

The Portia Group, Ltd.

• Strategic Communication Advisors •

The Portia Group, Ltd. is a strategic communication advisory firm working with a select clientele from business and the professions, with an emphasis on the legal profession. Principals Mary E. Ryan and Brian E. Leroy together have over 25 years of communication, litigation and trial consulting experience. They provide teaching and training programs and consult on strategic communication for a wide variety of applications including all aspects of trial communication, advocacy, negotiations, interviewing and witness preparation in the U.S.

Mr. Leroy and Ms. Ryan have combined backgrounds in persuasive and nonverbal communication, law, trial consulting, economics, law firm management, psychology, performance arts and behavior change. They have spoken for many premier legal training organizations across North America such as:

- a) National Association of Protection and Advocacy Systems;
- b) International Association of Defense Counsel Trial Academy;
- c) The Defense Research Institute;
- d) National Institute of Trial Advocacy; and
- e) Association of Trial Lawyers of America (Harvard University and Stanford Law College).

Mary E. Ryan

Mary E. Ryan is a strategic communication consultant and communication educator. Based on her background in persuasive and nonverbal communication, psychology, performance arts and behavior change, Ms. Ryan specializes in integrating nonverbal and verbal communication techniques into effective, ethical, persuasive communication strategies to achieve goals. In the past year she has facilitated discussion with over 400 people from across the country on a wide variety of cases and legal issues. Ms. Ryan helps speakers develop persuasive communication strategies based on her training in persuasive communication.

She has consulted on a wide variety of lawsuits and other communication events in the U.S. Canada and abroad for over 12 years. She also has managed large-scale international product liability litigation, hiring, coordinating and overseeing expert and legal teams and assisting with preparation of witnesses. Ms. Ryan began her first communication consulting business at the age of 26 and has taught on the faculty of several colleges and universities.

Brian E. Leroy, Q.C.

Brian E. Leroy, Q.C. is a strategic communication consultant, a barrister and Queen's Counsel. Mr. Leroy was partner responsible for formal apprenticeships of young lawyers in his firm for 6 years and teaches at NITA as well as the IADC and NAPAS. As part of his consulting practice in just the past year Mr. Leroy has analyzed and prepared a variety of civil cases for presentation to over 400 people in focus groups and mock trials across the United States. Mr. Leroy helps attorneys develop litigation and trial strategies based on jury research and his experience as a trial lawyer and assist speakers with developing strategic communication plans to achieve their communication goals.

At the age of 36 Mr. Leroy was a managing partner of a 50-lawyer firm. He has practiced criminal defense law, tried over 100 cases and appeared before the Supreme Court of Canada. Currently he maintains a limited legal practice acting for a select clientele including Suzuki Motor Corporation and the Canadian Standards Organization. He has extensive background in large scale international product liability litigation and construction litigation.

Strategic Communication Skills for Advocates

Presented by the Portia Group, Ltd.

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I. Communication Techniques & Principles

The basic principles of communication, particularly nonverbal communication, are intrinsically appealing to people. However, the real power of communication lies in the ability to make informed decisions about the use of communication techniques to achieve specific, predetermined goals in any situation.

There are two fundamental types of communication: nonverbal communication and verbal communication. Verbal communication is dependent only upon the content of the message and nonverbal communication includes all aspects of communication that are not dependent on the content of the message being communicated.

Strategic communication is communication that has a precise goal, determined prior to beginning the communication event. Understanding the principles of verbal and nonverbal communication allow a communicator to make conscious choices about what communication behaviors will help achieve the strategic communication goal.

A. Nonverbal Communication

Nonverbal communication includes body size, shape and movement, facial expression and eye contact and vocal qualities such as tone, volume and pitch. As might be expected, listeners “watch” speakers carefully to see and test if the nonverbal behavior conflicts with the content of the speaker’s communication. If there is a conflict the listener will usually rely upon the nonverbal message to determine what they believe about the speaker. It is critical to learn the typical instinctive responses people have to nonverbal behaviors so that informed choices can be made about nonverbal communication so it will be consistent with the content of the communication. Subtle change in nonverbal communication may significantly influence the perception of the message being communicated.

1. Establishing Power & Authority With Nonverbal Communication - Humans generally establish power through the use of nonverbal behavior by demonstrating the appearance of two behaviors:
 - a. Space control; and
 - b. Relaxation.

Both of these can be established by the voice as well as by movement.

2. Establishing Rapport & Trust With Nonverbal Communication – When human beings are in rapport with one another they often demonstrate particular behaviors. Recreating these behaviors can increase rapport. Displaying certain behaviors can also increase the likelihood that a person will intuitively trust another person. A conscious choice to display these behaviors can increase perceptions of trustworthiness.

Rapport

When humans are in rapport with each other they demonstrate the following behaviors:

- a. Similarity of behaviors;
- b. Forward lean & close proximity;
- c. Direct shoulder orientation;
- d. Mutual gaze; and
- e. Scoop nodding.

Although every individual is unique in their nonverbal communication skills, in general, women have been socialized to exhibit rapport building behaviors more frequently than power behaviors. Women often have difficulties establishing power without being perceived as overpowering or overly aggressive. In contrast, males often are socialized to exhibit power behaviors and frequently have difficulty naturally using rapport-building behaviors. It is important for all people to expand their repertoire of nonverbal behaviors to include both skills so they can achieve the goal.

Trust

When establishing trustworthiness the key is the appearance of openness and access. The following behaviors help increase trustworthiness:

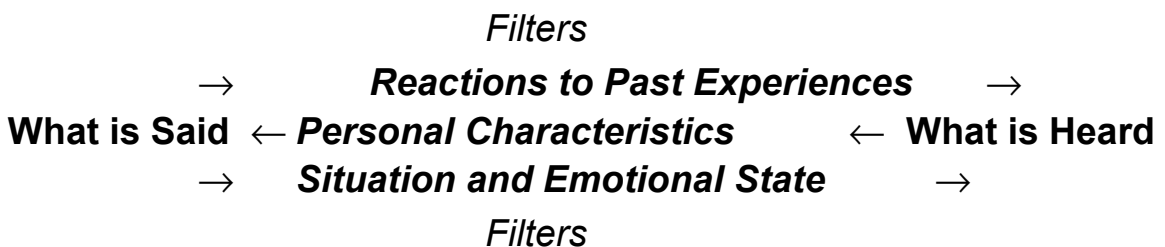
- a. Direct body orientation;
- b. Visibility of as much as possible of the facial mask (i.e. the face from the hair line forward);

- c. Visibility of eyes; and
 - d. Visibility of the palms of hands.
3. The Internal Effect of Nonverbal Communication – Nonverbal communication not only influences others who are watching it, but also can influence how we feel and perform. As a professional who must “perform” it is important to understand how the body is communicating with the mind so that behavioral choices can be made to influence communication and maximize performance. For example, to maximize performance consider:
- a. Developing a set of preparatory behaviors to do every time before a particular activity; and
 - b. Developing instructions about what “to do” rather than what “not to do” when performing an activity.

B. Verbal Communication

Verbal communication between human beings is based upon story telling. Consequently, a Persuasive Communication Model must be based upon story telling. When people hear information they create a story out of the facts presented based in large part upon factors that are largely beyond the speaker’s control. The following model demonstrates how these factors influence communication.

Communication Model



Every individual will have a different mix of these factors so a group of people hearing exactly the same facts will honestly “hear” different stories. This fundamental reality of human communication has a profound impact on how people interact with each other. For the speaker the existence of the filters must be recognized and as much as possible must be learned about the listener’s filters. It is also important to know as much as possible about ourselves because these filters will be influencing our perception of what we are hearing.

- II. **Strategic Communication vs. Tactics** – Strategic communication is communication that has a precise goal for the communication event. Most importantly, the goal is decided prior to the beginning of the communication event. Strategic Communication can help people be more effective in all aspects of their lives. Clear goals also reduce stress and increases satisfaction for everyone. Tactics are the methods or activities used to achieve the strategic goal. People frequently become caught up in the moment of trying to “win,” the contest immediately confronting them on a question by question basis when many of the answers may not matter to the overall goal of the communication.

Strategic Communication requires a clear understanding of what the “win” will mean for everyone and then selecting the best tactic or series of tactics to achieve it. As a speaker you can help yourself perform most effectively by asking the questions outlined on the attached sheet titled Survival Tips. This will help you identify the goal and the tactics as a speaker.

A. **Establishing Strategic Plans**

Every important task should have a strategic plan. A strategic plan requires a clearly defined goal and a plan for achieving that goal. In order to help establish strategic plans answer the following questions:

1. Where are we now? (The Current Status)
2. Where do we want to be? (The Goal)
3. What will it take to get there? (The Action)
4. When will we know we have arrived? (The Evidence)

Be sure to answer each question with as much specificity as possible, then write down the answers. As time passes check the progress of the plan toward the goal. Revise the goal as required. Once an overall strategic plan has been established the right people must do the right things to accomplish the plan. This requires strategic communication.

B. **Strategic Communication Planning**

In order to get people to take the action required to execute a strategic plan the person in charge of the plan must be able to communicate effectively with each person to get that person to act. Strategic communication is communication that has a well-defined goal and adapts the method and manner of the communication to the person receiving the information. In order to know how to communicate strategically with a particular person answer the following questions:

1. What do I know about this person and in particular their communication filters? (The Person)

2. What do I want this person to do, exactly? (The Goal)
3. What content and nonverbal techniques will communicate the message required for the listener to act? (The Strategic Communication)
4. What will be the evidence that I have persuaded the person? (The Proof)

Answer each question with as much specificity as possible. Write down the answers. It is important that the listener understands exactly what action is required of them. Plan a nonverbal technique that is consistent and supportive of the content. The content should be planned to adapt to the listener's filters. For example, an optimist should be told that good things will happen if they act in the way the speaker desires. Even if it is not possible to be certain about all aspects of the plan still make a plan. That plan will serve as a check point to validated or correct the action being taken.

C. Application of Strategic Communication

Verbal Communication - As communicators we cannot control other people. We can control ourselves and our communication. Beginning every communication event from the perspective of the listener rather than as the speaker can help us make better decisions about how we will communicate with others. Clearly define exactly what the person needs to do. Analyze whether the person is capable of doing it. If they are, offer the person the content and nonverbal behavior that what will help motivate them to want to do it.

Nonverbal Communication - When the goals are clear the following techniques may help to achieve a particular goal. Once you have decided the goal of the particular communication event you may make choices about the nonverbal behaviors to help achieve that goal.

1. Establishing Power –Power may be established in a setting such as a court room or conference room by doing the following:
 - a. Moving around the room;
 - b. Touching things in the room;
 - c. Encroaching on others personal space zones;
 - d. Showing high levels of relaxation in your body;
 - e. Pausing before responding when asked a question;
 - f. Maintaining eye contact for extended periods of time;
 - g. Lowering the pitch of your voice; and
 - h. Using a falling inflection at the end of sentences.

2. Establishing Rapport – Rapport may be established during an interview, meeting, examination or negotiation by doing the following:
 - a. Similarity of behaviors between yourself and the other person (this is not merely mimicking others);
 - b. Moving closer to the individual;
 - c. Facing the person directly;
 - d. Maintaining eye contact only as long as the other person is comfortable;
 - e. Scoop nodding when listening;
 - f. Respecting the person's personal space zone;
 - g. Eating a meal with the person;
 - h. Repeating back what the person has said to you; and
 - i. Giving verbal encourages (e.g. uh huh, what else. Please note verbal encourages are particularly important when speaking with a person with impaired vision.)

Humans are very sensitive to nonverbal behaviors so subtle changes often have significant effects. Dramatic changes to nonverbal behaviors may have unexpected results. The ability to make good decisions about nonverbal communication can be best improved by consciously observing and even recording the changes observed in everyday situations when any of these nonverbal factors are changed.

III. Conclusion

The basic principles of communication, particularly nonverbal communication, are intrinsically appealing to lawyers and the people who work with them. However, the real power of communication lies in the ability to make informed decisions about the use of communication techniques to achieve specific, predetermined goals in any situation.

Nonverbal Communication Techniques

Nonverbal communication includes all aspects of communication that are not dependent on the content of the message being communicated. Nonverbal communication plays an important role in relationships with others because humans respond to it at a deeply instinctive level. A large portion of our communication with others is actually nonverbal. Some studies have found that well over half of all communication is nonverbal. This is particularly true for the emotional content of communication. Nonverbal communication is influential in establishing the perception of power and building rapport.

The purpose of this handout is to provide a list of nonverbal behaviors that will assist in establishing power or building rapport. Two of the behaviors included are actually verbal behaviors, but their importance warranted including them.

Establishing Power

From a communication perspective, power can be generally defined as the perception that a person has authority or control of some aspect of a situation or event.

Power is important to communication because in order for a person to communicate effectively that person must first be heard and have their message attended to by others. If a person is perceived as having no power there is little or no reason to listen to their message. Power also allows a person to control a communication event to varying degrees. This does not mean that a person always wants to try to be the most powerful person in every situation, but it is important to know how to establish power when the communication goal requires it.

Of course the best way to ultimately establish power is to be knowledgeable and competent. However, the following nonverbal behaviors will help to establish power in most settings.

1. Move around the room;
2. Touch/move things in the room;
3. Enter others personal space zones;
4. Show high levels of relaxation in your body;
5. Do not respond immediately when asked a question;
6. Maintain eye contact with others for extended periods of time;
7. Lower the pitch of your voice;

8. Use a falling inflection at the end of sentences.

Building Rapport

Rapport can be defined as a positive connection between two people. Rapport is important to communication because if a person is in rapport with another person that person will tend to give information more freely to that person. Rapport can build trust so people tend to believe the information given to them by someone with whom they are in rapport.

The following nonverbal behaviors will help build rapport:

1. Demonstrate a similarity of behaviors between yourself and the other person. (e.g. Sitting when they are sitting. Please note, this is not merely mimicking others.);
2. Move closer to the individual;
3. Face the person directly, do not turn away from them when talking or listening;
4. Maintain eye contact only as long as the other person is comfortable;
5. Slowly scoop nod frequently when listening;
6. Respect the person's personal space zone, do not invade their space (Hint: If people move or lean back away or break eye contact when another person moves toward them the second person has probably invaded the first person's space zone);
7. Eat a meal with the person if possible;
8. State information back that the person has said so they know they have been heard and understood *; and
9. Give verbal encouragers* (e.g. uh huh, go on, what else? Verbal encouragers are of particular importance when speaking to a person with impaired vision.).

*Actually verbal techniques, but important tools.

Nonverbal Communication Self- Analysis Work Sheet

Make several copies of this form. During a communication event of a type that your believe you are usually effective in, answer the following questions. (Hint: videotaping is an excellent way to do this analysis. It is also helpful to have someone who knows you well fill out a copy of the form about your behaviors as well.) Do this for several communication events. Review the answers. Does a pattern develop? Are you generally successful in situations that demand rapport building skills, but weaker in situations that demand power, or vice versa? This analysis will help you determine your baseline behavior patterns. Once you have done this you can begin to expand your nonverbal communication skills by making conscious choices to adopt the behaviors that will help you accomplish your communication goal.

Communication Event: _____

Power & Authority Behaviors – “Yes” answers to the following questions identify behaviors that generally are perceived as those of someone who has power and authority in a given situation.

Do you appear to be physically relaxed (e.g. non-restricting clothing, relaxed posture, not fidgeting?)

Yes No

Do your gestures generally move to the sides of your body (e.g. do you create a broad silhouette?)

Yes No

Do you move freely around the room and touch objects or people?

Yes No

Do you look away when other people are speaking to you?

Yes No

Do you hold other people’s eye contact when you are speaking?

Yes No

Rapport Building & Immediacy Behaviors – “Yes” answers to the following questions identify behaviors that generally are perceived as those of someone who is building rapport with others.

Do you orient your entire body towards someone when speaking with them?

Yes No

Do you move closer to someone you are speaking with?

Yes No

Do you find yourself adopting the posture, movements of gestures of someone you are speaking with?

() Yes () No

Do you maintain eye contact with others when they are speaking?

() Yes () No

Do you occasionally slowly nod your head in a scooping motion when listening?

() Yes () No

Vocal Warm Up

It is important to warm up and stretch your voice and your vocal “muscles” before you use them. Just like it is important to warm up and stretch your muscles before you exercise. When you are someplace alone, such as driving your car, let your stomach muscles completely relax. Breathe in allowing air to fill your lungs. This should push your *stomach out*, *not* raise your *shoulders up*. Now starting with your voice on a high note start to sigh. As your sigh continues let your voice slide down through the lower notes until you run out of breath. **Do this several times each morning.**

Articulation Drill

Clear articulation is an important component of credibility for a speaker. Regular articulation drills increase understandability and clarity. To begin let your jaw muscles relax. Your mouth should open slightly. Then read out loud hyper-articulating each syllable and consonant sound. Be sure to make particularly the final consonant sound of each word very distinct from the next word. The goal is to retrain the articulator muscles (tongue, lips, jaw) to obtain a muscle memory of clear articulation so that your articulation improves in any situation. Use the list of sentences on the left side of the page for the drill and the tongue twisters to test whether or not you are improving. Both the list and the tongue twisters are just suggestions. You can read anything out loud and test with any tongue twisters you like. The key is to do this often. **At least 5 minutes a day for two weeks to start.**

Drill

Why does Mary make me do these stupid things?

Now is the winter of our discontent.

Take it with a grain of salt.

Walking in a winter wonderland

Test

Who washed Washington's, white woolen underwear when Washington went west?

Seize the Day!

Don't shoot until you see the whites of their eyes.

Hail fellow well met.

It takes a long time to understand nothing.

What price glory?

That is the worst brief ever written.

Once upon a time, in the land of oobopshabam.

He wasn't worth his salt.

It was a dark and stormy night.

Between the devil and the deep blue sea.

So fair and foul a day I have not seen.

Sometimes a cigar is just a cigar.

Marley was dead as a doornail

It was the best of times, it was the worst of times.

Lie down with dogs, get up with fleas.

I don't like green eggs and ham.

We know too much and feel too little.

That's about as useless as teats on a bull.

In for a penny, in for a pound.

Today justice will prevail!

Once I heard a mother utter, "Daughter go and shut the shutter." "Shutter's, shut the daughter uttered, "I can't shut it any shutter."

How much wood would a woodchuck chuck if a wood chuck could chuck wood?

She sells sea shells by the seashore.

Ike ate eight acorn cakes.

As ye sow, so shall ye reap.

Yellow sieve slurry.

Picky people pick peter pan peanut butter.

One smart fellow, he felt smart.

Rubber baby buggy bumpers.

Survival Tips Check List for Advocates

- A. Define how will winning this event help achieve the overall goal. Exactly what is a win?**
- B. Analyze the arguments so they can be adapted to the audience. Who is the audience? What is known about this person's/people's/judge's/jury's:**

Past experience with:

- The facts/issues/motion/similar cases?

- The advocate?

Personal Characteristics/Personality Type:

- Optimist? (Arguments that good will happen if this motion is granted generally more effective than fear motivators.)
- Pessimist? (Fear or risk motivators generally most effective.)

Situation/Emotional State:

- Does this ruling create risk for this person or group?
- Does the issue make them uncomfortable?
- Is there a real or perceived bias against either side?

C. Prepare to maximize your performance. Is the advocate properly prepared physically and mentally to do a good job? Specifically:

Support Materials and Set Up

1. Go to the space where the event will occur, learn the space and feel comfortable in it.
2. Develop helpful speaker's notes that will allow response to questions out of order and memorize your first 30 seconds.
3. Make a second copy of speaker's notes in case the first set is lost or damaged.
4. Make enough copies of any materials.
5. Check all notes, exhibits or technical equipment.
6. Build rapport with the court clerk and any other court staff.

Body

1. Sleep at least 6 hours the night before.
2. Eat something with carbohydrates.
3. Drink lots of water.
4. Do not have too much caffeine.
5. Do some kind of physical exercise.
6. Do some breathing exercises, vocal warm up and articulation drill.
7. Prepare and use a "home base" position and "prep set" for the body.

Mind

1. If the speaker is anxious or worried, set aside time to “worry” about the presentation and worry, but then;
2. Tell at least one positive story about how the event is going to go prior to speaking.
3. Practice out loud to another person.
4. Remember sometimes people scowl or look mad when they are merely thinking, it does not necessarily mean they do not like the advocate or do not agree with them. Tell a story that they are thinking hard about the arguments or had a bad day at home, then;
5. Find a friendly face and speak to that person until comfortable.

Strategic Communication Tips for Advocates

Summary of Topic	Typical Behavior	Expanding Skills
<p>Human Communication Principle: Every Communication Event Creates at Least Two Stories in the Mind of the Listener</p> <p>There are Two Sides to Every Communication Event: What You Say and What They Hear</p>	<p>Many People Consider Only the First Story (What They Are Saying) When They Communicate with Others and Not the Second Story (The Story the Communication Event Itself is Creating in the Mind of Listener)</p>	<p>Consider the Second Story as well as the First When Communicating.</p> <p>Think About What They Will Hear Before Thinking about What You are Going to Say</p>
<p>Strategic Communication: You Can Plan Communication Events Just Like You Make Plans for Any Other Event</p> <p>What is Your Communication Goal as a speaker?</p>	<p>Many People Do Not Plan Communication Events Because They Believe It Takes Too Much Time or Believe they Will Intuitively Do the Right Thing</p>	<p>Make Strategic Plans for Your Communication Events Just Like You Make Plans for Any Other Event</p> <p>Analyze the Benefit vs. the Time it Takes Using the Same Risk/Reward Analysis You Use Making Any Decision</p>
<p>Nonverbal Communication: 55-93% of the Meaning of Every Message is Communicated Nonverbally</p> <p>When Verbal and Nonverbal Messages Are in Conflict People Dismiss the Verbal Message and React to the Nonverbal Message</p> <p>Power is Established by:</p> <ul style="list-style-type: none"> • Controlling Space and Exhibiting 	<p>Many People are Intuitively Excellent either Establishing Power or Building Rapport.</p> <p>Frequently They Do Not Know When they Are Doing It or How to Stop and do Something Else Instead</p>	<p>Conduct a Nonverbal Self-Analysis in Several Settings and Expand Your Repertoire of Rapport Building Behaviors</p> <p>Establish Clear Goals for your Nonverbal as well as your Verbal Communication</p>

<p>Relaxation</p> <p>Rapport is Established by:</p> <ul style="list-style-type: none">• Engaging in Open Rapport & Trust Behaviors		
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