



# LEGALLY SPEAKING

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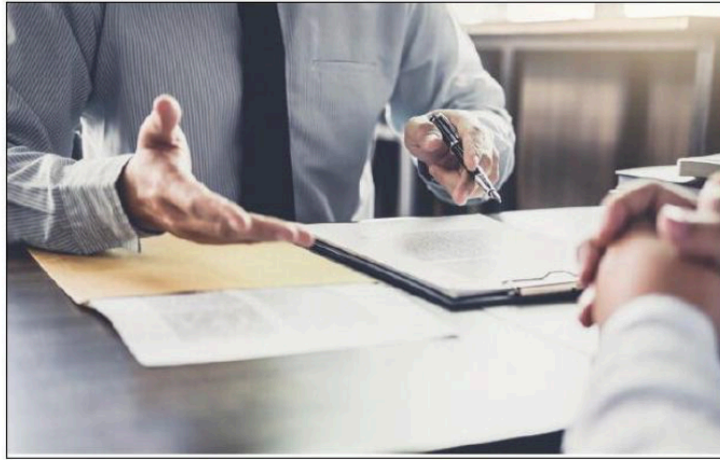
## The Last Word or the Lasting Impression? Communication in a Season of Change

By Kristi Paulson  
Special to Minnesota Lawyer

August has always felt like a month caught between seasons. Technically, it is still summer. The days are warm, the lakes are busy, patios are full, and most of us are not quite ready to acknowledge what is coming next. But the signs are there. The evenings arrive a little earlier, school supplies begin appearing everywhere, calendars that seemed wonderfully empty in June suddenly begin filling again, and occasionally there is that first evening when the air feels just a little different. Nothing dramatic has happened, and yet we know something is changing. Perhaps that is why August is a good time to think about transitions and the transitions that occur every day in the way lawyers and judges communicate with one another, with clients, with litigants, and with the people who depend upon us.

As lawyers, we spend an extraordinary amount of time thinking about what we are going to say. We prepare arguments, draft briefs, negotiate settlements, conduct depositions, counsel clients, write emails, hold hearings, question witnesses, and make decisions. Judges likewise spend enormous time considering not only the decisions they must make, but how those decisions should be explained to the people appearing before them. We understandably concentrate on the substance in the middle: the facts, the law, the argument, the reasoning, the negotiation, and the result. Yet sometimes we pay considerably less attention to two deceptively small moments that can disproportionately affect how everything in between is received: how the communication begins and how it ends.

People do not experience our communications as transcripts. They experience them as human interactions. What they perceive at the beginning can influence how they interpret everything that follows, while what they experience at the end can become the impression they carry with them long after the particular words have been forgotten. In a profession in which relationships matter, credibility matters, and nearly every dif-



DEPOSIT PHOTOS

ficult problem involves communication between people who disagree, those moments deserve more attention than we sometimes give them.

### The first 15 seconds

We have all heard some version of the proposition that we have only seconds to make a first impression. Whether the scientifically correct number is seven seconds, 15 seconds, 30 seconds, or something else is less important than the underlying reality: Human beings begin forming impressions almost immediately. Before we have demonstrated our expertise, explained our reasoning, or delivered our best argument, the person across from us is already gathering information about whether we are prepared, credible, respectful, interested, impatient, defensive, confident, dismissive, or trustworthy.

Lawyers sometimes resist that concept because our training teaches us to believe that substance should prevail. The strongest argument should win. The most accurate legal analysis should carry the day. The facts should speak for themselves. But communication does not occur in a laboratory. It occurs between human beings, and human beings notice tone, facial expression, body language, attentiveness, warmth, impatience, preparation, and respect. A lawyer who enters a mediation visibly irritated, drops a stack of papers on the table, barely acknowledges opposing counsel, and immediately begins explaining everything wrong with the other side's case has communicated quite a bit before making the first substantive argument.

Now imagine a different beginning. The lawyer enters the same mediation with exactly the same client, exactly the

same facts, exactly the same settlement authority, and exactly the same concerns about the opposing party's position, but begins by saying, "We obviously have some significant disagreements, or we would not be here, but I appreciate everyone taking the time to see whether there is a way to resolve them." Nothing has been conceded. No negotiating position has been weakened. No client interest has been sacrificed. Yet the lawyer has created an entirely different environment for the conversation that follows.

The same principle applies in the courtroom. A judge may have a difficult calendar, an argument may be poorly developed, or counsel may be asking for relief the law simply does not permit. The first few words from the bench can nevertheless establish whether what follows feels like a thoughtful judicial process or simply a rejection. "Counsel, I have reviewed your submissions carefully, and here is the issue I am struggling with" invites a very different interaction from an opening that immediately communicates frustration or impatience. The ultimate ruling may be identical, but the experience of receiving it may not be.

Even with people who already know us, every interaction gives us another opportunity to make a first impression. Think about the first 30 seconds of a telephone call with opposing counsel, the first paragraph of an email, the first exchange with a client who has been anxiously waiting for an update, the first question asked of a witness, or the first moments standing before a jury. We are constantly telling people something about who we are before we ever reach the substance of what we want them to hear.

That does not mean lawyers or judges

need to manufacture charm or perform some artificial version of themselves. It means being intentional. Before beginning an important conversation, it can be useful to ask a remarkably simple question: What do I want this person to believe about me before we begin? Perhaps the answer is that you are prepared. Perhaps you want the client to know that you understand the seriousness of the situation. Perhaps you want opposing counsel to understand that you will advocate vigorously without making the matter unnecessarily personal. Perhaps a judge wants the litigants to understand that they have been heard, even though only one side can prevail. Once we identify the impression we hope to create, we can ask whether the way we are beginning the communication creates it.

### We spend most of our time on the middle

The middle is where lawyers naturally focus, and understandably so. It contains the facts, the law, the negotiation, the disagreement, the persuasion, and the problem solving. It is where most of the work happens. Yet the effectiveness of that work can be influenced tremendously by the environment we created before we began doing it.

Consider two lawyers beginning a difficult settlement discussion. One begins by saying, "Your demand is completely unrealistic, and if that is where you're staying, I don't know why we're wasting our time." The other says, "We're obviously a long way apart, but I think it would be helpful to understand how each of us got to our numbers before deciding whether there is a path forward." Both lawyers may ultimately make the same substantive arguments and have the same settlement authority. Both may believe, with good reason, that the other side's position is unreasonable. But they have established very different conditions under which the negotiation will occur.

This matters because people tend to hear information through the lens we have already created. Once someone concludes that we are hostile, dismissive, condescending, or unwilling to listen, even reasonable statements can be interpreted through that lens. Conversely, when we establish credibility and respect at the outset, disagreement does not necessarily feel like hostility. The goal is not to avoid

### Correction

The article "Setting up shop: Avoiding legal snags for Minnesota startups" in the Aug. 10 edition of *Minnesota Lawyer* misspelled the surname of Larkin of counsel attorney Jacob S. Woodard.



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disagreement; disagreement is part of what lawyers and judges do. The goal is to create conditions in which disagreement can be productive.

### The last word is not the same as the lasting impression

If we sometimes underestimate beginnings, I suspect we underestimate endings even more. Lawyers are trained to respond. Someone makes an argument, and we answer it. Someone sends an email, and we reply. Someone says something inaccurate, and we correct it. Someone takes a shot at us, and every instinct developed through years of advocacy tells us that we should take one back. The desire to have the last word can be particularly powerful in a profession in which responding is quite literally part of our job.

The problem is that having the last word and creating the lasting impression are not the same thing.

Email provides endless examples. Most lawyers have participated in an email exchange that should have ended three emails earlier. A disagreement develops. Someone responds defensively. The next person corrects the record. Another reply arrives correcting the correction. Someone adds a new person to the distribution list, which virtually guarantees another round of explanation, and suddenly what began as a relatively minor scheduling or discovery issue has acquired a life of its own. At some point, the substantive problem becomes almost secondary because everyone is fighting over who gets to characterize what happened.

There are certainly times when the record must be corrected, a client's position must be protected, or silence could reasonably be misunderstood. But there are also times when the better advocacy decision is to recognize that nothing useful will be accomplished by another response. The question changes when we stop asking, "Do I have something else I could say?" and instead ask, "What impression do I want to leave?"

The same is true from the bench. A judge may have ruled against a party after carefully considering the law and the evidence, but the words that follow

the ruling can significantly affect how that litigant experiences the justice system. A self-represented party who loses may never understand the intricacies of the governing legal standard, but that person will understand whether the court appeared to listen. A lawyer whose argument is rejected may disagree with the result while nevertheless leaving the courtroom believing the argument received thoughtful consideration. There is an enormous difference between losing and feeling dismissed, just as there is a difference between prevailing and feeling vindicated in every accusation one has made about the other side.

### Sometimes the most important sentence is the last one

This is particularly important in client communications. Lawyers frequently deliver answers clients do not want to hear. The court is unlikely to grant the requested relief. The evidence does not support the client's recollection. Litigation will cost more than the amount realistically at stake. A settlement offer may be better than the likely trial outcome. Sometimes the answer is simply no.

Imagine ending one of those conversations with, "The court isn't going to give you that, so there really isn't anything more we can do." That may accurately communicate the legal conclusion but compare it with: "I know that isn't the answer you were hoping for, but now that we understand what is unlikely to happen, let's focus on what we can control and where we still have options." The legal advice has not changed. The lawyer has not sugarcoated the situation or promised a result that cannot be delivered. What has changed is the lasting impression. One ending leaves the client at a dead end; the other leaves the client with a path forward.

Mediation offers another example. Parties may spend eight or 10 hours disagreeing, bargaining, becoming frustrated, reconsidering positions, and ultimately reaching a resolution. By the time the agreement is signed, everyone is exhausted, and it is tempting to treat those final minutes as merely administrative. Yet the ending matters. Taking a moment to acknowledge that the parties made difficult decisions, compromised positions they once believed were immovable, and created certainty where

there had previously been uncertainty can change the way they remember the entire process. The settlement agreement resolves the legal dispute, but the final conversation may help determine whether the parties leave feeling defeated, relieved, respected, or ready to move forward.

### A few communication habits worth practicing

None of this requires a new communication system, another continuing education seminar, or a complicated checklist. It requires a little more intentionality at the two points in a conversation where we are often moving the fastest. Before your next important communication, try a few simple practices.

First, decide what you want the first impression to be before you begin. If you want to be perceived as prepared, calm, fair, credible, or open to discussion, ask whether you're opening communicates that. This can be particularly useful before a difficult client meeting, contentious deposition, settlement conference, or hearing where everyone arrives expecting conflict.

Second, read the first and last sentences of important emails before hitting send. Ignore the middle for a moment and read only those two sentences. If the recipient saw nothing else, what would those sentences communicate about your purpose and about you? If the first sentence unnecessarily puts the recipient on the defensive, rewrite it. If the final sentence invites another round of an argument that has already run its course, consider whether you need it.

Third, do not confuse responding with advocating. Sometimes advocacy requires a response, but sometimes it requires restraint. Before sending the fourth email in a contentious exchange, ask yourself whether the response advances your client's objective or simply answers something you do not want left unanswered. Those are not always the same thing.

Fourth, when delivering bad news, give the person somewhere to go next. Judges cannot change the law to make losing parties feel better, and lawyers cannot manufacture options that do not exist. But whenever possible, an ending can identify what happens next, what remains within the person's control, or what the lawyer or court expects going forward. People handle difficult information better when they understand what comes next.

Finally, think about the impression you

are leaving, not merely the point you are making. We can be firm without being cruel, direct without being dismissive, and confident without making someone else feel small. Those distinctions matter, particularly in a profession where today's opposing counsel may be tomorrow's co-counsel, mediator, judge, client referral source, or colleague.

### As the season changes

Soon August will become September. The evenings will become cooler, calendars will become fuller, and summer will begin disappearing faster than most of us would like. The transition happens gradually until one day we look around and realize that the season has changed. Professional relationships and reputations are built much the same way; not usually through one grand interaction, but through hundreds of small ones whose cumulative effect becomes the way people know and remember us.

We cannot control every impression someone forms of us, nor should we try. Lawyers and judges sometimes have to say things people do not want to hear, make decisions that disappoint them, take positions with which others strongly disagree, and engage in difficult conversations that cannot be made pleasant simply through better word choice. But we can control more than we sometimes realize. We can give thought to how we enter the conversation, how we conduct ourselves while we are in it, and how we choose to leave it.

So, as one season begins giving way to another, perhaps there are two questions worth carrying with us into the next one: What impression am I creating as this conversation begins, and what impression will remain after it ends?

Because in the practice of law, as in life, getting the last word may feel satisfying for a moment, but creating the right lasting impression can matter for years.

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