

Seeing Eye to Eye with a Jury

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Imagine yourself seated in the audience of an oak-paneled courtroom where an attorney is passionately persuading a twelve-member jury. What did you see in your mind's eye? Whether that mental image is from a recent court appearance, a cinematic courtroom drama or from last night's *Law and Order*, chances are you pictured a litigator lecturing before a jury. You probably did not visualize a litigator holding up an exhibit, aiming a laser pointer at a projected presentation or animation or manipulating a scale model of what is at issue. Based on a new study,² however, those missing communication tools are precisely what are necessary for a litigator to communicate effectively with jurors.

This study makes two key findings. *First*, jurors are by and large visually oriented. *Second*, attorneys are more likely than the general population to try to communicate, teach and persuade only by speaking, and are also less likely to use visual communication tools. Thus, significant and natural differences exist in the way attorneys and non-attorneys prefer to communicate and learn.

The Study & Its Implications — Animators at Law conducted the study over a three-year period from 2003 to 2006. During that time, 387 practicing attorneys and 1657 non-attorneys completed an online survey designed to assess their dominant learning style. A dominant learning style describes how each person prefers to learn, broken down into three categories: (1) visual (seeing), (2) auditory (hearing) and (3) kinesthetic (feeling). Everyone is a blend of the three styles, but one style is typically dominant. When teaching or persuading others, we tend to use our own dominant learning style to communicate. That is, an auditory learner will attempt to communicate by speaking while a visual learner will attempt to teach with pictures, regardless of the preferences of their listener.

The differences in learning and communication styles between attorneys and non-attorneys are surprisingly significant. Based on the results of the study, a typical twelve-person jury would likely be composed of 7 “visual” jurors, 3 “feeling” jurors and only 2 “hearing” jurors. Practicing attorneys, on the other hand, were shown to be far less likely (less than half) to be visual in nature and were ten percent more likely to be hearing/speaking-dominant. When combined with the tendency of most lawyers to use the courtroom for only communication through speech (*i.e.*, “hearing” communication), this juror/attorney communication gap is exponentially inflated. Recall that courtroom scene of the attorney speaking, and now consider for a moment that only two of the twelve-person jury prefer to be spoken to as their primary means of learning.

Three Practical Steps for Effective Juror Communications — We all hope that our communications are clearly understood, especially in the courtroom. What is a modern litigator to do if he or she desires the maximum clarity of communication with this new

knowledge? The study results suggest that many attorneys must first become aware of their tendency to communicate mostly by speaking, and must adapt instead to the audience they are speaking to. Here are three practical tips that will aid in achieving the maximum clarity in persuasive communications:

1) **Speak to All Three Learning Styles** – One of the skills of best-selling authors is that they speak to all three communication styles. Read a few pages in a best-selling novel, and on the same page, it would not be uncommon read about the *sounds* of the forest, the *feel* of the damp heavy air and a color so green that it reminded him of what he had only *seen* before in the hills of Ireland. The example, of course, points out the use of language that one would typically associate with the three learning/communication styles. Modern best-selling authors and editors are intentionally adding such language to speak to the widest audience possible, and the courtroom environment should be no different. Use a combination of phrases like “I hope you can *see* where this leaves us?” “I hope you are *hearing* this message” and “can you imagine what that might *feel* like?”

2) **Use Visual and Kinesthetic Evidence** – I recently watched a mock trial where a litigator presented limited visual evidence on a scientific fact in dispute. Later, I watched behind one-way glass as the mock jurors, clearly favoring the opposition, noted that “they had just *seen* more science” from opposing counsel. That litigator had “shown” the jury many more scientific exhibits using visual aids. Given that a majority of jurors are visual in nature, this reaction was not surprising. It is simply imperative to use visual evidence to communicate with them.

3) **If it is a Critical Point, Use Visual Evidence to Emphasize the Point** – An ABA study has found that juror memory retention is increased 650% when oral communications are combined with visual communications.³ Today, litigators will almost always use visual evidence such as documents, photographs and exhibits for substantive portions of a case. The gap between these so-called old-style litigators and the new no longer lies in the use of evidence and technology, as most have embraced both to one degree or another – today’s modern litigator, recognizing the need to combine oral and visual evidence, will also include creative exhibits in their presentation that “show” the jury key legal *arguments*, not just key *documents*. Always remember, a majority of the jury needs to *see* the information. Anytime the jury must remember the point, show them *and* tell them.

Educational psychology is quickly finding its way into the courtroom. To build a winning case, you must be understood. To be understood, you must cater to the learning styles of a jury. The new rule of litigation success may very well be that the side that is most understood wins. Using basic learning/communication psychology, one can rest assured that they are being understood – and remembered – to the maximum possible degree.

¹ Animators at Law is an eleven-year old attorney owned and operated litigation consulting and trial exhibit company comprised of talented information designers and creative attorneys. We regularly serve top-tier law firms and companies in a variety of practice areas and give them an *Unfair Advantage*[™] in the courtroom and beyond. Our core business is making complex information interesting and understandable to lay audiences using static trial exhibits, electronic presentations and animation. We also provide in-court support personnel to facilitate the seamless presentation of graphics and electronic evidence. From strategy to presentation, we are creative and reliable perfectionists who help top litigators win at trial.

² *The Animators at Law 2007 Attorney Communication Style Study*. More information on the study may be found at <http://www.animators.com/> or by contacting the author of this article at lopez@animators.com.

³ 1992 ABA Journal *citing* The Weiss McGrath Report.