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Promoting Communications Between Social Scientists and Lawyers

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THIS ARTICLE SERVES as a reminder. It is intended to remind lawyers about fundamental communication skills. It does not pretend to plow any new ground. Rather, it offers fundamental solutions to a fundamental issue. That is, the cultural and communication dissonance between professions—in this case between lawyers and scientists, especially social scientists. Sometimes, especially in the crush of litigation, the best remedies return to foundational skills.

Different Professions, Different Planets?

I spoke with a colleague as we planned forensics training for social scientists. We both had legal and social science backgrounds and were preparing to speak on how social scientists can be better expert witnesses. The gist of the conversation went something like this:

> Yikes! We're going to have to translate a lot of legal terms and legal procedure.
>
> Yeah, I know. Especially, if they don't testify regularly. Nor do most attorneys know social science culture. How would they know?
>
> Lawyers have their language. Social science has theirs.
>
> "And ne're the twain shall meet."
>
> "You know, it's not just a matter of language, either. It's a difference in professional goals, definitions and methods for uncovering truth, definition of outcomes, training, even professional ethics. Like they're living in different cultures."
>
> "Even worse, like we're living on different planets."

We knew we were not the only professionals having to straddle the two worlds of science and law. It is no secret that the space between the "layperson" and the "expert" in any field can amount to the differences between worlds. Ever since the landmark decision of Brown v. Board of Education, where social science evidence was used to render its landmark decision, courts and lawyers have used social research in earnest. Cases

utilizing social science research have dramatically increased over the years, not the least with the forest of forensic experts and cases cited in Daubert v. Merrell Dow Pharmaceuticals and its progeny. The importance of interdisciplinary communication has increased accordingly. As social science methods become more complex and sophisticated, the language and concepts also become increasingly specific and less understood across disciplines.

This problem may show up in three areas:

1. Lawyers who are new to the field or new to using social scientists as scientific consultants.
2. Lawyers who engage trial consultants, many of whom are social or behavioral scientists (especially if the relationship between the attorney and the trial consultant is new or is addressing new or complex research or concepts).
3. Experts testifying, many of whom are scientists.

Miscommunications yield miscues, misunderstandings and missed opportunities. Expectations can be unmet when either attorneys or social scientists do not "hear" what the other party is saying. The different assumptions and frames of reference between a lawyer's world and the social science world are largely the culprit. Legal research and social science research have different methods and ends in mind. The communication problem becomes acute when the two professions need to collaborate.

Why Is It So Hard for Two Educated and Accomplished Professions to Understand Each Other?

Simply put, the answer is: precisely because these professionals are so educated and accomplished!

Both the legal and scientific professions require both a high degree of training and experience. Years of specialized training, specialized skill-building, specialized technology, specialized discourse and specialized experience yield a highly specialized language and a highly specialized culture. The more specialized the culture, the easier it is to communicate to colleagues. Likewise, the more the specialized the culture the harder it is to communicate with "outsiders"—meaning those in other professions and just about everyone else.

The problem is more than mere semantics. The issue sizzles down to zeitgeist-the worldview, the frame of reference, the perspective from which the lawyer and social scientist understand truth, ultimate value, themselves and others. I have described this difference by saying that a courtroom is neither a classroom nor a therapist's couch.

Different authors use different terms to define these differences. Some suggest that there is a hierarchical difference between how legal decisions are made (judge or jury) and argued and the more consensual way that science arrives at conclusions. That is, a critical mass of consensus is usually required to repeat the same results before the scientific community concurs.

Other authors use the term dichotomous thinking to describe the law and believe that science has a more integrated approach. After all, at the end of a trial, the jury declares the defendant to be guilty or not guilty or liable or not liable. End of story—at least until appeal. In science, the truth is never really set in stone; something is rarely "settled law". This is particularly so for the social and behavioral sciences. People, culture and environments change. While these distinctions are admittedly overdrawn, they make a point. Different disciplines define "truth" differently.

So, How Can Lawyers Improve Communication?

The following ideas may seem obvious, even simplistic. They are not. Communication, persuasion and learning are not as simple as once thought—with the teacher figuratively opening up the brain of the student and pouring in information and the students then repeating it.

First, this article suggests what lawyers do not do—like, don't be a social scientist. Be a lawyer. In fact, be a cutting-edge lawyer—be a client-centered lawyer and be a lawyer who remembers to use cognitive skills that refine the human software. These are the cognitive skills that law schools are beginning to teach lawyers for the 21st century.

The first skill is to know how we learn and communicate. Demirdögen's 2010 article in the International Journal of Social Inquiry notes how the Yale Study of persuasion cited well-published elements of persuasive communication: the speaker, the message, the audience and the context. For social scientists to really "hear" the lawyer, the lawyer must attend to each of these elements. These communication elements are well-known by many, but are easy to forget in the crush of litigation. Adjusting your message to adopt all these elements is necessary for effective communications.

We have already noted all these elements earlier. That is, we have noted how the lawyer (speaker) uses professional language (message) to an audience (scientist) who comes from a different world (context). It could be a perfect storm of miscommunication. But client-centered communications act as the perfect calm in situations with a high potential for miscommunication.

Here are some specific cognitive skills and client-centered communications recommendations and strategies:

1. Use your imagination. Try being a novice and imagine knowing nothing. Your goal is to let the scientist teach the innocent (i.e., the jurors) about their scientific expertise. Are they effective? If you knew nothing about their expertise, do they clarify or confuse you? You should not have to excavate undergraduate study or your experience from previous cases to understand what the scientist is explaining.

2. Then, take it one step further and make the scientist use their imaginations. Ask "how" questions, not "yes or no" questions. For example:

"How do you think cross-examination will go?"

"How will you explain contrary data from other researchers?"

These questions make the scientist give voice to unspoken assumptions. It is better for the lawyer to find out unspoken assumptions or predispositions before trial—not during cross-examination.

For example, one unspoken assumption might be for the scientist to consider themselves to be so much the objective researcher that they do not consider their testimonial demeanor. They may think, "Let the research speak for itself." So they might appear disinterested or aloof. When, in fact, as Ivkovic & Hans, in their 2003 article in Law and Society Inquiry, said, "The messenger is the message."

3. A hallmark of client-centered legal practice is listening well and asking well. It sounds simple, but it is not. It takes time, energy and skills and the same skills can be applied to scientist witnesses as to your clients. It will seem awkward in the beginning. Asking open ended questions is much different than close-ended, yes or no questions. Asking, "Did you conduct DNA research in undergraduate school?" is different than asking, "Tell me how you got interested in DNA research? The open-ended question offers much more information not only about when they started such research, but what personal involvement they have with the research. The jury wants to know more about the expert than their list of degrees and publications. They want to know them as human beings with values and interests and passions. Jurors want to know more than what the scientist knows. They want to know who they are. Jurors must judge credibility. That's their job. Those values, interests and passions form the connective tissue for cultivating rapport with the jury. Without rapport, the scientist is just another talking head.

If the researcher cannot answer how and why they got interested in their research, suggest they think about it—hard. It's that important.

4. Be an educator to another professional. Speak the obvious. Be clear, even blunt. You are a professional. So is the scientist. But, the scientist is not in their classroom. They will be on your territory. They need to know how cross examination works and how their credibility will be challenged—and how they will respond. They will not test their "students" (i.e., jurors). Instead, the "students" will test the "teacher". The lawyer can describe how they expect the trial may proceed, how the scientist's testimony fits into the trial theory and other matters.

Then (and here is good client-centered practice at work with other professionals) ask the scientist to tell you what you just said. Another hallmark of client-centered legal practice is rephrasing responses. Rephrasing just means the lawyer says back in their own words what the scientist just said. The old formula is "I heard you say that…" Rephrasing makes the scientist think through what you have said and to organize it.

It also is a memory aid. Research tells us that restating information helps the brain organize information in a useful and meaningful way. Besides, factual errors in the communication are revealed and can be corrected. Similarly, research indicates that illustrations, examples, charts and graphs are all effective educational and communication aids. You use them in trials. Try using them to help the scientist to know their role in the proceedings, the significance of their testimony, what issues should be addressed, likely challenges to credibility and research, and other matters.

We think we communicate because we talk or write. We talk on cell phones, write emails, and use social media. Some even write articles. Just because we talk or write doesn't mean we communicate. It's a much more complex process. While the ideas in this article are simple, they are not simplistic. The concepts may sound like child's play, but applying them is not. It certainly is not intended to be patronizing to the scientist or to shoe-horn their testimony to fit certain results. It is how professionals communicate across their professional languages and cultures. The goal of this article is to reduce this culture gap so that the communication may not seem like it stretches between worlds, maybe just across the chasm between continents.

Ronald K. Bullis, is a free-lance writer and communications consultant. His latest book is The Narrative Edge in Expert Testimony: A guide for social workers You can review additional information on his practice at Ron's website: lawisthecoach.com.