow the conversation to continue and the dialogue to stay open. Often in conflict, where judgments are rampant and accusations numerous, the conversation stops and the parties shut down. Through the use of the tools and techniques set out above, combined with these stages, you will have the greatest opportunity to communicate and come to a resolution, or at least a better understanding of the conflict — from both sides.

1. **Make your opening objective.** Start the conversation with the facts. Avoid the why and focus on what happened. Describe it as a third party watching the situation would describe it. This will allow you to be more objective and prevent shutting down the conversation before it starts due to opinions and judgments. Appearing superior or right in the situation is the default approach of many people and it is not the attitude that helps resolve disputes. Rather, be curious and respectful.
2. **Introduce your view.** This is the stage where you start to include your point of view and conclusions. Continue to be honest and respectful while being observant. Try not to make your view or conclusions sound like they are written in stone and absolutely correct. Instead, talk tentatively, keeping the purpose of the conversation in sight. You may introduce your view and conclusions by saying, “it makes me wonder if ... I am thinking that ... It makes me feel ... *etc.*” Make it clear that it is you who is thinking or wondering or feeling and that it is not the absolute truth of the situation. You will want to ensure that the other person knows that you are open to changing your view once you are aware of all the facts and circumstances.
3. **Invite their view.** Showing that you are open to hearing from the other side allows you to naturally invite them to tell you their view of the circumstances — their story of the situation. You might do this by asking: “What’s going on? I’d really like to hear your view on this. How are you seeing things?” Know that there will be information you don’t currently have — information that may totally change your view of the situation. Use the listening techniques set out above to listen carefully and fully.
4. **Collaborate.** Open up to tell them your needs and interests — what was important to you in the situation? What were you hoping for, what happened that upset you and why? Perhaps this is the reason that the conflict arose and created the problem. Find out their needs and interests.

¹⁹ For detailed guidance on conducting conflict communication, refer to the following: Douglas Stone, B. Patton & S. Heen, *Difficult Conversations: How to Discuss What Matters Most* (New York: Penguin Books, 2010); Kerry Patterson *et al.*, *Crucial Confrontations: Tools for Talking about Broken Promises, Violated Expectations, and Bad Behavior* (New York: McGraw Hill, 2005); Kerry Patterson *et al.*, *Crucial Conversations: Tools for Talking When Stakes Are High* (New York: McGraw Hill, 2002).

Generate solutions that fit both of your needs. This conversation can be initiated with prompts such as: “What is important to you? What would you like to see happen? Help me to understand ...”.

The following are optional steps that may be used in a formal work setting:

5. **Document the agreement.** You may wish to document the resolution in detail, including who will do what based on this resolution, what will be done, when will it be done and finally how will it be done.
6. **Decide on follow-up actions.** The resolution arrived at may also involve follow-up actions, and the details of these actions might include who will be involved, what they will do to follow up, when this will take place and what the consequences will be depending upon what has occurred. Note that this type of follow-up is more common in corporate settings with formal reporting structures as opposed to law firm settings.

To assist you in working through a conflict communication, the worksheet below shows the various stages, as well as point-form reminders for each.

Chart 3.2: Conflict Communication Process Worksheet²⁰

Stages/Notes	Description
1. The Objective Opening	The facts —“what” not “why”
2. My View	Your point of view, including both facts and your conclusions <ul style="list-style-type: none"> • be honest but respectful • talk tentatively • soften the message • invite opposing views • keep sight of your goals • be observant
3. Their View	Invite them to share and be curious: “Help me to understand what’s going on.” “I’d really like to hear your opinion on this.” “Please let me know if you see it differently.” “I’d really like to hear your thoughts on this.”
4. Collaborate	Tell them your needs and interests. Find out their needs and interests. Generate solutions that fit both of your needs.

²⁰ Developed in part by the partnership of Fromm & Goodhand.

Stages/Notes	Description
5. Agreement	Who What When Document the details
6. Follow-up	Who What When

7. *Being Agreeable While Disagreeing*

Another key skill in conflict communications is being able to be agreeable while disagreeing. This can be difficult for anyone, but is particularly challenging for the majority of lawyers who are Thinkers on the MBTI. They have a confidence in their views and opinions that is notable. Where there is a disagreement, often their response is to automatically assume that someone else is wrong. While this is often a great strength in the legal world, it can be a significant weakness in conflict communication.

Being able to disagree while being agreeable allows relationships to remain intact — especially in interpersonal conflicts in the day-to-day with colleagues, clients and staff. This approach allows you to be political and help others save face.²¹ It also aligns with the suggestion above about agreeing where you can. Below are some suggested phrases:

- *I agree with what you are saying generally but my view differs on how we should proceed to tell the client about it.*
- *Help me to understand how you came to the solution you are proposing. I am unable to see why the third suggestion is included.*
- *We are willing to make many of the changes you have asked for in this contract. However, there are a few changes we cannot agree to.*
- *That makes perfect sense for the most part. It is this point on the second page that is not clear to me.*
- *We agree on so much. Let's agree to disagree on that point.*
- *Something you said earlier is closer to the way I am viewing the situation.*
- *Do you mind if I ask a few questions about this plan so that I can understand more fully your approach?*

²¹ Kathleen Kelley Reardon calls this “Face-Work” in *It's All Politics: Winning in a World Where Hard Work and Talent Aren't Enough* (New York, Doubleday, 2005) at 152.

- *We agree on 95 per cent of this and it's only that remaining 5 per cent that we need to work out.*
- *I understand what you mean and I agree generally. However, I have one recommendation.*

8. Dealing with Competitive Verbal Tactics

Depending upon the situation, effective conflict communication does not always require appreciating the other side's viewpoint. Where the purpose of the comments, statements or questions is to provoke you, diminish your confidence, create negative and unflattering perceptions of you, and/or lessen your credibility or legitimacy, you need to set firm boundaries and let the other side know you understand what they are doing. You also need to be able to respond to these detractors in the moment, on your feet. Although very junior lawyers are most often the subject of these tactics from external lawyers, anyone is vulnerable to them. Tactics can range from mild teasing or bantering in the boardroom to flat-out personal attacks on your credibility, ideas or opinions. They are especially common during heated, hardball negotiations. Below are some examples of banter and personal attacks to help clarify and distinguish them.

Figure 3.7: Competitive Tactics

BOARDROOM BANTER

Examples:

- *You are definitely setting a record for holiday taking — is this your third or fourth holiday this year?* (to suggest you are a laggard or don't care about the work)
- *Way to go! You are becoming queen (or king) of the due diligence room.* (to suggest that lowly due diligence is all you are doing)
- *How do you manage to settle so many of your cases? You are becoming the queen (or king) of settlements.* (to suggest that you as a litigator are not keen on doing a trial and would rather settle each time)
- *You seriously have not closed that little deal yet? That must make the client of yours really happy.*

CHALLENGE COMPETENCE OR EXPERTISE²²

Examples:

- *Given your relative inexperience in this role...*
- *When you have as much experience as I have ...*
- *Where did you go to law school? When did you graduate?²³*

²² Category suggested in Deborah Kolb, "Staying in the Game or Changing It: An Analysis of Moves and Turns in Negotiation" (April 2004) 20:2 Negotiation Journal 253.

²³ Several clients of mine mentioned that during the early part of their career this tactic was used on them by older male litigators, with the questions typically being asked just before the judge arrived in the courtroom.

DEMEAN IDEAS²⁴**Examples:**

- *Seriously, that is your solution?*
- *You're obviously not seeing the point.*
- *You can't be serious about that.*
- *That's really half-baked.*

CRITICIZE STYLE²⁵**Examples:**

- *That is irrational.*
- *You're being overly sensitive on this matter.*
- *Perhaps you need time to get some perspective.*
- *Calm down.*

It is important to understand that such comments and questions are not to be taken at face value — they are tactics. Thus they are not accurate comments or genuine questions but rather are ways to establish power — to determine what ideas are heard, how they are heard, and whether they are credited. Start observing how parties who use these tactics manage impressions, claim and maintain legitimacy, assert power and influence, and shape perceptions. Identifying the challenges and fending them off with well-timed and appropriate responses are essential skills in conflict management and negotiation.

It is important politically to be able to discern friendly banter, which males typically engage in more than women, from true power moves that are made to impugn your credibility and decrease your influence. If this type of interaction is common in your group and no one is immune from being the object of such comments, then this might more correctly be interpreted as banter. In some groups and environments, being able to respond to banter is a sign that you are part of the group. Note that as a woman it may feel uncomfortable and perhaps even hostile. From a masculine perspective, males only banter with those who are worthy. If you determine that it is just banter and everyone is subject to it and appears to enjoy it, you may decide to just go along with it. If you are unsure, ask a trusted colleague in the group for advice.

Clarification of the comment or question will also allow you to better judge the intent — especially with external lawyers you don't know. You could use the listening checks set out above in section IV.A.4.b, Use Powerful Listening Skills, especially the Obtain and Clarify checks. Or you might

²⁴ Category suggested in Deborah Kolb, "Staying in the Game or Changing It: An Analysis of Moves and Turns in Negotiation" (April 2004) 20:2 Negotiation Journal 253.

²⁵ *Ibid.*

want to use the last word of the question or comment, such as “unfair?”, “unreasonable?” or “emotional?” This forces the other side to explain the comment more fully and allows you to determine their intent more readily. It also allows you to show your goodwill and appear reasonable in the face of their less-than-generous comments. If you determine that it is only banter and are tempted to reciprocate, be careful if you are not used to using it, as you might easily slip past banter and into personal attack.

If in your work environment you are typically the primary recipient and the comments are such as to diminish your image and make you look subordinate to the group, then it falls more on the side of power moves. How you deal with it will depend on the person making the comments, the situation in which they are made, and the impact of the tactic. Again, if unsure, ask for advice from a trusted colleague.

Being on the receiving end of a verbal tactic can be uncomfortable and unsettling. How do you respond? If you ignore it, you remain at a disadvantage. If you confront, you risk escalating the situation. The objective in responding is to change the power dynamics.

A very effective, subtle and sophisticated counter tactic used by a senior female litigator when she first started out in practice demonstrates this nicely. While in court, a senior male litigator on the other side kept commenting on her dress and her shoes in a very focused and unpleasant way. She knew that it was a competitive tactic and meant to throw her off her game. Rather than address it overtly, she waited until the end of the day when the hearing concluded. When he came over to shake her hand she turned it over and grasped it with both of hers while thanking him profusely for being so kind to her throughout the process and being such a great role model for her and all young women. He immediately began to feel uncomfortable and tried to pull his hand away. She continued praising and thanking him for his consideration in a very earnest way. She eventually let his hand go. By doing this she called his competitive game in a very appropriate way and he never bothered her again. Since then she tells as many junior female lawyers as she can about this version of “tit-for-tat”.

Appropriate comebacks can help you regain credibility and get the discussion or negotiation back on track by allowing the other party to come forward in a less aggressive, more productive way. Some of the political aspects that need to be considered are: whether to confront the comment or tactic head-on instead of waiting; building up alliances so that when you tackle the issue you do so with great support; recognizing and assessing the information gleaned from the context and content of the comment (the meta-message); and/or how best to deal with the situation to improve and enhance your reputation and image. Recognize that dealing with such challenges in the moment is difficult. Planning in advance is key — think about how others are likely to respond. If you are responding to an external lawyer, there are fewer political aspects to consider. If it is someone at work, it takes

much more thought. Consider the full range of motives for the comments. Perhaps dealing with it in private is best. Form alliances and ask trusted colleagues for advice. If you do decide to deal with it in the moment or otherwise, the following are some suggested ways to proceed.²⁶

Figure 3.8: Counter Tactics²⁷

Take a break to buy time

Similar to dealing with strong emotions, taking a break allows you to distance yourself from the situation and determine how best to proceed. A break can be as simple as a long pause following the inappropriate comment or question, allowing the speaker to focus on what they just said. Or the statement *“Let me think about that”* or *“Let’s get a coffee”*. Longer breaks may mean reconvening the meeting at another time. This is the easiest counter tactic to employ and is perfect for Introverts who characteristically think of great responses after the conversation or meeting is over.

Ignore it and refocus

Much like avoidance in negotiation, this response allows you to avoid the competitive comment and refocus the discussion to important points or different topics. Examples of phrases include: *“Let’s move away from that avenue and consider other options”*, *“Let’s get back to talking about the grant of the requested extension”*, *“You had mentioned some concerns with clause 86, what are they specifically?”*, *“A more productive approach might include ...”*, *“Do you have any ideas?”*

Call it

Let the other side know that you recognize the tactic. By naming it you defuse its power and show the user, and any bystanders, that it is not working. You might say: *“No need to make this personal”*, *“You’re questioning my credibility”*, *“You’re demeaning my idea”*, *“You’re undermining my authority”*, *“We are spending valuable time on personal attacks and it is not productive.”*

Correct it

This is the most powerful response you can make. With it you defuse the tactic and also show your knowledge and expertise. *“These are not my settlement figures, these are industry standards”*, *“These figures were provided by your client”*, *“What I am asking for is not unreasonable — it is totally in line with the evaluations”*, *“Not only am I familiar with this type of transaction — typically I am involved in larger ones.”*

Engage in tit-for-tat

If the other side will not stop being competitive, adopt the same strategy. This definitely shows the other person that you recognize what he or she is doing and are willing to respond in kind. For example, *“I have proof that you spread a false*

²⁶ For more suggestions on dealing with competitive tactics, see Deborah Kolb, “Staying in the Game or Changing It: An Analysis of Moves and Turns in Negotiation” (April 2004) 20:2 *Negotiation Journal* 253.

²⁷ Counter tactics are similar to those used in dealing with competitive tactics in negotiation.

rumour about me. If you don't rectify the situation I will rectify the situation in a way that you will not like."

Reframe

This is a common technique used in mediation whereby the mediator connects common interests or approaches of both parties through reframing the discussion, comment or question. It takes a high level of skill, but when successful it allows the parties to see that they have common goals, and that attacking each other will not get them there. Examples of phrases include: *"We are both concerned that this issue gets resolved in a constructive and timely way", "We will both look good if this report is comprehensive and includes items from both of our lists", "These ideas may seem crackpot initially but we both agreed that we needed to be creative to solve this dilemma."*

Build an Alliance

This is work that is done in advance and away from the interaction. This solution inoculates others from changing their perception of you. As a result the focus is shifted to the person making the comment or asking the competitive questions. One way to start building an alliance is to ask for advice from trusted colleagues. If they too have noticed the competitive tactics and do not agree with their use, you are already on your way to defusing their impact on you. Using this counter tactic allows you to ignore the tactics and perhaps even have someone else deal with the competitive player for you.

V. YOUR SKILLS DEVELOPMENT PLAN — COMMUNICATION

As with all skills development plans, it is important to understand what you bring to the table and at which level you are currently operating. Figure 3.9 below provides a guide to the various skill levels. Once you have assessed your level and *know where you are*, determine *where you want to be*. Go one level up. Use this information to fill in the skills development plan found in Chapter 2 (See Figure 2.5). Think about the resources you will need to go to the next skill level. Read section V.A, Tools in Skills Development, found in Chapter 2. Fill in your plan and then work consistently with your plan. Work on it at least weekly in order to achieve the level of skill you want. Often when people complete the analysis they feel that they are done. Be aware of that trap and find ways to keep at it. It will be worth the effort!

Figure 3.9: Skill Levels in Communication

Dimensions: Confident Communication Styles, Tentative Language Habits, Clear Communication, Personality Preferences and Communication, The Three Conversations, Listening Skills, Conflict Communication, Dealing with Competitive Verbal Tactics

Expert — uses language patterns and approaches to show confidence, competence and connection; is able to flex to others' communication style to make them feel at ease; is aware of personality preferences and how they affect language patterns and approaches; is fluent and versatile in communicating connection as well as authority; communicates messages clearly by understanding the audience; uses

a speaking format that is easy to listen to and allows ideas and messages to be transmitted clearly; listens well to others; deflects verbal tactics easily; approaches conflict constructively through dialogue, recognizing opportunities for growth and transformation.

Confident — communicates confidently; does not reduce authority through tentative language habits; often flexes to others' styles; is usually clear in communicating messages and ideas; does not always take time to understand the audience; somewhat aware of personality preferences and their impact on language patterns and approaches; is able to deflect most verbal tactics; is becoming more aware of the three levels of conversation during a tough talk; sometimes listens well; is getting more comfortable and versatile in dealing with difficult conversations when the stakes are high.

Good — is aware of how communication styles affect perceptions of confidence and competence, and only occasionally uses tentative speech patterns; recognizes others' personality preferences; through conscious effort is able to flex to others' styles; for the most part communicates clearly; is tuned in to the audience's response and receptivity; is developing better conflict communication; recognizes opportunities when differences arise.

Competent — is somewhat aware of habitual language patterns and the importance of making value visible through communication; sometimes communicates clearly but not consistently, especially in situations with influential others; occasionally deals well with competitive tactics that reduce credibility and legitimacy; is aware of personality preferences but not their impact on communication; avoids conflict communication.

Novice — is unaware of the importance of language patterns and approaches in making value visible; uses tentative language patterns most of the time; has a rambling style of communication that makes it hard for the listener to follow; does not listen well; is unaware of the three conversations in conflict conversations; tends to get very defensive, silent or aggressive in conflict communication; does not deal well with verbal tactics.

VI. KEY IDEAS

- Clear and effective communication is an essential skill in law. How well you communicate determines how others view you and, to advance in law, making your value visible and contributions obvious is essential.
- Using a communication guide allows you to frame your thoughts so that they are easily communicated and understood by others. Make it easy for your audience to listen and you will be a much more effective communicator.
- Tentative language habits weaken your message and are often misinterpreted as indicative of a lack of confidence. Awareness of such habits and expansion of your communication approaches ensures versatility; you appear confident, authoritative and competent while still being able to express deference and respect appropriately.

- Direct communication is valued in law firms and in North America generally. It reduces confusion but may evoke pushback. Indirect communication, allowing for multiple interpretations of a comment or statement, is diplomatic and permits face-saving. Be versatile and learn to use and choose the approach that works best in the circumstances.
- In business, the passive and assertive voices are generally used. Due to the nature of law, the third voice — aggressive — sets boundaries and signals your unwillingness to back down. This is typically a necessary voice for young lawyers who may be vulnerable to competitive external lawyers.
- Many lawyers avoid conflict in the workplace despite being strong advocates for their clients in conflict. Learn to use powerful communication tools and techniques for high-stakes interpersonal conflict and start to recognize the opportunities that conflict brings.

VII. FAQs

I am starting to notice when I use tentative language and the passive voice but I am finding it hard to change. Is this common? Yes, it is. The first stage of behaviour change is awareness — so congratulations, you have achieved that. And remember that since verbal rituals take a very long time to develop, they are hard to change quickly. Also, it is important to realize that you don't want to make any big changes, so it is good that you are not doing that. Give yourself credit for recognizing each time when you use tentative or passive language in situations where it might be misinterpreted. Now start thinking of some phrases to replace the ones you currently use. Practice them so they come easily to mind and are easy to say. Note that you are not trying to suppress your current approaches or languages but rather adding to them. Also keep in mind that there will be situations where tentative or passive language approaches are entirely appropriate — for example, when you are around others with similar personal factors such as age, gender and background, or when you wish to signal connection and warmth. Use language consciously so that you communicate effectively and without misinterpretation.

I prefer the Judging function and get really impatient if I have to listen to others go on and on without succinctly stating the problem or what they want. How do I deal with that? As a Judger you will be impatient with others and want them to be quick and efficient in communication. However, not listening well is not the way to get the speaker to do this. Multi-tasking or looking at your watch will most likely just upset the speaker and will cause the communication to dry up rather than letting it flow. If this person is staff, perhaps you could suggest clear communication training to make them more efficient. I have found that if you really listen and focus on the person, without showing signs of impatience, he or she will become more focused as well. And remember that owing to your preference for Judging, you may be more intolerant than others about time and concise communication.

VIII. RECOMMENDED READING AND RESOURCES

Listed below are the resources I have found most helpful and recommend to clients.

Bolton, Robert. *People Skills: How to Assert Yourself, Listen to Others, and Resolve Conflicts*. New York: Simon and Schuster, 1979.

Hirsh, Sandra, & Jean Kummerow. *Life Types: Understand Yourself and Make the Most of Who You Are*. New York: Warner Books, 1989.

Humphrey, Judith. *Speaking as a Leader: How to lead every time you speak...from boardrooms to meeting rooms, from town halls to phone calls*. Mississauga, ON: John Wiley & Sons, 2012.

Kolb, Deborah. "Staying in the Game or Changing It: An Analysis of Moves and Turns in Negotiation." (April 2004) 20:2 *Negotiation Journal* 253.

Kroeger, Otto, & Janet Thuesen. *Type Talk at Work*. New York: Tilden Press, 1992.

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Kummerow, Jean, Nancy Barger & Linda Kirby. *Work Types: Understand Your Work Personality*. New York: Warner Books.

Mindell, Phyllis. *How to Say It for Women: Communicating with Confidence and Power Using the Language of Success*. New York: Prentice Hall Press, 2001.

Patterson, Kerry, et al. *Crucial Confrontations: Tools for Talking about Broken Promises, Violated Expectations, and Bad Behavior*. New York: McGraw Hill, 2005.

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Reardon, Kathleen Kelley. *It's All Politics: Winning in a World Where Hard Work and Talent Aren't Enough*. New York: Doubleday, 2005.

Sandberg, Sheryl. *Lean In: Women, Work, and the Will to Lead*. New York: Knopf, 2013.

Stone, Douglas, Bruce Patton & Sheila Heen. *Difficult Conversations: How to Discuss What Matters Most*. New York: Penguin Books, 2010.

Tannen, Deborah. *Talking From 9 to 5: Women and Men in the Workplace: Language, Sex, and Power*. New York: Avon Books, 1994.

