



What Law School Didn't Teach Us

BY TIFFANY CHRISTIANSON

There's something central to practicing law that we all do several times per week, if not several times per day, but that was barely mentioned to us in law school: communicate with clients. We were taught how to analyze, issue-spot, research, apply the law, and write persuasively, but we never learned how to explain our very complex craft to the people for whom we are

doing it (and by whom we are paid). None of us in private practice researches case law for an argument or drafts a contract or estate plan in a vacuum. There's always a client of some sort on the end of this thing we are doing.

It's easy to speculate about why law schools might skip this topic. First, the bar exam is no laughing matter, and the knowledge and skill needed to pass is significant and vast. So, law

schools focus on that. Fair enough. Second, teaching the law and its underlying philosophy to law students is a very different task from giving a nontechnical explanation to clients for practical application. Most law school professors do not work with clients—they're legal scholars and experts in teaching law to students—so perhaps they are not inclined to address client communications in-depth. A third possibility is that, as an entire industry, we fancy ourselves to be excellent client communicators, thank you very much.

Comprehension versus Disclosure

How do we do pull off this elegant hypocrisy? Because of [read with a booming voice]: the Rules of Professional Conduct. These rules are absolutely necessary and worth the repetition we receive in CLEs. They do, however, have a pretty significant unintended consequence. Consider Colo. RPC 1.4. Under that rule, we are to:

(3) keep the client reasonably informed about the status of the matter; [and]

(4) promptly comply with reasonable requests for information.

Once we fulfill those obligations, we mentally check that box. Done. We are respectable attorneys who follow the ethical rules with responsibility and precision!

I have just one question: When you checked that box, did you effectively transfer the concepts in your head into your client's head? Most likely, you did not. There is the unintended consequence: We confuse disclosure with effective communication.

The ethical rules could not practically or fairly hold us responsible for our clients understanding our explanations and advice. Clients bring varying intellect, experience, and effort, all of which is completely beyond our control. But communicating with an eye toward comprehension is something we should practice as a matter of style.

The Assignment

You may be asking yourself whether this writer has exceptionally unsophisticated clients and/or is a poor communicator herself, because your colleagues and you are excellent communicators. Or maybe you find it unnecessary for clients to understand our advice. After all, clients pay us to worry about the details so they don't have to.

Allow me to derail those theories. My clients are experienced and savvy businesspeople, and I am in the business of client communications. And while clients do pay us to worry about details, here is the important part: we need to understand their precise goal to help them meet it, and they need to understand our advice well enough to use it. Even sophisticated, intelligent clients leave out important facts and miss big pieces of our advice and explanations.

Clients do not need a law school education to understand the slice of law that applies to their narrow situation. They just need an effective translator and some plain English. Our clients should be able to see what we see, both now and coming down the pike.

I challenge you to make a few small tweaks in how you communicate with clients and observe the results.

1. Ask Three Specific Questions during Client Intake

When a new client comes into your office, you listen to the facts, take notes, and begin to size up the client's needs. Once you have a general sense of those needs, you begin to strategize the steps needed to reach those goals. But slow down and take a quick mental inventory of the assumptions you just made. You need to ask your client some clarifying questions before you can develop a firm strategy to meet his goals.

First, ask the client, "What is your worst fear about your [case/negotiation/estate plan]?" You will be shocked by their answers. We make assumptions based on what we see in the facts: They want their money back. They want to get this contract. They just need an estate plan. Often, it's not that simple. Once I started asking this question, I began to better understand my clients' needs. Consequently, I was able to argue

for them more effectively and reach their goals with more precision.

Discussing your clients' fears also allows you to eliminate the ones that are implausible and help them prepare for those that are plausible. Consider the value to your client if you can alleviate a fear that was going to keep him up at night for months, or alternatively, if you can help him identify and quantify a justified fear so he can prepare for it—emotionally, financially, and operationally. In both instances, you give your client the gift of peace.

The second question to ask is, "What process and timing are you expecting?" The importance of this one cannot be overstated. Probably the largest blind spot clients have is the process of how their lawsuit (or IP registration, business purchase, personal injury claim, etc.) will progress and how long it will take. By addressing this up front, you can greatly reduce the client's

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This does not mean that you promise your client her lawsuit will be over in six months. It means you educate her on the stages of the process and the purpose of each stage. That way she always has a sense of where she and you are in the process. Without that context, your client will feel like she's sitting blindfolded in a car while you drive around in circles saying, "Trust me. We will get there when we get there!" Instead, give her the destination, a map, and a window view.

The third question to ask is more of a confirmation. "So, at the end of this, you expect, _____. Is that correct, and am I missing anything?" This is really the inverse of the first question. You have identified the client's fears, and now you need him to tell you how he defines success. This question ensures that your client and you are aimed at the same target. The client's response can also smoke out unrealistic expectations and allow you to correct them.

Throughout these discussions, pay attention to your client's tone and other nonverbal communication, not just her words. While some technology aims to eliminate lawyers or make us less relevant, this kind of human-to-human discussion highlights the value we bring. Consider how much more passionately your clients will recommend you to others when you can guide them, dispel their fears, and aim for their goals in a personalized way.

2. Repeat Yourself

Part of our job is to teach clients enough about the slice of law that applies to their narrow situation so they are equipped to go forth and use it. Teaching is best done with repetition. Hearing a concept or definition one time is not enough for most people to internalize it. With repetition, however, the listener can begin to comprehend it in a useful way and recall it later. We become comfortable with the terminology used in our practice area, and it's easy to define a "motion to dismiss" once and move on. Instead, repeat major concepts often and in multiple discussions with your client. And use plain English.

This is where our style of practice should not be anchored down by the ethical rules. Yes, if we disclose something once, we can check that box. If we focus on client understanding and usefulness, we will still check the box, but we will also provide clients with useful information they can act on. In turn, they will give us more complete information about their matter when we need it—instead of giving it to us too late, or never.

3. Use Visuals

Aside from the vocabulary gap, the primary reason clients do not understand and retain our advice is that we ask them to absorb complex information while we are meeting or on the phone. The social pressure for the client to feign understanding is significant. It's human nature, and we all do it. You might understand what your doctor tells you when you see him in person. But once you get home and repeat it to your spouse, the details are already getting muddy and indistinct. Sometimes you understand parts of what your doctor says but not the whole explanation. Regardless, you nod with understanding rather than ask enough follow-up questions to really get it. It is the same for your clients: when they get off the phone with you and start to relay your advice to their business partner, or make a decision based on a court ruling, they might not have a clear picture to relay or consider.

The problem in each of these scenarios is that the listener has to absorb the information while hearing it live and usually has no easily digestible way to review it later. (Your Motion to Compel or Services Agreement does not count as "easily digestible" review material.) Most lawyers don't use visuals when communicating with clients because our work product is a stack of (really boring) Word documents. So, it feels like there is little to show. But with a small shift in thinking, we can actually use visuals in very


effective ways to solve the client's absorption problem.

Consider providing video recordings of your explanations. This sounds daunting, but these are no longer difficult or expensive to create. You can easily record videos of your explanations and advice specifically for each client. Your firm can also maintain a library of videos to explain common concepts. You will be amazed how thirsty clients are for explanations about their situation. While reading our flat documents is boring and difficult for clients, watching videos that explain things to them is a valuable supplement (not replacement) to your discussions with them, and they want it. The benefit to you is that, as clients better understand your work, they will also value it and appreciate you more.

If, instead of relying on memory after a call, your client can replay the information in private, his comprehension will rise steeply. And his business partner can hear it for himself. That solves both the problem of absorption and the difficulty of relaying the advice to another client party.

Your firm can also use simple things like a "Frequently Used Terms" sheet to define common terms relevant to their matter (litigation, family law, etc.). Take it a step further by pairing each definition with a simple visual image that cements the meaning. This enables your client to easily refresh her memory without the embarrassment of asking you to define "personal representative" or "motion for summary judgment" again. This is simple but incredibly useful.

Conclusion

We are in an era of shifting expectations and technology in the practice of law. By looking at your role from a slightly different angle, you can transform your client's experience and improve your own experience in the practice of law at the same time. 



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