

Say What? Seeing Things from a Juror's Perspective

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Jurors learn visually. Lawyers do not.

Once mere speculation by litigation theorists, this attorney-juror communication gap has now been confirmed by a new study. The *Animators at Law Attorney Communication Style Study* has revealed a measurable gap in the way practicing attorneys and the general public learn and communicate. This study makes two key findings. *First*, jurors are largely visually oriented. *Second*, attorneys are more likely than the general population to try to communicate and persuade by speaking, and attorneys are far less likely to use visual communication.

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 a PhD-designed survey engineered to assess one's dominant learning style. A dominant learning style describes how each person prefers to learn, and is 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 do so. That is, an auditory learner will attempt to communicate by speaking while a visual learner will attempt to teach with pictures, regardless of the needs of their audience.

The differences in learning and communication styles between attorneys and the general public 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, are 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 historic tendency to communicate in the courtroom by speaking, this juror/attorney communication gap is exponentially widened.

Attorneys should be aware of their tendency to communicate non-visually, and should consider adapting to the audience they are speaking to. The educational community has made this shift over the last three decades. Here are three practical tips to aid in achieving the maximum clarity in persuasive communications with jurors:

1) **Address All Three Learning Styles** — Read a few pages in a best-selling novel, and you will often read about "the *sounds* of the forest, the *feel* of the damp heavy air and a color so green that it reminded him what he had *seen* in Ireland." The example, of course, points out the use of language that one would typically associate with the three learning/communication styles. Best-selling authors and editors are today 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 Aids** — It may be tempting just to speak to a jury, but the survey data suggests otherwise. Indeed, the survey data strongly states that merely speaking information to a jury will result in under-communicating with 82% of the audience. Ideally, a more balanced approach emphasizes visual information. Visual information can take any form, whether a document, an electronic presentation, a chart *etc.* Adding in kinesthetic evidence, perhaps in the form of a scale model, will further communicate the point. Of critical importance is the knowledge that for most attorneys, this will not feel natural or necessary, but this is precisely the point of this study.

3) **If it is a Critical Point, Use Visual Evidence to Emphasize the Point** — One study has found that juror memory retention is increased 650% when oral communications are combined with visual communications.² Accordingly, most litigators have embraced the use of visual evidence and technology. 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 to understand and retain it. Any time the jury must remember the point, show them *and* tell them. They need to see the conclusion as well as the documents from which they must draw a conclusion.

Ultimately, we all want to be understood. It is our audience that we must adapt to if we are to be best understood. In order to better communicate with and be understood by people who speak a different language from our native tongue, we know that we must learn their language and some of their culture. Speaking our native language louder, slower or with the perfect choice of words will not make us understood. We must adapt and be willing to learn a new language and new method of communication. In the case of most attorneys, the new language that must be learned is visual.

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*TM 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 Harold Weiss & J.B. McGrath, Jr., *Technically Speaking: Oral Communication for Engineers, Scientists and Technical Personnel* (1963).