

The Scrivener: Modern Legal Writing



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

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*History is made on this day as we embark
on a new era of communication.¹*

The only U.S. network of coastal radio stations using Morse code turned off its transmitters earlier this year. Morse code was an astonishingly fast technology in its day; in comparison to the days or weeks it took the pony express, steamers, or carrier pigeons to transfer information, Morse code took only a matter of minutes.² But, now, 155 years later, telegraph is so much slower than other forms of communication that it has become obsolete. Instead of spelling out words in dots and dashes, e-mail permits almost instantaneous transmission. In addition, global positioning systems are much more effective than radioed Morse code signals to locate ships in distress.

With the passing of Morse code, we entered a new era of communication. New methods of transmitting information now provide faster and more effective results. Similarly, neuro-linguistic programming, a new approach from communication science, provides techniques for faster and more effective communication in your writing.

Background of Neuro-Linguistic Programming

Neuro-linguistic programming was developed in the early 1970s by John Grinder and Richard Bandler, a linguistics professor and mathematics professor, respectively, both at the University of California in Santa Cruz.³ Neuro-linguistic programming primarily classifies perceptions on the basis of

three of the five senses or representational systems: sight (visual), hearing (auditory), and touch (kinesthetic). Everyone uses each of these senses at various times, but most people have a preference for one of the senses.

When using neuro-linguistic programming to enhance communication, the goal is to identify the primary sense by which your audience processes information and to modify your approach to better reach that person.⁴ Because our thoughts are multi-faceted—encompassing the visual, auditory, and kinesthetic—any words we choose to express our feelings or ideas are inherently limiting. Thus, when we describe reality, language always falls short of complete communication. As lawyers, we often focus too narrowly on the language alone. Yet we can use neuro-linguistic programming techniques to consider how words are presented, their associations, and the memories or passions they arouse. These considerations have a significant impact on the message communicated.

Some experts have applied neuro-linguistic programming techniques in litigation contexts.⁵ Many of these same techniques are equally applicable in the context of legal writing. This article is an introduction to some of the neuro-linguistic programming techniques that may be used to improve how you communicate in writing.

Techniques

1. *The Meaning of Communication Is the Response You Get.*⁶

The word “communicate” comes from the same Latin root as the words “common” and “commune.”⁷ To achieve communication, two persons’ minds must commune or come together. Only when you achieve this conjunction can there be true understanding.

DO YOU HAVE QUESTIONS ABOUT LEGAL WRITING?

K.K. DuVivier will be happy to address them through *The Scrivener* column. Send your questions to: K.K. DuVivier, University of Colorado School of Law, Campus Box 401, Boulder, CO 80309-0401 or through e-mail to: duvivier@spot.colorado.edu.

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Your intent may be irrelevant. What you intended to say can be lost if the message is not heard and interpreted in the way you intended. Thus, the only message having significance is the one that the audience receives and understands.

Determine whether the following example achieves what should be the author's primary intent—refuting the appellee's argument:

Example: In urging that the judge's membership in the Anti-Birth Control League is analogous to membership in a political or religious organization, the appellee builds a house of cards. The comparison is, of course, fallacious. It is more analogous to totalitarianism than to democratic politics. The appellee should be sanctioned for urging such a position.⁸

To most readers, the example fails to refute effectively the appellee's arguments because it focuses too little on specific logic. Instead, it consists primarily of angry attacks. It matters little whether the attacks are direct *ad hominem* jabs at persons—such as the calling for sanctions here—or oblique swipes at their arguments; calling the appellee's argument "fallacious" is not much more than a polite way of calling the appellee a "liar." Overall, the primary reader response to the words in the example is that the author is angry.

Such attacks are not uncommon in briefs, yet none of the judges I have consulted has responded positively to them. Not only do such attacks fail to refute the arguments, they also fail to achieve any secondary intent to appear clever or to regain credibility after an attack in the appellee's brief. The anger becomes so distracting that any message intended becomes lost by the message received.

2. Making Assumptions is the Mark of a Lazy Communicator and the Surest Road To Failure or Defeat.⁹

Whether in relationships or in professional work, a common error is making the assumption that your audience will think or react the way you do. As a result, a gift of chocolate-covered strawberries may not be appreciated if the recipient is on a diet or is allergic to chocolate or the berries.

Each of us evaluates a situation from our own system of values, biases, or beliefs. However, if we use our own values, biases, or beliefs to assume what other people should think, feel, or do, we will frequently be mistaken. For true communication, it is important to determine the values and thought processes your audience will use.¹⁰

In brief writing, one way to avoid any misconceptions based on assumptions is to quote the exact word or phrase used by a court in articulating a concept. For example, if a court reasons that parents may be liable for "allowing their children access to obviously and intrinsically dangerous objects," paraphrasing this holding as limiting parental liability to situations in which they have supplied their children with weapons may appear to be a distortion. Because different words can

have vastly different meanings for different people, "supplying with weapons" may not be an accurate translation of "allowing access to dangerous objects."

By using the same words, or "backtracking,"¹¹ you can avoid any impression that you are manipulating the meaning. Thus, backtracking saves you from any dangerous assumptions that your paraphrase will have the same meaning to your audience as it does to you.

Conclusion

In the future, the dots and dashes of Morse code still may be recognized as a form of communication.¹² However, in this new era of communication, technologies such as e-mail have given us a fresh perspective. These forms now predominate because they are more efficient and effective. Similarly, the techniques of neuro-linguistic programming can give you a fresh perspective on your writing. By adopting these techniques, you should be able to achieve a new era of communication with your readers.

NOTES

1. Opening line in a ceremonial farewell-to-Morse-code message sent to President Clinton in July 1999. The message was sent from a World War II-era ship in San Francisco harbor, both in Morse code and via e-mail. The White House acknowledged with an automated e-mail response.

2. According to commentators of the day, space and time were "annihilated," and "[i]nformation [could] be literally winged with the rapidity of lightning." Woodward, "Mourning Morse: Old Language of Dots and Dashes Is Signing Off," *The Milwaukee Journal Sentinel* (July 25, 1999) (quoting from the *Baltimore Weekly Niles National Register*).

3. Knapschafer, "Reading People May Help Lawyers Win In Court," *The Journal Record* (Jan. 14, 1989).

4. Lisnek, "Finding Jurors With Open Minds Requires Looking Inside," *139 Chicago Daily Law Bulletin* (March 15, 1993).

5. Lucas and McCoy, *The Winning Edge* (N.Y.: John Wiley & Sons, Inc., 1993). See also Knapschafer, *supra*, note 3, and Lisnek, *supra*, note 4.

6. Lucas & McCoy, *supra*, note 5 at xiv.

7. Communis = common, *The American Heritage Dictionary* 299 (Boston: Houghton Mifflin Co., 2d College ed., 1985).

8. Example is a modified version of a sample reply brief from Gaubatz, *The Moot Court Book* 231 (Charlottesville, VA: The Michie Co., 2d ed., 1987).

9. Lucas & McCoy, *supra*, note 5 at xiv, partially quoting, Robbins, *Unlimited Power* (1986).

10. *Id.* at 53.

11. In neuro-linguistic terminology, repeating exactly what you thought was said is called "backtracking." Lucas & McCoy, *supra*, note 5 at 24.

12. Morse code may still have a use today: the rhythmic beat of fans in sports arenas—dum-dum, dum-dum-dum, dum-dum-dum-dum, dum-dum ("Let's Go!")—is Morse code for the numbers 7 and 3. By telegraphers' shorthand, 73 means "best wishes." Woodward, *supra*, note 2.

Stuart VanMeveren Named to Head National District Attorneys Group

Stuart VanMeveren, district attorney for Larimer and Jackson Counties, was recently elected president of the National District Attorneys Association. VanMeveren is the first Colorado district attorney to serve as president of the national group. The National District Attorneys Association membership comprises 7,000 prosecutors.