

Lawyers Can Build Trust Through The Spoken Word

By **Sidney Kanazawa**

A recent Wall Street Journal article noted that when Boeing Co.'s new incoming CEO Dave Calhoun wanted to reset Boeing's relationship with the Federal Aviation Administration, he called the head of the FAA and purposely left other executives and lawyers off the line.

He did not tweet. He did not text. He did not send an email or letter. Nor did he conduct a conference call or have his lawyer or other representatives make the call or listen in on the call. He made a personal call. He engaged the head of the FAA to participate with him in a live one-on-one improv, where both could offer insights into themselves, ask questions or present opening lines to explore the thoughts and emotions of the other — and develop a sense of trust in each other.



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But why call when you can write with the precise words and precise meaning you want to convey? Why risk the drama, uncertainty and vulnerability of a phone call? Why make a personal call when lawyers or other representatives can call on your behalf and save you from being a witness in a later dispute, or from making a potentially embarrassing misstatement?

Why? Because suspicion cannot be flipped into trust by preplanned, one-way communications through surrogates. To trust someone, we need to feel we are seeing and hearing that person's authentic self — not something they have constructed.

We need to feel we are past the masks and seeing a person's real core. The spontaneity and vulnerability of a two-way phone call is like a sporting event, where the outcome is not predetermined, but arises from an unscripted and transparent interaction that is authentic and real.

For lawyers, this is our challenge. According to the latest Gallup poll among professions, 85% of Americans say nurses' honesty and ethics are very high or high. Only 22% say the same about lawyers. Our ranking is admittedly higher than car salespeople (9%), members of Congress (12%) and business executives (20%), but it is significantly lower than engineers (66%), doctors (65%) and police officers (54%).

The public's ankle-high perception of our profession's integrity precludes us from relying solely on our degrees and licenses, and compels us to affirmatively demonstrate that we are trustworthy. Words alone (even with emojis, capitals and punctuation [smile]) will not suffice.

In today's social media world, there is a presumption that a tweet, a post, a text or an email is sufficient to convey our meaning, our feelings and our sincerity. It's fast, efficient and safe. A tweet/post/text/email can be sent from a phone. It arrives instantaneously. It creates an accurate record of what was said. And it can be one-way. No dialogue or difficult questions. Straight and to the point.

But is it? As we have seen through multiple disinformation campaigns built on fake memes, fake news and fake scandals, we cannot help but be skeptical of short, one-way text messages, especially when trying to reset a relationship. For lawyers, our already low baseline for trust requires us to do more.

A phone call can instantly clear misunderstandings and bolster credibility. As a person old enough to remember doing business before fax machines, emails, text messages and Instagram, I remember a time when picking up the phone was the most efficient means of getting something done. It was instantaneous. A voice spoken was instantly heard.

Statements could be clarified, modified and reversed. Questions and answers could dispel any misinterpretations. Gasps, silence, tone, volume and background noise added unspoken meaning. "Small talk" about the news of the day, weather, sports, entertainment, food, drinks, friends, family, weekend plans, travel, hopes and dreams gave us a more rounded picture of the other, and hinted at whether we could identify, respect and trust each other.

In-person meetings were even better. Facial expressions, body language, eyes, handshakes, touches, gestures, choice of food and drink, respect or lack of respect for others, golf ethics and other clues whispered — and sometimes screamed — whether the other was being sincere and worthy of trust.

The panoply of information was, of course, not perfect, and was still subject to unconscious biases. As a young lawyer, I once tried a maritime case in Los Angeles involving a seaman who got into a fight in Boston. I interviewed the police officer who broke up the fight by phone, and planned to use him as a witness at trial. The retired officer, however, refused to travel to Los Angeles, so I arranged to have his testimony beamed into the trial via videotelephone.

On the phone, the officer slurred his words, but I thought that was just the way he spoke. I never saw him before trial. When he appeared on the screen for the first time, his eyes looked a little bloodshot and his words were slurred. The seaman involved in the fight nudged me and whispered that that is how the officer was when he arrested him: "He's drunk." But we in Los Angeles could not be sure of his sobriety, because we could not see him walk to the stand nor could we smell his breath.

Nevertheless, the instantaneous improv nature of conversations can subtly guide us through difficult interactions and provide more inside information than any exchange of writings. In conversations, we expect an immediate response. Even a pause is a response. By contrast, when someone does not immediately respond to our text, we do not know if it is because of what we said or because the other has been distracted by something else.

The expected response clock of conversations is particularly valuable when testing ideas or in negotiations. We can gingerly throw out ideas, watch unspoken reactions and either pull back, modify or pursue our ideas, depending upon the how our audience responds. The expected response clock often tells us more in facial expressions, body language, pauses, change of tone and other immediate reactions than any exchange of words.

When you throw out an idea and there is a pause, you know the other is thinking about it. It may be possible acceptance of the idea. Or it may be polite contemplation of how to nicely reject your proposal. But you know they are thinking about what you said, and are not responding to something else.

Listening before speaking is one of the many arts of conversation. I once represented a client horribly injured in an industrial accident. Rather than file a written complaint and immediately start the litigation, I wrote a letter to my opponent (with a short snippet of my anticipated trial closing argument) and invited my opponent to lunch. At lunch, we talked about our respective lives, experiences, thoughts and opinions. Nothing about the case.

Toward the end of the lunch, we spoke for a few minutes about the case. In my mind, I had a settlement figure that I thought would be reasonable for the case. Through my opponent's comments, it became evident to me that my opponent — undoubtedly moved by my anticipated closing argument (you can't see my silly smile as I write this) — had valued the case twice as high as I had. I quickly pulled back my thoughts, reassessed and kept my figures to myself.

The two-way nature of conversations also permits us to show humility, kindness and concern. If nothing else, by turning our body and eyes toward the speaker with our mouth shut, we show we are listening and present. As a mediator, I have learned this is more powerful than I ever imagined. But I should have known this long before I became a full-time mediator and arbitrator.

I once got into a traffic accident where I clipped the back of a vehicle traveling perpendicular to me and caused that vehicle to be flipped into some roadside bushes. I stopped and rushed to the other vehicle to check on the driver. Ignoring my car insurance card (which practically says, "never say you're sorry or admit or acknowledge anything"), I ran up to the driver's window and immediately said, "I'm so sorry. Are you okay?"

Apparently shocked by my admission of fault, the driver, preparing to be angry, deflated his ire, instantly lowered the temperature in our encounter, expressed appreciation for my concern and then proceeded to collaborate with me about how to right his vehicle and get him on his way. Amazingly, the vehicle was not significantly damaged and we resolved this dispute among ourselves in a matter of days.

Spontaneous conversations with empathy can work in large crowds too. At an angry meeting of potential oil spill claimants, I stepped to the podium (in jeans, not in my lawyer costume — giving me a few extra ticks of credibility) amid shouts criticizing the stupidity of my foreign ship owner clients. To the next person that yelled at me, I asked: "What should we do now that we are not doing already?"

The response was thoughtful and helpful. We wrote it down on a large white board behind me. I repeated that question to every person who stood up and yelled at me. Pretty soon, the white board was filled with the angry audience's suggestions. At this point, a fellow at the back of the crowd stood up and shouted, "We don't give a d— about all of this. Where's my money?"

Suddenly, a woman in the front row (who was gathering contact information from the crowd for a mass action against my clients), stood up, turned to the man in the back, and said, "Sit down and shut up. These guys are trying to help." Our questions flipped the crowd and made them supporters rather than opponents. As a result, we settled 600 claims within two weeks of the spill, and all 2,000-plus claims within three months. A tweet, text, email or long letter could not have accomplished a similar result.

To master the live unscripted improv of conversations requires practice. And there are more than enough people to practice with all around us if we just take off our ear buds, look at

each other and talk — or just pick up the phone. As Kobe Bryant would say, if you want to master it, practice it.

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