



OBSERVATIONAL SKILLS AND NONVERBAL DISCOURSE IN THE CONTEMPORARY COURTROOM

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ABSTRACT

Every legal institution is founded on the view of human nature and how human behaviour is determined. In a court case, the attorney's goal is to persuade the court to rule in favour of his client. He/she should be aware of, and learn to regulate, the consequences of nonverbal communication in his attempts to convince. Facial expressions, gestures, kinesics, proxemics, touching, scent, and paralanguage are all examples of nonverbal communication. Courtroom observation adds depth and qualitative confirmation to other pre-trial research methodologies. This research paper deliberates on different observations skills a lawyer must have and what things must he observe around in the legal system. It also explains how lawyers may utilise participant observation data and observation abilities to develop new strategies and themes, as well as deal with unexpected courtroom happenings. The goal of this research paper is to critically examine and understand observational skills and nonverbal communication for lawyers. Nonverbal communication in the court has a subtle impact on the entire trial procedures. This research article covers empirical and doctrinal data on non-verbal discourse in the court and offers a practical model which explains how numerous nonverbal signals of individuals in court interact to impact a judge's thinking. This research paper defines and characterises body language and attempts to demonstrate its position and importance in legal procedures. This study explores various types of non-verbal communication. This study attempts to demonstrate the elements of human behaviour drawn from social psychology as well as field work to shed light on human behaviour in courtrooms, empower attorneys to better represent their clients, and recommend solutions to enhance the court system. This research paper emphasizes on the role, contemporary relevance, and challenges of the non-verbal communication in the legal field.

Keywords: Legal Institution, Nonverbal Communication, Courtroom Observation, Human Behaviour, Court System.

INTRODUCTION

The capacity to accurately observe, analyse, and record conclusions is one of the most valuable tools of the counsel. Our perception is limited; the way we view our surroundings may not accurately reflect what is really there. Sorting content, filling holes, and adapting prior experience to new circumstances are all valuable skills. Recognizing our shortcomings is also critical in the legal profession. The purpose of this article is to demonstrate observation skills for the study of usual and deliberate behaviours of court participants. Observing a case is a simple method to gain a sense of what advocating is like and to see excellent advocacy abilities in action. Nonverbal communication is prevalent for both direct and facilitated communication.

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Though attorneys have used nonverbal persuasion strategies subconsciously for ages, sociology has lately offered empirical evidence to trial practise these ideas. It is always present and proclaimed, although the lawyer is frequently unconscious of its presence. In his opening address, the lawyer employs gestures and eye contact to influence the judges. By his posture and facial gestures, the judge discreetly transmits his thoughts regarding the case. Throughout his overall look and the apparel he wears, the client unknowingly communicates messages to the judge. Underneath the judge's scrutiny, a witness on the stand exposes more via fiddling with his clothing and changing his body than he does via his statement. Simultaneously, the judges seeing these nonverbal behaviours may be impacted by it. As a result, the lawyer should be aware of the availability of this mode of communication and use it to his benefit.

Body language cannot be entirely eliminated, implying that nonverbal communications are ongoing and widespread. Body language reveals not only what is going on in people's brains, but also the passive participants in court proceedings.¹ False perceptions and improper prejudices regarding nonverbal communication, particularly in courtrooms, necessitate addressing this particular matter. The nonverbal behaviour of judges, clients, witnesses, and lawyers will be the emphasis of this research. This research paper will then move on to a discussion of how much the judges rely on nonverbal cues when determining verdict. The problem of communication in judicial procedures is divided into two parts: the amount of formalisation of the norms of this procedure, and the region of subjective restrictions of the parties in this communication.

IMPORTANT SKILLS TO KEEP UP WITH RECENT DEVELOPMENTS IN LEGAL PROFESSION

a. Communication skills: Any attorney must have very sound speaking abilities in order to discuss their arguments before the judges and correctly express and represent the claim; b. Observational skills: Prior going to court, every prosecutor must closely examine and assess a situation. If they lack some detail, it may lead to the failure of a lawsuit and justice. The attorneys should observe and make use of a large amount of knowledge that they must deal

¹ Agnieszka Gurbiel, "The importance of the body language and the non-verbal signals in the courtroom in the criminal proceedings" 112 *World Scientific News* 75-83 (2018).



through. They should hence be able to notice the smallest nuances in order to learn from them;

- c. People skills: Attorneys work in a field where nonverbal interpersonal contact is essential. They should be able to communicate effectively, persuade others, and empathize with others;
- d. Perseverance: Being an attorney necessitates determination, courage, loyalty, and devotion;
- e. Research abilities: A prosecutor must thoroughly investigate the client's and the cases' past.

Attorneys help victims get justice as well as play a key role in the legal system. With the competitiveness, lawyers must hone particular abilities and strive to be the best. Soft skills are becoming progressively relevant for attorneys, especially in their ability to provide good client support, expand and lead teams, and build industry. Emotional intelligence is essential for all levels because it encompasses several soft skills, especially observation, nonverbal communication, client relations, and resolving conflict. These may give a competitive edge as well as an important protection against automation. Observational skills and nonverbal contact are two examples of such soft skills. However, most legal firms today take a less formal approach to learning soft skills.² Body language as well as a positive personality are required for successful communication with colleagues, team members, and customers. This included conversational and interpersonal skills, as well as the ability to manage tense interactions, coordinate, get input, and listen actively.

OBSERVATION IN COURT ROOM

Grab a break in a courtroom where you regularly practise, or where you intend to practise regularly. There will be both fantastic and not-so-great attorneys. Make a mention of it. After that, speak with the lawyers and, if necessary, inquire. It's natural to feel uneasy just sitting in the court when you don't have an argument, but that's typical. Any smart lawyer must have studied lawyers in the past and most certainly continues to do so where necessary. And don't just look at the attorneys. Observe the judges; this is particularly important if you plan to work inside that court on a daily basis. The judges will become accustomed to seeing your face in

² Globe Law and Business, "Essential soft skills for lawyers - What they are and how to develop them" (July, 2020); Kim Tasso, "Essential soft skills for lawyers", *Lexology*, 22 June 2020, available at: <https://www.lexology.com/library/detail.aspx?g=0018fc23-cc31-4b31-beb9-e08982324c98> (last visited on May 25, 2021).



the court, and you'll become accustomed to see them in the court of law, making the first few encounters before them less threatening.

Take note of which judges ask a lot more interrogations (hot bench) and which only listen (cold bench). Consider introducing you to the prosecutor if there is an appropriate opportunity. And further, if you have a good relationship with an advocate in the courthouse, ask your lawyer to present yourself to the judge before or after your case begins. You will gradually learn to converse with the lawyers, resulting in more business connections and increased self-confidence. You could also meet a guide along the way. Many folks believe that if you're in court, you receive company. It may not be your ideal perfect case, however people in court who want a lawyer commonly ask other lawyers in the courts to handle their lawsuit.

A LAWYER MUST BE OBSERVED

If you have somebody free, have them come in and watch you in court. Request them, that they observe and give feedback about what they felt you did well and what they think you might build on. An attorney with strong observational experience should ask himself the following issues: have you been at ease before the adjudicator, or did you come off as tense, anxious, or excessively at ease?; does your client keep talking to you in the trial, causing you to forget important details?; do you seem to be well-organized?; could your points come off as rehearsed, as if you were reading through a script? When we are in the middle of a lawsuit, we are not concerned about how we appear; we are concerned with having the work finished and explaining the argument. To escape any of the problems raised in the preceding queries, one should improve one's nonverbal communication skills.

Observing from both sides - being watched as well as being the analyst - will do miracles for your work, motivation, and capacity to accurately reflect your customers. Have the opportunity to learn and be watched, and don't be afraid to confront any issues in the court to reform as well as progress. Get the most of a sluggish month by studying and watching in court when you have the opportunity. In the first year of one's law career, he is unlikely to be regularly busy. Use the time to study your attorneys, adjudicators, and other legal professionals.



ADVOCACY AND OBSERVING A TRIAL

Advocacy occurs when a legal counsel presents a specific case to the court in order to persuade the judge to make a ruling in favour of their party. Advocacy includes a wide range of skills, including legal review, drafting, oral presentations, nonverbal communication such as motions and body language, cross-examining witnesses in court, and presenting a clear and convincing case. If mooting sounds like a huge step right now, consider attending the trial to watch a courtroom. “There are real-life stories of positive and poor campaigning there. If you notice an attorney presenting compelling claims, consider that their point seems to be so compelling, take notes, and appreciate the experience. The observer takes down written field notes as well as summarises the events. We can see how the attorneys for the complainant and prosecution used various tactics to manipulate the judge's attitude, showing their own ideas of how to impact the court's actions.”³

OBSERVATIONAL SKILLS OF LAWYERS

A qualified prosecutor gathers all available facts without having any assumptions regarding its significance. We gather knowledge about our environment through our sensations at all times. Paying thoughtfulness to the information of the surrounding necessitates a determined attempt. Cases of criminal attorney rely on the ability of all those involved - cops, prosecutors, forensic scientists, and witnesses - to observe, e.g., we can fill a lost word in a sentence - a creamy pink dessert is considered to have a strawberry taste even though it really contains vanilla. How we interpret data in our brain is determined by input from our senses, what we give heed to, vision, long-term memory, and short-term memory.

Observation of Witness: Witness findings are an essential part of every jury prosecution. Not unexpectedly, witnesses' memories can be flawed (even if the witness is sure of what he/she had seen). The observations/eyewitness reports are influenced by the following factors: Emotional condition (upset, happy, sad), Nervousness (terror), if you are alone or with someone, the amount of people and/or livestock in the vicinity, what kind of action is taking place around you, what kind of stuff is going on around you?, the manners of a human (hand

³ “What is Advocacy”, *The Lawyer Portal*, available at: <https://www.thelawyerportal.com/free-guides/legal-careers-deciding-on-law/what-is-advocacy/> (last visited on May 26, 2021).



gestures, look, walk, stand), familiarity with the situation (favourite restaurant, college, house). The Innocence Project was founded in 1992 with the aim of re-examining post-conviction cases (individuals arrested and incarcerated) using DNA samples to provide definitive proof of guilt or innocence. As 375 false convictions in the USA were examined, it was discovered that around 70% of the prosecutions were the product of faulty eyewitness evidence.⁴

How to be a Good Observer: We really aren't instinctively inclined to pay heed to all of the specifics of our surroundings; thus, we must make a deliberate attempt to investigate our surroundings in a thorough manner. We are instinctively conditioned to sort out irrelevant details - we deliberately want to observe anything, no matter how minor or familiar, our feelings, and past experiences. We have a strong tendency to analyse what we see, to search for similarities and draw comparisons - collect all possible facts before jumping to conclusions. Since we believe our perceptions are unreliable, we should write down and document as many as appropriate.

Observation in Forensics for Lawyers: Cases were solved by dialogue about 2,000 years ago. Forensic science is now used by prosecutors to prove their cases. Forensic study is associated with obtaining information that can be used as evidence and presenting it to police and courts. Attorneys engage in further discussions and attempts to persuade the jurors through nonverbal contact and observation to reinforce the tale based on these details. Attorneys must do observational work, which includes gathering, examining, and evaluating evidence from crime scenes and interpreting it for the courts.

PARTICIPANT OBSERVATION IN COURTROOM

Participant observation is a technique that can be used to research the complex atmosphere of a trial and compare pre-trial observation with ongoing courtroom activities in order to demonstrate how facets affect the actual decision reached in court. Participant observation is seen in criminal justice and legal sociology. The emphasis of participant observation is on the mechanism instead of the result, on context instead of individual variables, and on exploration rather than proof. Participant observation lends itself to explorative study. Participant

⁴ "DNA Exonerations in the United States", *Innocence Project*, available at: <https://innocenceproject.org/dna-exonerations-in-the-united-states/> (last visited on May 26, 2021).



observation, on the other hand, can be a valuable tactic in trial analysis. Participant observers will be able to explore relationship analysis during the case using these concepts as a reference for future tactic growth.⁵

The usage of observational methods to assist a prosecutor or claimant in a courtroom presents a particular problem to qualitative methodologies. “Since sample observation procedures are severely limited in the court, it is impossible for sociologists to breach research ethics. Although secret observations in a trial can be performed, the conduct is public and takes place in open trial. While judges can gaze to the crowd for signs or efficient lawyers can use the spectators to gauge effective contact, the spectator is a passive participant in court engagement. In the court, observational approaches are mainly focused on "ghost" or "mirror" judges, so that these members can observe and respond to events identical to real judges.”⁶

Two unfolding narratives are witnessed, one of which proved superior to another in arranging the observations of the judges, as expressed in the judgement. Experienced lawyers have biases and preferences that have grown over time as a result of seeing trial as a legal instead of a social contest. There are connectivity issues at two closely related points. Firstly, there is a linguistic issue. Even outside of the pressure of the courtroom, the reasoning of case study of law and generalising techniques of sociology will collide. Secondly, these issues are ultimately influenced by economics. Participant assessment demonstrates a method of explaining the unfolding narrative that courts understand in trial.

NON VERBAL COMMUNICATION

Nonverbal communication refers to the transmitting of signals or messages via nonverbal channels such as haptics (touch), social cues, paralanguage, physical environments/appearance, watching while speaking, rate of glances, eye contact, kinesics, chronemics (time), and proxemics (distance). Scholars now believe that non-verbal discourse conveys better significance than verbal discourse, and many people prefer nonverbal communication over verbal communication. Nonverbal contact is influenced by culture. Similarly, nonverbal

⁵ Harvey Moore and Jennifer Friedman, “Courtroom Observation and Applied Litigation Research: A Case History of Jury Decision Making” 1 *Clinical Sociology Review* 125-130 (1993).

⁶ *supra* note 5.



features of written texts include handwriting type, word spacing, and the physical shape of a page. Nonverbal contact observation may be divided into three categories: the atmosphere in which communication occurs, the physical features of communicators, and the actions of communicators throughout conversation. It entails both consciously and unconsciously encoding (creating details such as expressions of face, movements, and postures) and decoding operations (understanding of data via received senses).

IMPORTANCE OF NON-VERBAL COMMUNICATION

Majority of psychologists believe that non-verbal communication contributes for 60% to 70% of social communication.⁷ Nonverbal discourse can even convey a message outspokenly and with the usage of suitable gestures or body signs. Body signs comprise physical features, aware and subconscious actions and signals, and private space meditation. If the body language transmitted doesn't complement the verbal meaning, a false message is identified. Nonverbal communication reinforces first impressions in the legal profession, influencing judge experience in court trials: perceptions are created during the first five seconds of interaction. We all understand what body language is instinctively, but describing it is more difficult. Since it omits the theoretical hypothesis that body language is the primary origin of knowledge for the receiver of a given message, the term portrays nonverbal communication in a laconic manner. Body language could be classified into the following categories of nonverbal communication⁸:

TYPES OF NON-VERBAL COMMUNICATION

Kinesics: It is the analysis of motions of the arm, hand, torso, and face. It can be categorised into four subtypes; gestures, head movement and posture, eye contact and facial expressions.

Gestures: It is hand and arm expressions including illustrators, adaptors and emblems. Adaptors are physical gestures that signify emotional states, most often fear. E.g. we can unknowingly

⁷ Fontenot and Karen Anding, "Nonverbal communication and social cognition" 4 *Salem Press Encyclopaedia of Health* 4, (2014).

⁸ "Types of Non-Verbal Communication", available at: <https://open.lib.umn.edu/communication/chapter/4-2-types-of-nonverbal-communication/> (last visited on May 26, 2021).



click pens, shake our legs, and so on. Fidgeting of hands, swinging hair, or scratching are typical self-adaptors used in public speaking. Emblems are movements which have a predetermined sense. As an example, The “OK” symbol is a lifted thumb. Emblems are highly culturally unique. Illustrators are the most popular gestures used to convey the verbal message with which they are associated. E.g. Gestures of hand may be used to signify the size of an object. Illustrators take various forms, but their role is the similar throughout cultures.

Head Movements and Posture: We may turn our heads to show that we are interested. Lying down, squatting, sitting and standing are the four fundamental human postures.⁹

Eye Contact: The analysis of nonverbal contact through eye action is known as oculusics. Certain eye habits, such as cold eyes, malicious eyes, and so on, are linked to personality characteristics or emotional responses. Eye Contact serves many purposes, including regulating conversation, signalling cognitive activity (looking away while interpreting information, expressing interest showing others we are aware with our eyes), and establishing rapport or social relationships. We make clearer eye contact with our audience to show that we are nearing the end of our conversation. When we listen, we create more intense eye contact, rather than glancing like we do when we talk. The eyes provide us with the sensory input we require to understand person's expressions, motions, and even eye contact.

Facial Expressions: Happiness, sorrow, terror, rage, and indignation are all universally recognised facial expressions. Their shows are influenced by cultural and social norms. Smiles are very effective communicative cues. Social smiles are distinguishable from more sincere smiles. Facial gestures contribute to the expressive rhythm of voice. Emotional gestures on the face are similar, regardless of gender, culture, ethnicity, etc. When we are experiencing the same feelings, we all exhibit similar facial expressions. However, there are ethnic and individual variations. According to a study of congenitally impaired individuals, both blind and normal vision people display nearly identical facial features in the same conditions. Thus, the capacity to convey empathy through facial gestures is biologically inherited.

⁹ Albert Mehrabian, *Nonverbal Communication* 16 (Transaction Publishers, New Brunswick, NJ, 1972).



Haptics: It is the analysis of nonverbal contact by touch. High fives, pats on your back, holding wrist, handshakes and other forms of touch can be used to communicate. The message communicated by touch is heavily influenced by culture.¹⁰

Vocalics: It is the analysis of paralanguage, which includes verbal filler, rate, tone, vocal characteristics and verbal communication. Pitch aids in the regulation of conversational flow and conveys the importance of a statement. In a trial, e.g., use a higher volume of voice to enhance communication or to attract the Court's attention. Others will become bored if a speaker speaks slowly. A fast speaker can be hard to understand, thus is detracting from the speech. However, every voice has a unique characteristic defined as a vocal signature. A faster pace of speaking paired by a friendly voice tone could be advantageous for achieving cooperation and aiding in convincing.

Proxemics: It is the investigation into how space and distance affect connectivity and behaviour. In general, our space is divided into 3 regions - the public zone (12 or more feet beyond one's body), the social zone (4–12 feet beyond one's body), and the private zone (1.5–4 feet beyond one's body). These above areas occupy more area in our front, i.e. in our line of vision, than in our back or side, which we cannot watch what persons are doing.

Chronemics: It is the analysis of, in what way time influences communication, including by what means time cycles influence our communication, distinctions among individuals who are past or present focused, and cultural perceptions on time as set, as well as calculated (monochronic) or flexible yet adaptive (polychronic).

Personal presentation and environment: It is concerned with our physical features and how the things we use to adorn ourselves and our environments, known as items, offer nonverbal clues that others interpret regarding our social world. E.g. the architecture of a venue, as well as seating configurations and layouts, all have an impact on communication.

Clothing: Artifacts is the analysis of clothes and other items as a form of nonverbal communication.¹¹ Clothing conveys an individual's appearance, origins and financial status, society, temperament, level of trust, desires, age, power, values, and what people will react to

¹⁰ Remland, M. S., Jones, T. S., *et.al.*, "Interpersonal distance, body orientation, and touch: The effect of culture, gender and age" 135 (3) *Journal of Social Psychology* 282–296 (1995).

¹¹ Yammiyavar, Pradeep, *et.al.*, "Influence of Cultural Background on Non-verbal Communication in a Usability Testing Situation" 2 *International Journal of Design* 33 (2008).



them. The way an individual wears is usually influenced by inner motives such as feelings, perceptions, as well as culture.¹²

NON-VERBAL COMMUNICATION IN LEGAL DISCOURSE

Chronemics, Haptics, Proxemics, and Kinesics are the most popular nonverbal communication techniques used by attorneys. The transmission of context through the use of verbal symbols is referred to as nonverbal communication. Nonverbal behaviours are swayed by culture in various forms: male-female, culture's concern about complexity (uncertainty avoidance), hegemony (power distance), and individualism-collectivism. "In the context of court trials, the nonverbal actions can be observed when: (a) when attorneys and clients converse; (b) when attorneys present their closing and opening statements; (c) when attorneys question and cross-examine witnesses; (d) where witnesses testify; and (e) when adjudicators converse with witnesses and lawyers."¹³ Nonverbal contact, however, encompasses far more than just the presenter's face and offers parties with input to plan and handle in-person communications on a moment-by-moment level in the pursuit of participants' interests. "The analysis of body language that comprises artifactis, oculusics, facial expressions, posture, hand movements and gestures is called Kinesics."

MAJOR TYPES OF NON-VERBAL COMMUNICATIONS USED IN LEGAL DISCOURSE

1. Gestures. — These are hand motions that are used. There are six different styles of gestures: - Enumerative; where the prosecutor uses his or her fingertips to indicate one, two, or three in order to help the client comprehend a number-related concept; Descriptive; where the client uses hand gestures to signify large, thin, long, and so on; Locative; when the prosecutor shows the client where to sign, or where the advisor points the client to the attorney's place; Emphatic; where a prosecutor uses hand gestures to emphasize a critical argument to the client; Adaptive:

¹² LearnVest, "What Your Clothes Say About You", *Forbes*, April 3, 2012, available at: <https://www.forbes.com/sites/learnvest/2012/04/03/what-your-clothes-say-about-you/?sh=4b0490b66992> (last visited on May 27, 2021).

¹³ Vincent Denault and Miles Patterson, "Justice and Nonverbal Communication in a Post-pandemic World" 45 *Journal of Nonverbal Behaviour* 4 (2020).



when individuals are under pressure, they use this term like, scratching the cheek, rubbing the nose, pinching the mouth, playing with a marker, moving the knee, and so on. All of these are signs of tension or even efforts to say a lie; Symbolic; hand gestures such as 'Namaste' to welcome a client. They are unique to each culture. The prosecutor must welcome the client in accordance with the client's cultural standards. Otherwise, a cultural barrier could arise. Cultural Gaps may be indicated by Symbolic Gestures.

2. *Posture*. — It applies to how we hold ourselves while sitting, standing, or walking. When the elbows are stuck out, it stops someone from quickly passing us and is a symbol of superiority that means we're primed for trial, as attorneys will do. When seated, leaning back reveals insouciance and ignorance, whereas straddling a chair is a symbol of superiority that attorneys should resist. Low confidence posture: Usually demonstrated by the client; crossed legs, hands linked in front, loose shoulder arms crossed at the chest; and head down. High confidence posture: the attorney's back must be straight; his or her shoulders must be firm; and his or her hands and arms must be placed tightly near the body. Many of these demonstrate attentiveness. In order to pay interest, the prosecutor should even lean slightly toward its customer. Both the counsel and the client should adopt a variety of postures.

3. *Facial Expressions*. — Our facial expressions reveal our feelings towards others. It also shows our emotional state - if we are furious, sad, or other. The Attorney must have authority of his or her facial expressions. He or she might be genuinely surprised at any of the client's comments. However, his/her extreme reaction may prevent the client from continuing to talk or may allow the client to communicate on unnecessary information. A sincere concern gesture will assist the counsel in connecting with the customer. To set a constructive tone in the courtroom, make a quick eye contact with the adjudicator and smile to convey friendliness, transparency, and trust. Please ensure your facial expressions correspond to the substance of your voice. When presenting a humorous message, a grin, bright eyes, and gently lifted brows are appropriate. When giving a serious message, a wrinkly eyebrow a snigger jaw, as well as a subtle head nod could help. Micro-expressions are subconscious, very rapid (sometimes one-tenth of a second) displays of feeling that are full-face or partial and very brief. It is very useful for judges and attorneys to consider other people's views, interests, personalities, or motives, or to determine if an individual is covering up information.



4. *Eye contact/ Oculistics*. — At all times, the prosecutor should retain eye contact with the client. Notes should be taken in such a way that eye contact is not interrupted very frequently. A counsel may use eye contact to decide whether or not the judge is interested, disturbed, or annoyed, and then adjust his or her response appropriately. The client's eye movements can suggest whether he is lying or telling the facts.¹⁴ In addition, the advocate should understand the client's cultural context.¹⁵ Some traditions, such as rural India, forbid women from making regular eye contact with others outside the home, such as rural women refusing immediate eye contact in a court meeting. A witness or accused may stop eye contact to signal to the opposing lawyer that they do not wish to engage or query the individual further.

5. *Artifacts*. — Humans have a propensity to make snap judgments based on their first impressions. Our height, weight, hair, skin quality, and teeth are all evaluated. A fit and healthy and well-maintained appearance makes a pleasant first impact on the customer. In addition, the clothing we wear ought to be traditional. It is often best to resist wearing skin-revealing clothing during a therapy session. In addition, jewellery should be avoided to wear. In the session, no heavy perfume should be worn. Attorneys can dress decently in front of clients and judges by wearing a plain and classy watch and polished black leather shoes. Phones must be turned off at hearings and counselling sessions to avoid being disrespectful.

6. *Proxemics (distance)*. — Depending on the essence of our interaction with the people in question, we retain social distance with them. Intimate Space (50 cm): Only those who are physically close to you are permitted to join. Criminals access this region on purpose to annoy or intimidate us. Members of the family and personal associates share a Friendly space (50cm to 1.5m). Colleagues share the Social space (1.5m to 3.6m). Zone of the Audience (more than 3.6m).¹⁶ Proxemics between lawyers and clients: It comes into the category of social space. For counselling, having seats that are closely spaced is a smart idea. So much distance would prevent the customer from providing sensitive information. Nevertheless, being too near can make the attorney seem unprofessional. As a result, seats that are 1.5 to 4.5 m apart are perfect.

¹⁴ K. Hogan and R. Stubbs, *Can't Get Through: 8 Barriers To Communication* (Pelican Publishing Company, Gretna, 2003).

¹⁵ "Top 8 Cultural Differences in Nonverbal Communication", *Point Park University | Online*, 24 May 2021, available at: <https://online.pointpark.edu/business/cultural-differences-in-nonverbal-communication/> (last visited on 28 May, 2021).

¹⁶ Sluzki, E Carlos, "Proxemics in Couple Interactions: Rekindling an Old Optic" 55 (1) *Family Process* 7-15 (2015).



7. *Haptics*. — It denotes "contact coordination." When used positively, it is used to express fellow-feeling, encouragement, and empathy. Haptics in Counselling: Haptics can be used with caution while counselling. Touching a client's arms or back may help to calm him or her down. Nevertheless, culture can influence touch perception. If the customer is from a society where strangers are not touched or shaken hands, haptics can be stopped.

8. *Chronemics*. — It is the professional time language. Our promptness sends a good note to our customers. A prosecutor may only focus on the client being on time and completing the counselling on time if she or he is punctual. While counselling, multitasking is not a good idea. Both the prosecutor and the customer should switch their phones to quiet mode.

9. *Head Movement*. — In a court, a head up suggests an interested or impartial mood. A head tilt indicates interest and is unconscious compliance expression which reveals the jaw. It will help the adjudicator feel more accepting of the person. While a head down implies pessimistic defiance, which should be prevented.

JUDGE'S NON-VERBAL DISCOURSE

If the judge nonverbally expresses a bias or prejudice against the client, the attorney should timely object and describe the conduct for preservation in the record so it can be used as grounds for appeal. Because the majority of the judge's body is concealed behind his desk, the only nonverbal behaviour noticeable is his facial expressions and hand gestures. As a result, the lawyer should be on the lookout for any indications of animosity on the part of the court against his client. A reviewing court could view an adjudicator's instruction to ignore his nonverbal behaviour as an appropriate remedy for any potential harm done.¹⁷ Although judiciary agrees that an adjudicator's nonverbal communications could be grounds for reversal on appeal or a mistrial ruling, they are hesitant to overturn solely on such grounds.

¹⁷ Elizabeth A. LeVan, "Nonverbal Communication in the Courtroom: Attorney Beware" 8 *Law & Psychology Review* 83 (1984).



ATTORNEY'S NON-VERBAL DISCOURSE

Williams and Mehrabian performed studies that showed that speakers that used more eye contact, gestures, facial movement, less self-touching, mild relaxing, close distances, greater vocal volume¹⁸, faster talking time¹⁹, and, for men, addressing the crowd less squarely were more convincing.²⁰ A paralanguage research discovered that speakers who talk in monotone and seldom change their voice pitch are much less reliable and convincing to observers. An analysis of voice pitch and speaking rate found that men who slow down their speech rate and raise their voice pitch are seen as less convincing than people who talk louder with a low pitch voice.²¹ Verbal signals that are closely coordinated with kinesic cues are more convincing than verbal messages that are not. Physical appearance is often a significant element of a communicator's persuasiveness. In every situation, the attorney may be mindful of his own nonverbal contact during the trial and how it can influence or discourage the judgement of adjudicator.

CLIENT'S NON-VERBAL DISCOURSE

However, the judge will sometimes watch the client while he is sitting at counsel's table during a witness's testimony, counsel's argument, or when the attorneys approach the judge's bench. Because the client is normally sitting beside the counsel, the lawyer may quickly warn him that he is displaying nonverbal behaviour that could be detrimental to his case. Since the client is normally silent for the most of the hearing, he is not the centre of attention. According to one report, when an ugly female respondent is judged by a male, she is more expected to be found guilty and sentenced harshly than a beautiful respondent.²² Another research suggests that when challenged to remain unbiased, adjudicators would 'lean over backwards' to be lenient on unattractive suspects.²³

¹⁸ Packwood, "Loudness as a Variable in Persuasion" 21 *Journal of Counselling Psychology* 2 (1974).

¹⁹ Miller, Maruyama, Beaber & Valone, "Speed of Speech and Persuasion" 34 *Journal of Personality and Social Psychology* 619 (1976).

²⁰ Mehrabian & Williams, "Nonverbal Concomitants of Perceived and Intended Persuasiveness", 13 *Journal of Personality and Social Psychology* 52 (1969).

²¹ Apple, Streeter & Krauss, "Effects of Pitch and Speech Rate on Personal Attributions", 37 *Journal of Personality and Social Psychology* 723 (1979).

²² Efran, "The Effect of Physical Appearance on the Judgment of Guilt, Interpersonal Attraction, and Severity of Recommended Punishment in a Simulated Jury Task", 8 *Journal of Research in Personality* 51 (1974).

²³ Friend & Vinson, "Leaning Over Backwards: Jurors' Responses to Defendants' Attractiveness", 24 *Journal of Communication* 127-129 (1974).



WITNESS'S NON-VERBAL DISCOURSE

A witness could be critical to winning a lawsuit, thus they must be as prepared as possible prior going to trial. The witness could be apprehensive because he is in the intensive scrutiny of the judges and under stress to respond the lawyer's queries. If one is frightened, he may demonstrate harmful nonverbal communication accidentally. As a result, the witness may mistakenly convey the appearance to the judges that he is doubtful about his own statement.²⁴

“Anxious conduct, which may be viewed as deceptive conduct is indicated by self-adapters such as rubbing one's chin or nose, digging into one's hands, grasping one's knees, and picking at one's fingernails.”²⁵

As per one study, “males with high-pitched voices and who talked slowly are seen as less genuine and more worried than men with low-pitched voices and who responded quickly.”²⁶ A lawyer can prevent having his witness look frightened by making him feel secure and encouraging him to relax and take his time answering to queries. Experiments reveal that deceptive communicators, usually, nod and gesture little, lean ahead less, say less, speak relatively slowly, grin more, as well as display quite agreeable facial expressions than honest communicators.²⁷ The witness could be dishonest or anxious; in any scenario, the lawyer may exploit the other side's witness's apparent weakness in cross-examination to make him look less trustworthy to the court and to disclose his deception.

ROLE OF NON-VERBAL DISCOURSE IN CONTEMPORARY LEGAL FIELD

Usually, verbal language is replaced by non-verbal communication. Let's understand this by the following. Accentuation: Emphasizing the seriousness of an order or appeal. E.g., using hand gestures to show that a critical point is being addressed; Complementing: Our facial expressions indicate whether we are happy or unhappy, upset or peaceful. People want to translate our gestures to determine if we are trustworthy; Contradicting: To be polite, we often mask our emotions and anger; similarly, when confronted by our rivals, we try to display the

²⁴ Morrill, “Enter-The Video Tape Trial” 3 *John Marshall Journal* 245 (1970).

²⁵ Ekman & Friesen, “Nonverbal Leakage and Clues to Deception”, in S. Weitz (eds.), *Nonverbal Communication: Readings with Commentary* 281 (1974); McClintock & Hunt, “Nonverbal Indicators of Affect and Deception in an Interview Setting” 5 *Journal of Applied Social Psychology* 64 (1975).

²⁶ *supra* note 21, at 720.

²⁷ Mehrabian, “Nonverbal Betrayal of Feelings” 5 *Journal of Experimental Research in Personality* 73 (1971).



contrary of what we are thinking in our minds. Thus, nonverbal speech is used to refute our inner thoughts in order to protect ourselves; Regulating: When someone is speaking, we should allow him to continue by using gestures of hand. We may also request that he stop by displaying our hand; Substituting: Where there is a language difference where the sender and recipient do not understand the same language, sign language is used. We also use sign language in an incident or in a loud environment. For example, a smoke alarm; traffic control by lights and hand gestures by cops.

The ongoing interaction of nonverbal symbols endures to have a powerful influence on the judgments of lawyers, judges, and witnesses. Nonverbal discourse in the courtrooms has an elusive effect on the whole trial. In his or her voice, the defender or counsel practices eye contact and gestures to persuade the bench that he or she is right. In the American legal system, the judge expresses his/her opinions about the trial to the jurors through body posture as well as facial gestures. When building a rapport, using warm nonverbal cues (gentle voice tone, close distance, eye contact, and smile) while eliminating antagonism elements (sarcastic tone, distortion gestures). A rapport is described as the adopting of identical poses (the mimicking) of synchronised body movements, facial expressions or speech styles.

Several years of research have shown that the interpretation of guilt or innocence is mostly determined by the defender's nonverbal contact. Thus, reputation is a combination of the following elements: social skills, character integrity, dynamism, friendliness and confidence. As the person communicates nonverbal cues to question the receiver's assumptions, he becomes more convincing. The speaker becomes more persuasive if he uses nonverbal communication to challenge the message's recipient's expectations. E.g., an excellent lawyer can earn respect by speaking loudly than the judges expect. If the prosecutor switches from his conservative attire to something more casual. The new style offers a rational and strong statement that can demolish the members' assumptions and thereby become more credible. According to studies, speakers became more persuasive as they speak fluently while keeping eye contact, the expressiveness of their facial expressions, and the absence of agitation-free movements.



CONCLUSION

Observations in common is that the competing attorneys sought to construct their respective interpretations of facts involving interaction in two companies engaged in the case. While participant observers are more likely to trust and locate credible details obtained using observation, this is not always the case for lawyers. Since the prosecutors are generally steadfast in their tactic of perplexing the jurors, they dismiss observational evidence gathered during the proceedings as irrelevant. Apart from listening and learning from other lawyers and judges by observation, to be at the courtroom is helpful for both you and the practise. Nonverbal contact in court trials is significant aspect that is underappreciated.

The research presented in this article proposed that nonverbal contact conveyed during a trial is mainly through voice sound, gestures and facial expressions. Yet, many other forms of nonverbal contact are used at the trial and contribute to the judgement process. Cultural and racial disparities between the judges and the plaintiffs, clients, or lawyers can also influence his or her opinion. The judge's opinion can be even influenced by the nonverbal nature of pupil dilation. While nonverbal contact by jurors, judges, claimants, and prosecutors will not be the sole determinant of the case's result, the lawyer should be mindful of its potential persuasive and dissuasive impact on the adjudicators. According to some researchers, the growing body of psychology literature on the impact of subconscious nonverbal influence has allowed lawyers to enhance their courtroom efficacy.

Judges and attorneys should bear in mind that the many nuances or perceptions of nonverbal behaviours, affected by cultural contexts or other influences, preclude literal interpretations, but that only giving attention to the text at the cost of expressions, facial displays, and eye gaze isn't without its risks. Nonverbal contact can be used by judges and attorneys to enhance their comprehension of evidence and their evidence by providing a more complete understanding of the nuances of communicating and the various explanations for the nonverbal behaviours they observe. While these recommendations are straightforward, they have the potential to have a significant positive effect on the legal system.