

The Scrivener: Modern Legal Writing



Neuro-Linguistic Programming And Writing: A New Era of Communication—Part II

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Neuro-linguistic programming describes a method of understanding how people subjectively process information through different preferred modes or representational systems.¹ Generally, neuro-linguistic programming classifies perceptions into three broad categories: (1) visual, (2) auditory, and (3) kinesthetic. The September *Scrivener* column² addressed two precepts of neuro-linguistic programming in the context of legal writing. This article addresses two more.

Precepts of Neuro-Linguistic Programming

1. *The Foundation of Successful Communication is Noticing, Observing, and Listening.*³

To avoid assumptions about what mode your audience may prefer, you need to refine your ability to notice what is significant to them. This will improve your ability to understand how to communicate with them. In its most simplistic form, you can diagnose your audience's preference by paying attention to the way they characterize their observations. For example, people with a preference for the visual mode tend to use more visual words, such as "clear," "picture," "focus," and "see." They also tend to use phrasing such as "I see what you mean"; "Picture this for a moment"; "In my view . . ."; and "He appears so transparent."⁴

In contrast, those preferring the auditory mode may select sound-based words such as "hear," "listen," or "say." Some sound-based expressions are "I hear what you mean"; "That

sounds good to me"; "That rings a bell"; "I want you to explain . . ."; or "Everyone is clamoring for my attention."⁵

Finally, kinesthetic-based persons select tactile words, including "comfort," "feel," "grasp," or "handle." Some feeling-based phrases used by kinesthetics are "I'm comfortable with . . ."; "I can't grasp what is happening"; or "This is hard to handle."⁶

Obviously, neuro-linguistic insight is more reliably gained and verified when you can have a dialogue with your audience. Thus, it has been advocated in the context of identifying the preferences of jurors⁷ or for improving rapport with a client.⁸ However, some of the neuro-linguistic concepts can translate to written contexts as well and help you penetrate the mind of the writer.

The following two examples are taken from judicial opinions. Based on the words italicized, it might appear that Justice Quinn, the primary author of the opinion in Example 1 has a preference for auditory data. In contrast, the italicized words in Example 2 reinforce Judge Brigg's assertions that he is more visual than auditory and that, in fact, he may be kinesthetic.⁹

Example 1: Pam Guenther *stated* that as she and Michael began struggling, she *screamed* for her husband to get a gun. It was her further *testimony* that Josslyn Volosin had appeared and was trying to break up the fight when the *sound of gunshots was heard*.¹⁰

Example 2: As defendant *approached*, the officer observed a plastic bag partially *protruding between the fingers* of defendant's *clenched hand*. When defendant was within a few feet of the vehicle, he *made a "sweeping motion" with his arms*, after which his *hands were empty*.¹¹

There is some danger in oversimplifying the analysis. First, there are words from other representational systems in both of the examples and in other portions of the decisions. Second, ju-

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

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dicial opinions may contain portions written by counsel for the parties, by court clerks, or by other court editors in addition to the author-judge. Furthermore, the wording chosen might reflect the testimony of particular witnesses who had a preference for one mode of communication over another. Consequently, when legal documents may have multiple authors, it is difficult to diagnose accurately the neuro-linguistic preference of one particular author.

Despite this possibility of imprecision, there is an advantage to putting in the effort to determine the representational system that is most comfortable to your audience. If you presume that your audience hears in the same way you hear, your mind and that of your audience may pass like ships in the night, never connecting. Instead, you can achieve communication by tuning in to what words and systems are significant to your audience and speaking or writing to them on their own wavelengths.

2. The Person With the Most Flexibility Has the Most Power.¹²

To avoid getting stuck in one way of thinking or communicating, you must evolve to succeed. Instead of focusing solely on your intent, you must focus on the response you are receiving. Instead of making assumptions that the readers will use your representational system, you must research your audience and tailor your writing according to what you find. Finally, instead of sticking blindly to one approach, it is best to make adjustments as you observe your audience's response to the words or ideas chosen.

However, it may be difficult to diagnose the mode preferences of your main audience. Furthermore, much legal writing has multiple potential audiences with more than one preferred mode of communicating. Consequently, in legal writing, it is best to cast your nets broadly to capture the widest audience. Notice how the following example provides information in all three primary modes of communication identified by neuro-linguistic programming: the visual [marked with a "v" below], auditory [marked with an "a"], and kinesthetic [marked with a "k"]:

Example 3: Detective Goin, who supervised [k] the search [v] at defendant's home, also testified [a]. Detective Goin testified [a] that he and several other officers arrived [k] at the defendant's home to conduct [k] a consent [a] search [v] at approximately 8:00 P.M. Detective Goin decided to knock [a] on the door rather than use [k] the key they obtained [k] from the defendant to enter [k] the defendant's home. Detective Goin fur-

ther testified [a] that after knocking [a], he saw [v] a person pull [k] back a paper covering the window in the front door and look [v] out. Detective Goin displayed [v] his badge and announced [a] "Police." He then saw [v] the person run [k] from the door and retreat [k] elsewhere into the home. Detective Goin continued to knock [a] for about fifteen seconds. In response [k], the door was opened [k] by Daisy Martinez (Daisy), a juvenile and the daughter of Caroline Martinez (Martinez) who also occupied [k] defendant's home.¹³

Thus, it is important to become aware of the visual, auditory, and kinesthetic in your writing. By writing and speaking from this multiple perspective, you can stretch beyond your preferred mode and include wording and information that reverberates with every member of your audience.

Conclusion

As writers, our goal is not simply to get words onto a page. Our goal is to provide our readers with information and to persuade them to understand our ideas. To achieve this goal, we must connect. The best way to connect is to understand our audience. Only when we move from our audience's lead can we engage with them in a true dance of communication.

NOTES

1. Gamm, *Harness Your Personal Power: The Second Revolution in Advocacy* 1 (Gamm 1992).
2. DuVivier, "Neuro-Linguistic Programming and Writing: A New Era of Communication—Part I," 28 *The Colorado Lawyer* 45 (Sept. 1999).
3. Lucas and McCoy, *The Winning Edge* xiv (N.Y.: John Wiley & Sons, Inc., 1993).
4. Lisnek, "Finding Jurors With Open Minds Requires Looking Inside," 139 *Chicago Daily Law Bulletin* 2 (March 15, 1993).
5. *Id.*
6. *Id.*
7. *Id.* at 1.
8. Knapschaefer, "Reading People May Help Lawyers Win in Court," *The Journal Record* (Jan. 14, 1989).
9. Telephone discussion with Judge Stephen C. Briggs of the Colorado Court of Appeals (Thursday, Sept. 23, 1999).
10. *People v. Guenther*, 740 P.2d 971, 973 (Colo. 1987).
11. *People v. Outlaw*, 1999 C.J. C.A.R. 4439, 4439 (Colo.App. 1999) (not released for publication; petition may be pending).
12. Lucas and McCoy, *supra*, note 3 at xv.
13. *People v. Mendoza-Balderama*, 28 Colo.Law. 216, 217 (Colo. 1999) (S.Ct. No. 98SA460, *ann'd* 5/24/99) (J. Scott delivered the opinion of the court).

First J.D. Monthly Luncheon to Highlight Year-End Tax Planning

The First Judicial District Bar Association ("First J.D.") will hold its monthly luncheon program meeting on November 9 at noon. Tim Bradley, CPA, will address the group regarding matters of end-of-the-year tax planning for both attorneys and their clients. Bradley also may attempt some prognostication about changes to the tax law as recently passed by Congress and vetoed by the White House.

The luncheons are held in the Lookout Mountain Room of the Jefferson County Courthouse. The cost is \$12 for First J.D. members and \$22 for nonmembers. Seating is limited, and early reservations are encouraged. For reservations or information, call (303) 279-5568 in Golden.

If there is an area of the law that you would like to know more about, the Luncheon Committee welcomes your input. If you have suggestions, call Scott Kleger at (303) 202-0231.