



## *SENSORY* BASED LANGUAGE IN LEGAL COMMUNICATION

John L. Barkai

Most people prefer to communicate in either a visual, auditory, or kinesthetic modality. By carefully observing the language employed and the movements of the eye, the listener can discern the correct representational system being utilized and match it in his response.

**L**awyers are professional communicators. Language is their principal tool. From the first moment of law school to the

last day of legal practice, lawyers receive, internally organize, and convey information.

When conversing orally, the law-

---

**John L. Barkai** is Associate Professor of Law and Director of Clinical Programs, University of Hawaii School of Law in Honolulu. He is a member of the Board of Directors of the Legal Aid Society of Hawaii, Vice President of the Divorce Clinic, and a member of the Hawaii and American Bar Associations.

yer's effectiveness often is dependent on his ability to establish rapport with the other person. In fact, the information and rapport functions of communication often are inseparable.

Despite the central importance of communication to lawyering activity, no explicit model ever has been developed for the legal profession. When attention has been directed towards legal communication, most of the emphasis has been on written intercourse. But lawyers gather and convey much of their information orally. A large part of a lawyer's daily activity consists of conversations with clients, witnesses, judges, and other lawyers.

This article will present suggestions for improving oral legal communication. The discussion will examine the sensory-based models of parts of the world that human beings experience and how they affect the communication process, how the use of these models can improve the rapport and information functions, and how they may be utilized in the preparation and trial of a legal case.

**A** PERSONAL WORLD MAP • There is a difference between the physical world and how a living creature experiences it. Each species has sense-receptor structures and mechanisms that meet its informational needs. A person, for example, can detect only certain aspects of the physical en-

vironment that do not exceed certain thresholds. Even within these limits, at any moment an almost infinite amount of information is available to his sensory apparatus. To absorb all of this data is impossible. People pay attention, both consciously and unconsciously, only to a few experiences within the vast array available.

No one grasps the full reality. Some of its aspects necessarily are deleted and distorted in constructing a model of the world. Hence, a human being never knows exactly what is happening around him. What he is doing constantly is extracting some of the almost unlimited number of sensory experiences and organizing them into a model of his universe. The selected bits of information enable him to view existence as a continuous whole, allowing him to create a map of the world he inhabits. Every map is to some degree unique, because each includes different experiences selected from the shared experiences available to all people.

As a consequence, the map is not the territory. Maps differ from the reality of the physical world, even as different persons have differing maps for the same territory. The value of the maps is derived from their relationship to territory; the more similar the map is to the territory, the more useful the map is to the person who employs it. Furthermore, the greater the similarity between maps of different people, the greater the shared understanding.

If a person's map of the world differs greatly from reality, an alteration of the map might be in order. The change would involve psychotherapy. Lawyers should be concerned with reading maps, not with altering them. In legal communication, lawyers should be able to use a variety of maps for traversing the same territory.

An understanding of the map-territory distinction suggests that determining reality is impossible and often not a useful pursuit. Yet one view of the legal system is that a trial seeks to discover the truth. This postulate seems unwarranted. At best, a trial can only collect similar reports on a shared experience. Duffy, *Practicing Law and General Semantics*, 9 W. Res. L. Rev. 119, 124 (1958).

**S**ENSORY BASED CHARTS • The physical world has a vast number of qualities that can be detected by human beings through the five senses of sight, sound, touch, taste, and smell. These senses are used to create the maps of experience, with each sense providing the basis for a separate map, and the total of all experiences resulting in yet another map.

Although all of the senses operate constantly, usually, a person ignores most of the sensory input and focuses attention on the sense system receiving the information most important at the time. For example, the reader of this article is at the moment

probably most aware of the words printed on this page— not the feeling in his right leg, the sounds around him, the smell in the air, or the taste in his mouth.

The external world, however, is only one cause of the maps created by people. The internal mind, too, generates internal experiences, which seem to be based upon previous sensory perceptions. No matter how abstract and intangible a word may appear to be, its meaning always relates back to impressions acquired through the senses.

All people can see images in the mind's eye that are not present in front of their faces. Likewise, they can internally generate sounds, feelings, tastes, and smells that have no contemporary counterpart in the external world, although people vary widely in their ability to conjure up memories of the past or sensations never previously felt. These internal and external worlds combine to produce the human maps.

**T**HE ROLE OF LANGUAGE • The physical senses and language are the key elements of the human communication system. Not long after birth, people begin to learn a language system that allows them to translate the information acquired from the external world and created in their internal world into a form which can be used to communicate with other people. Because of different sensory experi-

ences, words have slightly different meanings to each person; hence, all words are metaphors. But since words have sufficiently similar meanings to most people, human communication can take place.

As people interact with the world in which they live, they constantly refer to the maps they have created. While these maps seem buried deep within people, perhaps even within their unconscious minds, the maps are, in fact, visible and can be read. Listening can give the lawyer very detailed information about the speaker's maps. Reading them is simply a matter of specially directed listening skills.

### Words as Thought Concepts

Thinking is an extension of the sensory process. When thinking, images, feelings, and words run through a person's head. They generate language, with the words actually representing the particular mode of sensory-based thinking in which the speaker is engaged. By recognizing the mode and directing his speech towards it, the lawyer can improve communication with the speaker.

The fact is that communication is in part conscious and in part unconscious. The content is usually conscious; the process is largely unconscious. When speaking, a person selects, usually unconsciously, words that reflect the sensory system with which the speaker is perceiving his experience. As a result, how the con-

sciously expressed experience is represented can be detected through the words chosen at the unconscious level. These sensory modes of expression — with one mode for each sense — are called "representational systems."

Hence, careful listening will lead to an awareness of the speaker's map of the world as indicated by his sensory-based predicates — the adjectives, adverbs, and verbs that define the relationship between the noun parts of the sentence. The nouns of a sentence reveal the speaker's content; the predicates reveal the process.

Normally, lawyers concentrate on content, unfortunately neglecting the process. Yet valuable additional information is available by tuning into the process of communication. For example:

- A visual speaker: "I *clearly* get the *picture*."
- An auditory speaker: "I *hear* what you are *saying*."
- A kinesthetic speaker: "I do get the *point* of it; it is not *hard* to *grasp*."

Communication is usually limited to the three sense modalities of vision, hearing, and feeling, and this article will concentrate on them. The gustatory and olfactory systems are used so infrequently in speech—with the corresponding assumption that they are used relatively infrequently

in the thinking process—as to not merit extensive study. Some readers, of course, might think that this differentiation “stinks” or leaves a “bitter taste” in their mouths.

### A Meaningful List

The following list will aid in the recognition of the three major representational systems in speech. A shorter list can be found in G. Bellow & B. Moulton, *The Lawyering Process* 932 (1978).

Visual	Auditory	Kinesthetic
<i>see</i>	<i>hear</i>	<i>feel</i>
<i>picture</i>	<i>listen</i>	<i>point</i>
<i>flash</i>	<i>shout</i>	<i>smooth</i>
<i>glimmer</i>	<i>loud</i>	<i>push</i>
<i>envision</i>	<i>tell</i>	<i>cold</i>
<i>clearly</i>	<i>whisper</i>	<i>grasp</i>
<i>scene</i>	<i>talk</i>	<i>firm</i>
<i>blank</i>	<i>screech</i>	<i>contact</i>
<i>dark</i>	<i>amplify</i>	<i>hard</i>
<i>look</i>	<i>tune</i>	<i>reach</i>
<i>blue</i>	<i>tone</i>	<i>warm</i>
<i>watch</i>	<i>scream</i>	<i>soft</i>
<i>appear</i>	<i>harmonize</i>	<i>touch</i>
<i>dull</i>	<i>discord</i>	<i>tight</i>
<i>perspective</i>	<i>silent</i>	<i>rough</i>
<i>imagine</i>	<i>ring</i>	<i>handle</i>
<i>bright</i>	<i>bell</i>	<i>solid</i>
<i>show</i>	<i>purr</i>	<i>stuck</i>
<i>focus</i>	<i>squeal</i>	<i>cement</i>
<i>vague</i>	<i>crackle</i>	<i>heavy</i>
<i>disappear</i>	<i>converse</i>	<i>pull</i>
<i>illustrate</i>	<i>say</i>	<i>knock</i>
<i>colors</i>	<i>remark</i>	<i>hold</i>
<i>shapes</i>	<i>rattle</i>	<i>brush</i>

<i>viewpoint</i>	<i>quiet</i>	<i>strike</i>
<i>obvious</i>	<i>voices</i>	<i>sensitive</i>
<i>transparent</i>	<i>clap</i>	<i>tie</i>
<i>vigilant</i>	<i>hum</i>	<i>seize</i>
<i>eye-to-eye</i>	<i>tap</i>	<i>cover</i>
<i>watch out</i>	<i>snap</i>	<i>beat</i>
<i>fantasy</i>	<i>drip</i>	<i>hang</i>
<i>vision</i>	<i>slam</i>	<i>tickle</i>

### Representational Language

Every person seems capable of receiving input and organizing it in any of the representational systems. A person's speech, however, normally is not equally divided among words reflecting the three systems. Usually, only a single representational system will be utilized by the speaker, depending on the context of the communication. The predicates that occur most frequently identify the most consciously significant sensory mode for that particular context.

Lawyer  
(visual)      “I *look* at my legal career as having a *rosy* future.”

Jogger  
(kinesthetic)      “Although it was *hard* starting *up*, my jogging now *strikes* me as improving. I *feel* I can *handle* it.”

Although no one representational system is better than any other for understanding the world and creating maps of its territory, and some individuals use all representational

systems constantly, most people have a most-highly-valued representational system that is the primary way for processing their worldly experience. In their most-highly-valued representational system, people can make the finest distinctions. By habit and during times of stress, they will rely on their favored sense mode. Which of the three systems is chosen by the speaker is irrelevant to the lawyer; to him, the important thing is to recognize the most-highly-valued system of the speaker.

### Neutral Words

Certain process words are unspecific with respect to any representational system. Examples are:

<i>bad</i>	<i>think</i>	<i>indicate</i>
<i>good</i>	<i>change</i>	<i>understand</i>
<i>nice</i>	<i>trust</i>	<i>experience</i>
<i>learn</i>	<i>consider</i>	<i>remember</i>
<i>sense</i>	<i>realize</i>	<i>respect</i>
<i>know</i>	<i>believe</i>	<i>be aware</i>

These predicates do not reveal the sensory process utilized. The underlying representational system can be uncovered, however, by asking: "How, specifically, do you think (know) (understand) that?"

Furthermore, certain learned responses employed by professional communicators or by people with special training do not necessarily reflect the representational system that the word would normally represent. For example, people who have had

listening skills training frequently say things like "It *sounds* to me" or "I *hear* you saying" or "So the way you *see* it is." These statements may reflect either the sensory system in use or a learned response. A more accurate gauge of a person's true representational system can be gained from responses to questions. Then he must go to his stored experiences and access and think through his representational system about the information required for the answer.

**E**FFECTIVE COMMUNICATION

- Knowledge of representational systems relates directly to the principal lawyering tasks of gathering and conveying information and to the subsidiary need of building trust or establishing rapport. As a professional communicator, the lawyer strives to understand other people and to be understood. Skilled use of representational systems will facilitate his work.

Communicating with a person in his representational system should give him a feeling that his inner world is understood, thereby facilitating trust and making information transfer easier. Two people then appear to share the same reality and speak the same language. Mismatching creates confusion; if a person's thinking process requires feelings, then seeing pictures is almost a different language.

A lawyer wants to get across to people in a manner that makes it

most likely that he will be understood. In some cases, being "clear" (visual) might not be the best strategy; perhaps it might be better if the words "rang" true (auditory), or maybe the need is to make "contact" (kinesthetic) with the listener.

As the professional communicator, the lawyer should accept the primary responsibility for communication, and hence he has the obligation to utilize the most-highly-valued representational system of the people with whom he communicates even if that means abandoning his own most-highly-valued system.

Representational systems can be utilized in any communication. Although the greatest impact is made in verbal communication, they are also important in written communication. The major decision on the utilization of a representational system depends upon the number of people involved and the type of feedback the lawyer is receiving.

**G**ROUP COMMUNICATION • In communicating with groups, a lawyer usually receives little, if any, immediate indication of the most-highly-valued representational system of each group member. Inadequate feedback occurs when addressing six- and twelve-person juries, three- to nine-person panels of judges, boards of directors, continuing legal education audiences, law school classes, or any public service group. Furthermore,

even if the most-highly-valued representational system of each individual member could be ascertained, probably some group members are primarily visual, others primarily auditory, and still others primarily kinesthetic.

Absent special considerations, each person should be made to feel that the lawyer understands his model of the world. The lawyer must be able to speak in all three representational systems. Consciously, he should mix his predicates so as to have something for everybody. His words should create images for the visuals, provide sounds for the auditories, and invoke feelings for the kinesthetics. Not that a person whose most-highly-valued representational system is not represented in a communication will not understand the communication; but if his representational system is included, he is more likely to comprehend better and to have greater rapport with, and confidence in, the lawyer.

Another approach would utilize predicates that do not indicate a particular representational system. This is difficult to do, however, because unspecified predicates are more limited and not as rich and varied as the other systems. The lawyer would have fewer words with which to work.

**I**NDIVIDUAL COMMUNICATION • When communicating with a single person, the lawyer must

## A Self-Assessment Examination

The self-assessment examination is based upon the various articles in this issue. The answers will be found on page 64.

1. Gilbert Harris, age 45, and his wife, Donna, age 42, were married in 1960. They have two children, Steven, age 13, and Jill, age 6, and live in New City, a town of about 35,000 inhabitants. Gilbert is a partner in the largest law firm in town. He usually leaves home for the office at about 8:00 a.m. and returns at 5:30 p.m. He seldom works weekends and never on major holidays. He plays golf at least three times a week, weather permitting, at the New City Country Club, where the family holds a membership, and attends the major sports events in town. He had played on his college basketball team. Donna, a physician, is an anesthesiologist at the Center City Municipal Hospital, a 200-bed general hospital. While she is on call for emergencies, normally she spends four mornings a week at the hospital, from 8:00 a.m. to 1:00 p.m.

The Harrises occupy a 12-room single house on a two-acre lot. They employ a full time maid-cook, who does the shopping for food, a part-time gardener-butler, and Annie, whose main responsibility during the past five years has been the children. She helps with the homework, watches them when they are sick, and chauffeurs them to their appointments. Their clothing, however, has always been purchased by their mother. Steven is an avid golf player, and he plays golf with his father, who taught him the game, once a week, weather and time permitting. He also plays basketball on his high school team, and wants to be a lawyer. Jill goes to dancing school, an activity encouraged especially by her mother. Both children attend Catholic parochial schools. Gilbert is a practicing Catholic, and while Donna is a nonpracticing Unitarian, she had agreed at the time of their marriage by a Catholic priest to raise the children in that faith.

Gilbert and Donna seemed happy together and were socially active in the community until Donna met Dr. John Locke, 15 years her junior, who came to intern at the Municipal Hospital. They had an affair together, and when Gilbert learned about it, the family relationship deteriorated quickly. Donna left to live with Dr. Locke, and she and Gilbert have agreed to a divorce, a division of the property, and the

financial arrangements for the children. The only dispute is over custody, which both parties desire. It is understood that whoever gets custody of Jill will also retain Annie. Steven has indicated that he would prefer to be with his father, who is more athletic and whose ability to speak well he admires. What are the factors that a judge should consider in awarding custody?

2. Into how many classes are medical devices classified by the Medical Device Amendments of 1976?
3. What does an upper-right eye movement signify?
4. What does a "due-on-sale" clause accomplish?
5. James Bright owns five acres of land that he bought seven years ago for \$5,000. Though the land is largely forest and uncultivated, a number of housing developments are being built near it, and construction has begun on a major highway that is going to run along one of its borders. As a result, a shopping center developer has offered James \$25,00 for his acreage. James thinks that the property will be worth about \$200,000 in four more years.

The only child of James, Mary, is being married, and for the occasion, James would like Mary to own the ground. He approaches you, as his lawyer, with a plan to "sell" the land to Mary for \$30,000, and, since Mary does not have any money of her own, to accept five non-interest-bearing \$6,000 notes signed by her, each note becoming due on another anniversary of her marriage. At the end of the five years, the full \$30,000 of notes will have become due. Each year, he and his wife will give Mary tax-free \$6,000 as an anniversary gift, which Mary will return as payment on the note then due. What would be your advice to James?

6. Fill in the missing words: The usual mechanism for obtaining affirmative relief for the client in the pretrial phase is the \_\_\_\_\_ hearing and order.
7. Name three sale transactions that should not trigger a "due-on-sale" clause.
8. In addressing a jury, which representational system(s) can an attorney employ?

first detect the most-highly-valued representational system employed by the person and then use that representational system in his own speech. Essentially, the lawyer must be fluent in all three representational system languages.

For example, the lawyer's inquiry into a client's problem would differ depending on the client's representational system.

Lawyer to visual client: "How do you *see* your problem?"

Lawyer to auditory client: "What would you like to *tell* me about your problem?"

Lawyer to kinesthetic client: "How do you *feel* about your problem?"

A lawyer could even keep a list of the representational systems of the people he frequently encounters, so that he will not have to rediscover the system each time he engages those people in conversation.

In sum, while some persons use different representational systems in various contexts, and others frequently employ two, or even all three, representational systems, a lawyer should seek the representational system utilized most often by the person to whom he is speaking and match it in order to increase rapport and improve information transfer.

**EYE MOVEMENTS** • In conversing with lawyers, clients generally talk about their past experiences, whether it be a commercial transaction or a crime situation in which they were involved. These events are no longer felt directly through sensory receptors, and therefore the speakers must rely on their memories. Through a mental process, these recollections are accessed and brought into consciousness. Although predicates reveal the sensory channels in which these experiences are stored, nonverbal behavior also indicates which representational systems speakers are using. Some people can detect representational systems by paying attention to tonal qualities of the voice, tempo of speech, breathing, and skin color changes.

The human eye always has been considered important in communication. A recent theory is that eye movements literally show from which representational system the information is coming. Each major sense—visual, auditory, and kinesthetic—is linked to a distinctive eye movement.

Often when a person is asked a question, he says before he answers, "Oh, let's see," as his eyes move upwards. Sometimes, his head will tilt backwards. The speaker is literally looking for a visual image to disclose the answer, even though he has little conscious awareness of this process.

An eye movement may be only a

mere flicker or may last for several seconds. For purposes of nonverbal behavior, eye movements are limited to up, middle, and down vertical positions, and right and left horizontal positions. The typical eye movement patterns for right-handed people and the corresponding links to the sensory process are as follows:

<i>Eye Movement</i>	<i>Representational System</i>
Up, right or left	Visual
Straight ahead, unfocused, or dilated pupils	Visual
Middle, right or left	Auditory
Down, left	Auditory
Down, right	Kinesthetic

Right and left refers to the speaker's sides. Furthermore, eye movements to the left indicate remembered experiences; to the right, constructed experiences. Remembered experiences are things that the speaker has personally and directly perceived; constructed experiences are things that are developed from other experiences. For example, seeing one's first classroom is a visual remembered experience. Seeing oneself sitting in that classroom is a visual constructed image. Constructed experiences either have not taken place or are unlikely to occur.

The following chart indicates the accessing patterns for a normal right-handed person.

<i>Eye Movement</i>	<i>Representational Systems</i>
Up, left	Visual constructed
Up, right	Visual remembered
Middle, left	Auditory constructed
Middle, right	Auditory remembered
Down, left	Auditory
Down, right	Kinesthetic

Left-handed people have their right and left positions reversed. Some people have different eye movement patterns. For example, a person may access visual constructed images down and to the left. However, that eye movement will consistently indicate the same sensory experience for him. By comparing verbal predicates with eye movements or by specific questioning, the lawyer can determine if the person has the typical eye movement pattern or some other form.

Eye patterns can be used to determine a person's representational system and to confirm the verbal predicates. Eye movements can help the lawyer select words that will aid the client to retrieve information stored in his mind but not presently in his consciousness. For example:

"What else do you remember about the accident?"

“Nothing, really” (eyes up to the left, indicating visual).

“Could you give me a better picture? What other images do you remember?”

When a person is accessing sensory experience internally, he is likely to miss external sensory input. When the eyes are moving, the person may not hear, at least consciously, what the lawyer is saying. A lawyer may want to pause when a person's eyes are moving rapidly or to repeat what was just said on the assumption that the person was accessing internal information and was unlikely to grasp the lawyer's statement or question.

**S**YSTEMS AND CLIENTS • From the moment a lawyer first meets a client until the case is closed, awareness of representational systems can improve the lawyering activities.

As the client walks into the lawyer's office, he is probably thinking of his legal problem or about the meeting with the lawyer. Typically, the client is under stress and is using his most-highly-valued representational system. A lawyer who can read eye movements can learn what system language to employ even before a single word has been spoken.

If the client's eyes are looking up, the lawyer might say: “Hello. How do things look to you today?” If the client is looking to the side, the greeting might be: “Hello. What

would you like to talk about today?” If the client's eyes are turned downward to the right, the lawyer might ask: “Hello. How are you feeling today?”

Although these opening sentences may appear too direct, sound too forward, or feel too awkward to some readers, to the clients actually thinking in the manner their eye movements suggest, these questions are entirely appropriate and are most likely to build rapport.

Because reading eye movements may be difficult, the spoken predicates of the client may determine more easily the representational system in use. The lawyer asks a question and then pays careful attention to the content and process of the response. An initial open-ended question by the lawyer will allow the client to select the first topic.

Thus, to the lawyer's query: “Hello. How can I help you?” the visual client may reply: “It looks like my wife and I need a divorce. I just don't see how our relationship will work any more.” The auditory client may answer: “I think it's time for a new will. I hear old age whispering to me.” The kinesthetic client may say: “The police are trying to stick this rap on me. I didn't do anything. They can't touch me.”

Unspecified words in a question make the discovery of the client's representational system easier. Clients have a marked tendency to repeat some of the lawyer's own lan-

guage. If the lawyer employs a term indicating a particular representational system, the client may use it. For example:

The lawyer: "Can you tell me what you see as the problem?"

The client: "I see as my problem the depressing relationship I have with my husband" (eyes down right).

If the client parrots the words of the question, the lawyer's task becomes more difficult, requiring more listening for predicates that will determine the representational system to which the client resorts. The eye movements will become increasingly important, because they may point to an incongruity between the representational system of the predicate and the representational system suggested by the eyes.

### **Eliciting and Offering Information**

To gather information, the lawyer can ask a question that matches the client's most-highly-valued representational system.

Lawyer: "What happened next?"

Client: "That's really all. I don't remember any more."

Lawyer to visual client: "Well, what did it look like after that?"

Lawyer to auditory client: "Can you remember the next sound you heard?"

Lawyer to kinesthetic client: "What did it feel like then?"

Or, rather than simply focusing

the client's attention to his most-highly-valued representational system, the lawyer could direct that client to a review of all the representational systems:

Lawyer: "Well, let's try this. Picture yourself back there. You might even want to close your eyes. Recall what is being said and the other sounds in the room. What are you feeling?"

When using all three representational systems, the best results are usually obtained by starting with the client's most-highly-valued representational system because the client is most adept at using it. Once the client has been able to recreate one portion of an experience, he can be led to other, less well remembered, portions of it.

During counseling and when conveying information, using the client's most-highly-valued representational system will lead to easier and better understanding by the client. Thus:

To visual client: "I see three options for you."

To auditory client: "It sounds like there are three possible options."

To kinesthetic client: "I feel you have three options."

### **Parties**

These uses of representational systems will work equally well with witnesses and even opposing counsel. The technique can be employed

during witness interviews, depositions, examinations in court, and negotiations with opposing counsel.

On the other hand, at certain times, as during cross examination of a witness in court, the lawyer may purposely wish to mismatch representational systems in the hope of creating confusion or a negative personal dynamic.

In the courtroom, most of the effort should go to matching the representational system of the decision-maker, not the witnesses. A single judge will present less difficulties than a whole jury. Furthermore, a judge can be studied before the court appearance by sitting in his courtroom and paying careful attention to his behavior. With sufficient attention, it might even be possible to determine the most-highly-valued representational system for each judge on a three- or nine-judge panel.

**S**YSTEMS AND JURORS • Far greater difficulty is involved in determining the representational systems of jurors. A lawyer has few opportunities to observe the behavior of jurors and listen to their conversations. The only significant contacts will come during the voir dire and the opening and closing arguments.

To be useful during the trial, the representational systems of the jurors must be determined as early as possible, or, practically speaking,

during the voir dire. If the trial is a process for reconstructing legally significant events so that a decision-maker can determine the facts and subsequently apply the law, it is essential that the lawyer employ the terms with which the jurors best understand the world.

The discovery of the representational system predicates should not require much, if any, additional time during the voir dire. What is necessary is special skill. Nor should it matter much whether the judge or the lawyers question the prospective jurors. The only difference may be in the form of the questions. Unless eye accessing cues are used effectively, closed or leading questions, which judges seem to ask more frequently than lawyers, generally make the determination of a representational system more difficult. Lawyers who are permitted to conduct voir dire should solicit the viewpoints and feelings of prospective jurors.

#### **Addressing the Jury**

Even if the lawyer can recognize the representational system of the individual jurors, the essential problem of group communication is still present. With the three major representational systems likely to be represented, in which system should the lawyer speak to the whole jury during his opening and closing arguments? Three possibilities exist. He can:

- Use unspecified predicates;
- Speak only to certain members of the jury in their representational system; or
- Employ all three representational systems.

Theoretically, the unspecified predicates should be the most effective, because each juror can access his own most-highly-valued representational system and think that the lawyer is speaking his language. Unfortunately, the unspecified mode is the most limited; fewer word choices exist.

A second approach is to speak exclusively in the representational system of certain jurors. If the majority of the jurors share one representational system as their most-highly-valued, or if one juror — usually the foreman — appears to be the most persuasive and influential member, the lawyer can employ the majority's or that juror's system. A less complicated variation is not to use only one representational system, but to speak most frequently in that system, although the others would also be utilized. The most difficult technique involves switching representational systems depending upon whom the lawyer is addressing. As he looks directly at different jurors, he changes his vocabulary to the representational system of the person to whom he is speaking.

The "something-for-everybody" solution is the easiest, because the lawyer can preplan his vocabulary

before he even sees and hears the jurors. He can consciously mix his predicates and use words reflecting all representational systems. Not only will all the jurors sense that the lawyer talks their language at some point during the proceeding, but as all the sensory modes are being projected, the jurors will experience some parts of their world in all the representational systems.

Ladies and gentlemen of the jury. I will try to create a picture of the events of the day for you that will allow you to hear what those people heard, and to feel what they felt on July 11th of last year. The evidence will show that the bright, hot sun beat down on the men straining their every muscle on the construction site, while the children laughed and shouted in the nearby park.

**C**ONCLUSION • The theory of representational systems is an analysis of communication. It works most of the time. Rather than ask whether the model is always accurate, it would be better to inquire whether the model is useful.

To be an effective listener and communicator, a lawyer must attend to the process, as well as the content, of communication. Close scrutiny of how things are said, in addition to what is said, is essential. Lawyers will need to improve their listening skills if they want to improve their effectiveness.

*For Further Study*

**ALI-ABA Courses of Study**

**Federal Civil Practice and Litigation**, April 9-10, 1981, in Houston, Texas.

**Trial Evidence and Techniques in Federal and State Courts: A Clinical Study of Recent Developments**, cosponsored by California Continuing Education of the Bar, June 11-13, 1981, in San Francisco, California.

**Articles in *The Practical Lawyer***

**The Art of Interviewing and Counseling**, by Mark K. Schoenfield and Barbara Pearlman Schoenfield, *THE PRACTICAL LAWYER*, January 1978, p. 67, and March 1978, p. 41.

**How To Handle the Will Interview**, by Charles K. Plotnick, *THE PRACTICAL LAWYER*, July 1977, p. 81.

**The Initial Interview with a Divorce Client**, by Leo J. Barrett, *THE PRACTICAL LAWYER*, June 1977, p. 75.

**Licensing Negotiation Techniques**, by Philip Sperber, *THE PRACTICAL LAWYER*, March 1976, p. 75.

**The Initial Interview in a Domestic Relations Case**, by Milton O. Moss, *THE PRACTICAL LAWYER*, January 1976, p. 59.

**How To Handle a New Client — The Initial Interview with a Business Client**, by Joseph H. Savitz, *THE PRACTICAL LAWYER*, December 1975, p. 11.

**How To Handle a New Client — The Initial Interview in a Medical Negligence Case**, by David S. Shrager, *THE PRACTICAL LAWYER*, October 1975, p. 25.

**How To Handle a New Client — A Psychodynamic Approach**, by Mirta T. Mulhare, *THE PRACTICAL LAWYER*, October 1975, p. 17.