

Handout 1

Albert Mehrabian Communication Studies

1. Albert Mehrabian is currently Professor Emeritus of Psychology, UCLA. He is most well known for his publications on the relative importance of verbal and nonverbal messages.

Mehrabian comes to two main conclusions in his studies:

1. There are basically three elements in any face-to-face communication:

- Words
- Tone of voice
- Nonverbal behaviour

2. The non-verbal elements are particularly important for communicating **feelings and attitude**, especially when they are inconsistent i.e. if words disagree with the tone of voice and nonverbal behaviour, people tend to believe the tonality and nonverbal behaviour.

2. According to Mehrabian, the three elements in point one above account differently for our liking for the person who puts forward a message concerning their feelings: words account for 7%, tone of voice accounts for 38%, and body language accounts for 55% of the liking. They are often abbreviated as the "3 Vs" for Verbal, Vocal & Visual.

For effective and meaningful communication about emotions, these three parts of the message need to support each other - they have to be "congruent". For example:

Verbal: "I do not have a problem with you!"

Non-verbal: person avoids eye-contact, looks anxious, has a closed body language, etc.

It becomes more likely that the receiver will trust the predominant form of communication, which to Mehrabian's findings is non-verbal (38% + 55%) rather than the literal meaning of the words (7%). This is known as "the 7%-38%-55% rule".

3. So in summary Mehrabian found:

- 7% of message pertaining to feelings and attitudes is in the words that are spoken.
- 38% of message pertaining to feelings and attitudes is the way the words are said.
- 55% of message pertaining to feelings and attitudes is in facial expression.

4. Mehrabian did not intend the statistic to be used or applied freely to all communications and meaning as they frequently have been. They derived from experiments dealing with communications of **feelings and attitudes (i.e., like-dislike)** so unless a communicator is talking about their feelings or attitudes, these equations are not applicable.¹

¹ For further information – go to Albert Mehrabian's website at: <http://www.kaaj.com/psych/>

Handout 2 Active Listening Skills

Introduction

Being able to effectively communicate with parties in the court process is a cornerstone of managing communication and behaviour in such a high stress environment.

It is important to be able to interact with participants in the court process in a way that engages with them and maintains that level of engagement.

The five principal skill components of good active listening are:

1. **Body Language/Demeanour**

How you respond in terms of your posture, gestures, demeanour and tone has a significant impact on the way that your courtroom management and judicial role are perceived by parties.

Facial expressions, body position, eye contact, attentiveness, avoiding distraction and distracting mannerisms, and not showing disinterest or negative opinion, all assist in engaging with parties, building communication, and generation a constructive environment for effective communication.

2. **Minimal Encouragers:**

Even the slightest negative tone or movement can indicate to parties our support or lack of support for their involvement in a conference process.

Nods, smiles, positive Mmmhms and ahahhs, looks of understanding, questioning and empathy all encourage people to participate in communication which builds trust and assists them to have the confidence to discuss sometimes very difficult issues. One of the issues for self represented litigants in particular is the sense of not being heard. Minimal encouragers help to address that issue at an early stage.

Care that these do not signal agreement

3. **Genuine Curiosity:**

An approach based on genuine curiosity is as much a philosophy as a skill. The underpinning of respectful curiosity is that parties themselves understand best what is going on for them, or if they don't, then the best way for you to find out where the gaps are is to hear them talk. A respectfully curios approach allows parties to give voice to their stories and their worldview. Parties get to talk about their situation from their perspective and you allowing them to do so provides space for interpretation and possibilities to arise that we may never think of. Genuinely curious questions are deceptively simple. They include examples such as:

"Why are you defending this matter?"

"What were you hoping to achieve by bringing this claim to court?"

"When you talk about shared care what does that look like to you?"

4. **Paraphrasing**

Paraphrasing is a mini intervention with parties that feeds back to them what they have said in a way that assists them to know that you have heard both the factual and emotional content of what they are saying. For example:

"You are upset because this matter has been adjourned 3 times because they aren't ready and now they are asking for another adjournment?"

"You are worried because you are not used to appearing in court and you are not sure what you need to do here?"

5. Normalising Statements:

Normalising statements take a third person approach to setting parties at ease in what otherwise can be a difficult and stressful situation. The focus of a normalising statement is to relieve tension by ensuring the party knows that it is not unusual for someone in their situation to feel or respond in the way that they do. An example of a normalising statement is:

"Many people feel overwhelmed with all of the Court rules and procedures."

Care needs to be taken that such comments are not experienced as judgemental or patronising.

6. Summarising

As Judges, this is one of your areas of particular expertise. You will have all had experiences of good and not so good summing up and the effect that it has on others in the Courtroom. The process of summarising doesn't need to be limited to the end of hearing a case, a well timed (clear, fair and well enunciated) summary of a party's explanation, statement or evidence can be used to good effect.

Summarising back to parties gives them the sense that you have heard and understood their view of the issues. Care is necessary that they don't take your 'understanding' as agreement.

7. Reframing

Paraphrasing, summarising and asking questions can all be done in a reframing way. The features of reframing are:

- Neutralising negative statements
- Neutralising attacks or negative inferences against other parties.
- Restating the issue in more general terms that the parties may be able to progress from.
- Putting a series of statements into a logical progressive sequence.

Example:

"That @#\$% has never been there for our son. I was always the one that looked after Toby, now he wants him so he can bum around on the benefit (welfare). That's not what Toby wants"

Which might be reframed as:

"You have told me that you are and have always been there for your son Toby, and that you are worried now that he will be taken away when he wants to stay with you."

Conclusion

The Court environment is foreign to many litigants. Being heard and acknowledged in the process goes a long way to engaging with them and encouraging them to participate in a constructive manner. Research shows that people tolerate unsatisfactory outcomes far more easily when they perceive have been heard and respected from a procedural perspective. Active listening is a cornerstone of building that level of personal and procedural satisfaction.

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Active Listening Exercises

1. Body Language

- a. In pairs – seated back to back – one person talking the other not responding. Break after two minutes.
- b. Ask each for their experience. Make observations.

2. Minimal Encouragers

- a. In pairs - seated face to face, one person talks and other person listens (reverse from exercise 1). Listener makes no response at all, no eye contact, no minimal encouragers.
- b. Ask each for their experience. Make observations.

3. Genuine Curiosity

- a. One person listening and being curious, one person speaking
 - Why did you become a judge?
 - Has it been all you hoped it would be?
 - What keeps you enthusiastic and fresh faced every day?
- b. Try suggesting answers instead of asking questions – how was that?
- c. Ask each for their experience. Make observations.

4. Paraphrasing

- a. One person in pair interviews the other about their “most difficult or frustrating or enjoyable moment as a judge”.
- b. Interviewer then paraphrases (facts and emotion).
- c. Paraphrase can be right or wrong. // Swap and try reversing roles.
- d. Ask each for their experience. Make observations.

5. Normalising statements

- a. One participant interviews the other and asks “what was the most difficult thing you encountered when you began as a judge?”
- b. Interviewer then makes normalising statement as if talking to a new Judge during the morning adjournment on a hard day.
- c. Ask each for their experience. Make observations.

Handout 3

Recognising and Responding to Underlying Needs: Exercises

1. You will be working in threes. At any given time, one of you will be an unrepresented litigant (URL), one will be the Judge and one will be an observer.
2. We will provide the URL with a cue card that will specify:
 - a. The nature of the case she/he is appearing before you on.
 - b. The issue being addressed.
 - c. The statement that the URL will make to start the mini exercise off.
 - d. The underlying driver / need of the URL that the Judge will need to recognise and relate to.

When the mini exercises start:

3. The URL will tell you the nature of the case and the issue being addressed. They will then (in role) make their statement as the URL and continue responding to the Judge's relating strategies until appeased (or when 2 minutes is up).
4. The Judge's job is to **recognise** and **relate** to the litigant using the skill sets you have seen so far. The skills of:
 - a. Noting the URL's body language and demeanour, and using yours effectively.
 - b. Using minimal encouragers.
 - c. Genuine curiosity.
 - d. Paraphrasing; and
 - e. Normalising statements.

Please note that at this stage we are asking you not to "respond" to the issue. Past experience has taught us that by and large judiciary are very good at making a quick appraisal and reacting. For the learning benefits of this process we ask that you limit your focus to recognising the underlying issues and relating to the SRL.

5. The Observer will be given a sheet of paper with three questions on it:
 - a. What did you (as observer) recognise as the underlying need / need of the URL?
 - b. What did you see the Judge do in response?
 - c. What effect did you see this have on the URL? (Helpful or unhelpful.)

As the Judge and the URL are doing the mini exercise, the observer will write their answers to these three questions on the worksheet provided.

When the mini exercise has been completed, the observer will:

- i. Ask the participant playing the role of the Judge the three questions.
 - ii. Ask the person playing the role of the URL the three questions.
 - iii. Say what they saw (regarding the 3 questions) as the observer.
6. There will be 3 cue cards and each of you will have the opportunity to play the role of Judge, URL and Observer. You have roughly 8 minutes to address each of the 3 problems.

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7. When you have done all three we want you to have a brief conversation about your observations so that you have some erudite and insightful comments to make, when your group of three is back with everyone else and we have a 10-minute plenary discussion.

Cue Card (A)

Case	Inland Revenue Prosecution.
Issue	Small one-man band mechanic not filing taxation returns or paying goods and services tax.
SRL Statement	“Recuse? What does recuse mean? You can’t just recuse yourself from cases any time you want your honour, I fixed your car last week and did a bloody good job (and at a good price!), I didn’t leave you stranded and that’s all I am asking you to do, sort this out.”
SRL Headspace	Unfamiliar with the process; been hiding his head in the sand and it has all caught up with him; sees IRD as a big brother bully; Time off work to be here; He doesn’t understand the word recuse – what it means and why and it is a trigger for his response.

Cue Card (B)

Case	Occupational Safety and Health
Issue	Director of small company being asked to plead to a workplace injury case where there was employee contribution.
SRL Statement	“He’s had 27 years experience on that machine! Why am I the one that is in Court?”
SRL Headspace	Insufficient funds for legal representation and hasn’t even inquired about his insurance. Has done his business stuff himself since he started 30 years ago. Doesn’t understand Strict Liability. There is a recession on and he fears the worst for the survival of his business (these fines can be pretty big).

Cue Card (C)

Case	Application under the Care of Children Act 2004.
Issue	SRL is a self represented father applying for Day to Day care of his 2 children (aged 9 and 11)
SRL Statement	“You say you are worried there is a risk but she lied in her affidavit, there is no way I ever abused our daughter! Ask her to prove it – go on – you ask her. I have never been anything but good for our children and now with a stroke of a pen she can say that?”
SRL Headspace	Angry at unjustified allegation. Has plenty of buttons that are easily pushed as a result of a difficult past relationship. Not sure of the evidential process to address the allegation. Unaware of the processes (assessments etc.) that the Family Court can apply to resolve issues.