

Exploring the Effectiveness of Nonverbal Cues as a Means of Improving the Communication Skills of Law Students and Legal Practitioners

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Abstract

Modern legal studies at tertiary institutions in South Africa exclude the study of nonverbal communication as a key component in the communicative process. Therefore, within the domain of the legal profession, there has been a degree of ignorance about the effectiveness of nonverbal cues and signs as a means of improving the legal and communicative skills of attorneys. Some investigations have been undertaken on the role and importance of nonverbal behaviour as a communicative tool, yet limited research had been undertaken on its impact and benefits to the legal profession. The participants in the study were all practicing attorneys with legal experience ranging from one to twenty years. From the study, it emerged that the current one-dimensional communicative legal system constituted a challenge to most young attorneys. The study found that an understanding of the different components of nonverbal communication and its sign structures was crucial for attorneys to gain insight into the subjective meanings that emerged during the consultation process. The findings suggest that the study of nonverbal communication amalgamated with traditional legal skills would help remove the deep-seated dichotomy that still exists between theory and practice in the LLB curricula.

Keywords: Body Language, Gestures, Consultation and Nonverbal Communication.

Introduction

Today's fast-paced world is becoming increasingly characterised by communication which is a fundamental component of effective lawyering. The true potential of a lawyer is often determined by the communicative skills that they possess (Amini & Rahimini 2014). Effective communication goes beyond the verbal component (Muhammad & Villarreal 2017:2). Nonverbal communication is an integral component of the communicative process and is used by people from all backgrounds to communicate consciously and unconsciously (Otu 2015:1). Despite the fact that academic research has explored the characteristics and dynamics of both verbal and nonverbal communication, very little research has been done on the relevance of nonverbal communication in law. Due to law school's preoccupation with legal rules and the verbal component, there appears to be a degree of ignorance about the effectiveness of nonverbal communication in the legal arena and it is often ignored as an effective tool in the communication process (Wilkins 2013:104). The purpose of this paper is to explore the need for the recognition of nonverbal communication in the legal arena. In exploring this gap in the law, the researcher adopted a qualitative methodology approach where in-depth interviews were conducted with ten participants who were all attorneys. In addition to analysing the literature available on the subject matter, it was important for the researcher to ascertain the views of the attorneys on the importance and relevance of nonverbal communication to them. The various components outlined in the article such as the literature review, problem statement, objectives, research methodology, data analysis and results as well as strengths and weaknesses of the study led to the eventual finding that supports the need to incorporate nonverbal training into the law curriculum. Crucially, the findings of the study point towards the need to improve the nonverbal communicative skills of the aspiring attorney which can go a long way towards enhancing the reputation of the legal profession in South Africa.

Brief Review of the Relevant Literature

What is the true meaning of law? How does one develop legal knowledge? How does an attorney acquire legal skills? Throughout the history of academic law, these questions have sparked healthy debate but sadly very legal scholars have been able to grasp and understand the true nature of law. The layperson

may wonder as to why legally trained students are unable to grasp the true nature of law. Catterell (1994:7) argues that the answer lies in the notion that law has two distinct faces. The obvious one is where law is viewed as a doctrine of ideas which are constantly analysed, interpreted and developed whilst the other, the 'hidden face' is where law regulates the various facets of social life (Catterall 1994:7).

The influence of a sociological movement in jurisprudence where social and economic factors were regarded as crucial determinants in legal decisions reinforced the realist view that merely applying abstract principles does not reflect the reality of a legal system. According to Tokarz *et al.* (2013:11), it is extremely difficult for the trained legal mind to see beyond the realms of the legal world. For centuries, the law teacher and student have seen law as traditional and ceremonial with the primitive function of maintaining peace and order (Dilloff 2013:427). The court and judges were seen as the sole instrument in giving effect to the function of law where judicial decisions were only guided by legal rules, which rules were clearly set out in legal texts and case precedents (Wilkins 2013:104). Law was seen as inert, objective and impervious to the social climate. It was against this traditional formalistic background that the emphasis on the verbal and the written emerged.

The notion of law as a set of technical instruments without imaginative consideration of community values and social issues contributed towards a delay in the movement away from the backdrop of a formal legal order (McDougal 1947: 56). In recent times, a growing awareness has emerged that sees law as an important aspect of society which cannot be isolated from social phenomena (Cotterell 2). According to Llewelyn (2008: 25), the need to encourage the law student to learn, 'how to think rather than just what to know' is crucial to improving the legal skills of the attorney. For the modern day law student, the ability to, combine astute legal analysis with an awareness of social conditions is the key to improving their legal minds (Menski 2011:155).

Tokarz *et al.* (2013:15) states that a lawyer's business involves knowing their subject matter and this can be achieved by obtaining specific information about the social structure, the organization and the practices of the community in which they live in. It is therefore necessary for the legal mind to be receptive to the progressive nature of the world that one is living in. According to Jackson (1968:372), law must be seen and applied as more than just a set of legal rules.

The study highlights the need for the modern day lawyer to be skilled

in the vast array of legal variables in order to deal with contemporary legal issues. The study focused to a large extent on the ‘real world’ of the lawyer and proceeds from the basis that lawyers must apply the law through the actions of ‘real people’ – their clients rather than as conceptual deductions from the pages of legal documents.

Sarat and Felstiner (1998:98) state that clients expect their lawyers to provide legal advice and discuss outcomes as compared to reciting formal rules. In addition to perusing the relevant legal materials, the attorney must comprehend the problem at hand and then create a credible legal argument. In order to understand the nature of the problem, the attorney must possess effective communicative skills to elicit relevant material from the client.

Communication is crucial to the concept of law-in-action and it is this often overlooked ‘real factor’ that determines the true potential of an attorney (Amini & Rahimini 2014). The experience of nonverbal communication is a field that has been largely ignored in the legal sector and nonverbal communication is one of those essential variables that impact strongly on the entire communicative process. According to Laswell and McDougal (1943:202), good legal representation involves extracting ‘every inch’ of relevant information from the client – even information that is not forthcoming verbally. The exploration and analysis of nonverbal cues during the consultation process is crucial to extracting relevant and vital information that is necessary for the building of a strong case.

The entire communicative process is guided by the meaning that is attached to signs that encompass both verbal and nonverbal communication. Frost (1993:5) notes that communication is an important component in the legal system and is a process whereby meaning is transferred from the sender to the receiver. The three main forms of communication are verbal, nonverbal and vocal communication (Frost 1993:5). According to Burgoon *et al.* (2011:241), communication generally takes place verbally and nonverbally.

Verbal communication involves words that one use to convey meaning, whilst nonverbal communication involves communication by means other than words (Knapp *et al.* 2013). The features of nonverbal communication are boundless and the channels of conveying messages can take place through, amongst others, touch, smell, facial expressions, body posturing, vocal conveyance and even silence (Cunningham *et al.* 2004:305). Nonverbal communication, an important cog in the communicative process has largely been neglected as part of the total legal complex. The reasons are

understandable. It is accepted that words and language are essential to a scholarly study of law but there are other important variables that have entered the fray, with non-verbal communication being one of them (Burgoon, Guerrero & Manunov 2011:242).

Meaning can be transferred via different means or channels and in order to communicate effectively, one needs to be able to exploit different communication channels. According to Morreale *et al.* (2015:27), this can be done by taking into consideration the message type, environment and the audience. By exploring the different channels and strategies, one becomes more versatile as a communicator in varying situations (Morreale *et al.* 2015:27).

Nonverbal communication can take place consciously, unconsciously, between persons, within the inner being of a person and sometimes even against the wishes of the sender of the message (Cunningham *et al.* 2004:314). An understanding of nonverbal behaviour is therefore important in perceiving own interpersonal dynamics as well as understanding the intra-psychic functioning of others (Carter 2013:26). Mehrabian (1972:52) highlighted the importance of nonverbal communication by attaching specific relative values for the components of the communicative process.

According to Mehrabian (1972:52), the impact of the nonverbal component on interpersonal communication can be as high as ninety-three percent and although other studies have reached slightly different figures, what is central to most studies done, is the finding that nonverbal communication plays a dominant role in the interpersonal communicative process. It is interesting to note that it is not easy to manipulate nonverbal communication as facial expressions, body language and gestures are usually controlled by feelings and emotions as compared to words and language (Milford 2001:33). In the legal arena meaning need not only be derived from texts or the verbal but by the nonverbal signs or signals that are emitted during the legal process. This modern dynamic approach to interpreting and analysing law in its symbolic form is crucial to adding richness and depth to the way in which law is practiced.

Laswell and McDougal (1943: 52) note that for the attorney to provide the best possible representation to the client, she must extract ‘every inch’ of relevant information from the client – even information that is not forthcoming verbally. Within the domain of the legal environment are numerous nonverbal signs that convey meaning but to identify these signs and interpret the meaning,

the attorney has to look beyond the written text (Goodrich 1953: 96). The exploration and analysis of the nonverbal signs that are emitted from the client during the consultation process will allow the attorney to gather and extract all the vital information and meaning that is necessary for the building of a strong case. According to Burgoon *et al.* (2011:249), a huge array of behaviour exists within the confines of nonverbal communication but it is a neglected area of communication.

Rostain *et al.* (2012) note that an attorney can determine how to conduct the interview and react to the client by merely observing and interpreting the basic body language of the client such as gestures, facial expressions and body movement. Even in a courtroom setting, nonverbal communication subtly impacts on the entire proceedings of a trial during which gestures and facial expressions are transmitted by every individual in the court (Iyer 2011). The judge silently communicates her attitudes and feelings about the case through her facial expressions and body language, whilst the witnesses on the stand may reveal more through fidgeting with their clothes and body movements than through their testimony (Iyer 20114).

Iyer further points out that the body language of attorneys is important in building a good affinity with witnesses and judges. The use of positive nonverbal cues such as smiling and calm vocal tones is an important tool in influencing these court officials whilst negative nonverbal cues such as hostile gestures and lack of eye contact can be devastating to the attorney's prospect of success in the case (Devine & Caughlin 2014: 111). The ability of an attorney to elicit favourable information out of a client or witness depends largely on nonverbal cues such as eye contact, facial expressions, body positioning, tone of voice and head nods (Devine & Caughlin 2014: 115). Research on nonverbal communication has created a thoughtful social behaviour and it is now accepted that it can be used in different social settings such as job interviews, psychiatric analysis, intercultural communiqué, and occupational exercise within the different professions. People can now be trained on developing nonverbal perceptive skills (Constanzo & Archer 1991:223).

It is also essential for an attorney to be able to interpret the nonverbal cues that accompany the spoken, especially when such cues are inconsistent with the verbal. These hostile cues, such as the lack of eye contact or sarcastic tones are signs that the witness is uncomfortable and possibly deceptive in their responses (Remland & Jones 1989:71). Remland and Jones further note that it is not easy for people to exercise conscious control over the non-verbal signals

but words can be easily rehearsed. A skilled attorney can use these nonverbal signs to ‘breakdown the witness or client’ which would have been extremely difficult if the attorney relied exclusively on the verbal testimony. Detecting deception on the part of a witness is vital to attacking the credibility of that witness and nonverbal signals of deception can be picked up by careful observation (Eadie 2009). For Eadie, some of the most reliable nonverbal indicators are: blinking, pupil dilation, speech errors, vocal pitch, and hesitations.

It is human nature to look to the nonverbal system when one is cautious about the authenticity of the verbal message (Eunson 2013:232). Eunson argues that it is important to first determine a disjoint between the spoken and the nonverbal signals and once this is ascertained, the next step would be to look for a change in the verbal indicators. Knapp *et al.* (2013) is of the view that people have conscious control over the meaning when they communicate verbally but lesser control over the psychological responses or gestures such as blushing, sighing etc. These communicative cues that one have limited conscious control over, provides the receiver with important information as to true intentions. Very often these cues are nonverbal and are referred to as leakage cues. The ability to read leakage cues provides the best protection against deceptive communication.

A skilful trial lawyer or litigator cannot be successful without mastering the ability to decode nonverbal behaviour (Nierenberg & Calero 1980:155). The first consultation process between the attorney and client is the most crucial in the legal process, as the client’s statement forms the basis of her case. According to Rostain *et al.* (2012) the consultation process is pivotal to obtaining pertinent information from client that will then be used by the attorney to provide the best possible representation for the client. It is important for the attorney to get some idea of the problem by creating a relaxed atmosphere that then induces feelings of trust and candidness from the client (Prim & Porterfield 1956:3).

According to Brayne (2002:283) it is cause for concern that many newly qualified attorneys spend little time developing their interaction skills. However, it is imperative for the attorney to break through the ‘veil of reluctance’ in order to elicit as much information from the client as possible. Communicational skills in the form of the verbal and nonverbal are crucial in fostering a greater degree of interaction during the consultation process (Burgoon *et al.* 2011: 251).

The legal environment can be very intimidating to the client due to the formal nature of proceedings, the legal jargon used by skilled individuals, formal dress and organisational hierarchies amongst other aspects (Peters 2006). However, through nonverbal communication in the form of highlighting shared features, building trust and fostering credibility, one can break down some of these barriers and thereby be able to communicate across cultures, languages and legal systems (Peters 2006). The attorney can use nonverbal communication to bring about positive emotions on the part of the client which in turn allows for easier verbalisation of the message that needs to come across (Sauter 2017). The fact that people can decode foreign verbal language by following nonverbal cues, illustrates the power and value of this form of communication to reinforce the verbal (Otu 2015). In the legal arena, nonverbal communication should not only be used negatively to establish dominance and authority but it should be used as a tool to make the legal system more convivial to those that find it intimidating and discouraging.

It must be noted that there is no single guideline book, which can accurately interpret nonverbal communication due to certain nonverbal cues having manifold meanings within different contexts. It is therefore imperative to ensure that nonverbal behaviour is interpreted within the correct context and not as an isolated display. Digital and video recording have drastically improved the precision and reliability of nonverbal measuring with some tests showing an accuracy of over ninety percent (Coan & Allen 2007:225). Studies have revealed the consistency of nonverbal behaviour in different channels, thereby improving the reliability of such a measures (Davitz 1964:21).

Problem Statement

Modern legal studies at most tertiary institutions in South Africa do not include the study of nonverbal communication as a key component in the communicative process. Therefore, within the domain of the legal profession, there is a degree of ignorance about the effectiveness of non-verbal cues and signs as a means of improving the legal and communicative skills of attorneys. The study attempted to answer the following questions:

- What is the significance of non-verbal communication to the attorney and the client in a dual legal relationship?

- Would the ability to read and decode non-verbal signs add value to the attorney and the legal profession in general?

Rationale of the Study

It is hoped that the results of the investigation will influence a review of the current LLB curriculum at tertiary institutions in South Africa so as to incorporate the study of non-verbal communication into the programme. A study of non-verbal communication should greatly improve the practical legal skills of the aspiring attorney, and enhance the reputation of the legal profession in South Africa. In addition to the above, the research should be of interest to academics, legal practitioners and law students who view communication and the science of interpreting meaning as the most important tool of their trade.

Research Plan and Methodology

The study adopted a qualitative methodology with a case study approach where in-depth interviews with ten participants. Their responses were then analysed and the findings discussed. From a qualitative perspective, it was hoped that a holistic overview of the experiences of the attorney in practice would set the tone for a journey of discovery into the realm of nonverbal communication in the legal sector. The experience of the attorney within the context of the consultation process was studied in accordance with the principles of phenomenology.

Phenomenology stems ‘from the existential-phenomenological approach in philosophy which is (and was) concerned about human existence and experience, rather than metaphysical reality, and the way in which phenomena are experienced by human beings’ (Terre Blanche *et al.* 2006). This method focuses on the ‘lived world of experience’ where the personal experiences of people are detailed within their physical environment by accessing their conscious mind. By understanding and comprehending the personal experiences of people, without the baggage of one’s own assumptions and expectations, it becomes easier to capture the essence of their feelings and thoughts in the world of the subject. There was no better way to understand the mind-set of the attorney than by interviewing them in their own work environment – that is within the confines of their office.

In order to successfully adopt the phenomenological method of research, it was imperative to see things from the point of view of the subject matter. There was also a deliberate attempt to remain as free as possible from any preconceptions prior to discussions with the subject matter. The phenomenological method was used to understand the lived experiences of the attorney in their natural setting and appreciate how they made sense of the social world within the confines of the legal world (Creswell 2013). The advantage of using the phenomenological method was that it allowed for information to emerge naturally, the data was less likely to be contaminated by the techniques used and a comprehensive data of human experience was derived. However, due to the limited literature available on nonverbal communication within the legal sector, it was decided to conduct in-depth interviews in order to understand the subjects' true feelings and daily experiences in respect of the subject matter.

Dowling and Brown (2010) indicate that interviews allow the researcher to probe, prompt and obtain vital information, explore complex issues, and gain the true perspectives of participants, including their feelings, experiences, ideas and life histories. They note that interviewing is the predominant mode of data collection in qualitative research. In-depth interviews allow the researcher '...to understand the world from the participant's point of view, to unfold the meaning of people's experiences, and to uncover their lived world prior to scientific explanations' (Kvale 1996). The interviews allowed me to gain insight into the subjective meanings that the attorneys attach to the communicative process within the context of the consultation process.

It also allowed for an extensive amount of verbal data to be collected from a modest number of participants. It was necessary to choose subjects who have had particular experience in the subject matter so that their input and experiences could be fully analysed through direct interaction with them. Selecting a random sample of participants who relay their experiences through questionnaires would have failed to achieve the desired result.

According to De Vos (2002), the phenomenological approach requires the researcher to make use of naturalistic methods of study, which involve conversations and interactions with the subjects. This strategy of interpretative enquiry requires, 'participant observation and long interviews (with up to ten people) as methods of data collection'. In order to learn from people and arrive at conclusions, one needs to study people. Part of the process of studying

people involves ‘sampling their experiences’. To extract rich information, participants were selected who are practicing attorneys with specific experience under the study and with the ability to contribute towards the subject matter effectively. This method of selection is referred to as ‘purposive sampling’ where the sampling is done with a specific purpose in mind that is to use participants that are typical of the population (Punch 1998). It forms part of non-probability sampling where the selection of samples is not randomly and statistically done.

The participants selected for this study comprised five males and five females from diverse backgrounds, all currently working as attorneys at the Empangeni Justice Centre in Kwazulu-Natal. They were conducted via the Justice Centre Executive and interviewed within the space of one week. In an effort to conform to ethical codes of practice with regard to informed consent, the participants were informed about the content and objectives of the study, the interview process, details of the researcher, the issue of anonymity and the manner in which the results were to be disseminated. All the participants gave their written consent for their involvement in the study. By inductively analysing the raw data, it was used to establish common themes without the restraints of making deductions in advance, which could create preconceptions that obscure the data. The researchers were mindful of the fact that the qualitative data consisted of interactions and observations rather than statistics and chose to search for common themes, words and patterns when analysing the data.

Data Analysis

The study explored the results of the investigation into the participants’ conscious experience of using nonverbal techniques within the domain of their legal environment. As part of the study, the transcribed data was coded and a search for common themes was made when organizing the data. The identified codes were looked at and the themes that recurred in the data were then highlighted. The common themes were then placed into categories, which were easily identifiable. Those codes that did not fit into categories were kept separately. The transcripts were re-read on numerous occasions to ensure that all vital information was captured and placed into the relevant categories. It was searched for any links or connections in the various categories. These direct links were highlighted by using network diagrams to simplify the

process. After analysing the data inductively, it became necessary to interpret the data. This important stage of the study viewed determined the relevance of the study in that one was now in a position to establish the findings and results that hopefully established new insights into the research area. From the summaries of the data, the following themes emerged:

- Challenging Aspects of the Legal Profession
- Non-verbal Communication
- Interaction
- Body Language
- Silence
- The Experience of Deception
- Culture
- Confusion
- Facial Expressions
- The LLB Curriculum

Results and Evaluation

The aims and objectives of the study were to assist in restoring the standard and quality of services offered by attorneys to their clients by:

- Understanding their experiences during the consultation process;
- learning of their difficulties during the communicative process with the client;
- Understanding the meaning and substance that they attribute to nonverbal communication;
- Understanding their nonverbal experiences during the consultation process; and
- Learning of their views on the role and future of nonverbal communication in the development of the communicative legal skills of the attorney.

From the available and relevant literature it was found that nonverbal communication like verbal communication is an essential cog in the communicative process. It is especially important during the consultation

process. Nonverbal communication is vital during the early stages of the consultation process as it impacts greatly on first impressions. First impressions provide the platform from which attorneys can make judgments and decisions. It is vital for the attorney to set the ‘stage’ for the consultation process and to motivate the client to participate freely and accurately. Nonverbal communication in the form of personal appearance, body language, vocal cues, facial expressions, personal space and posture play important roles in obtaining accurate information and deserves the attorney’s conscious attention. Establishing good rapport with the client through a handshake or smile can impact on the success of the consultation. Getting the client to talk is vital to the consultation process and this can only be done through establishing a trusting environment. An understanding of nonverbal communication is therefore vital to establishing good interactive skills. Analysing, interpreting and utilizing the nonverbal component during the communicative legal process have largely been ignored.

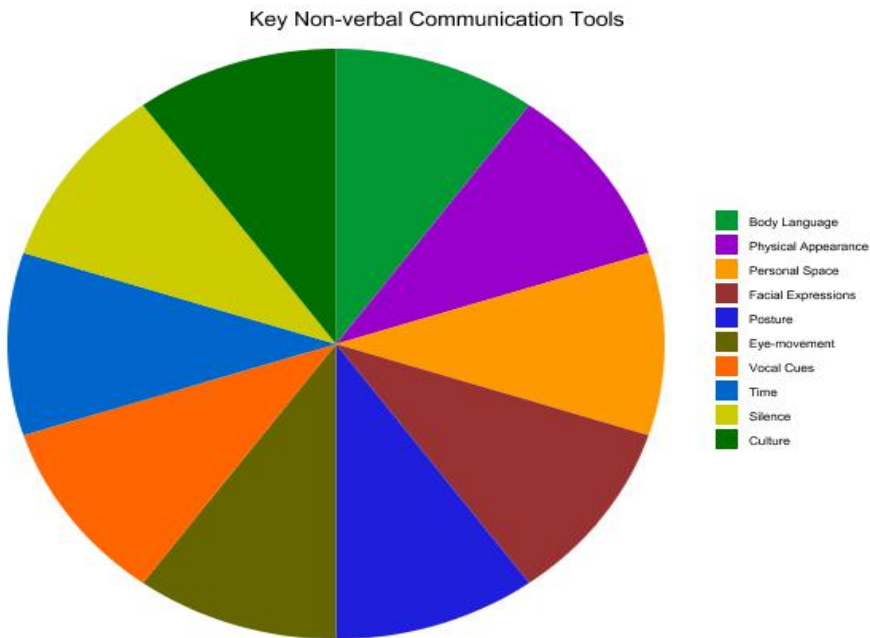


Figure 1. Non-verbal components that should be used

Figure 1 above shows the multitude of non-verbal components that should be used during the consultation process in order to facilitate interaction.

The intention during the interview stage was to gather information on nonverbal communication – its use, relevance and attitudes of the participants towards this underutilized component in the interactive legal process. Common themes emerged during the analysis of the participant's experiences of their interactions with clients. It was a point to record the distinctive features of each experience in its social context. However even though the distinctive nature of each experience was noted, due regard was given to them in relation to each other and not as independent entities. The table marked Table 1 below displays the themes extracted from the experiences of the participants. These themes were gleaned from the interviews with the participants. The themes divided by the total number of participants reflects the percentages arrived at in the summary below.

For the purposes of convenience, the letter P together with a numerical denomination reflects the participants.

Themes	P 1	P 2	P 3	P 4	P 5	P 6	P 7	P 8	P 9	P10	Total
Difficult/Challenging	1	1	1	1	1	1	1	1	1	1	10
Interaction	1	1	1	1			1	1	1		7
Deceit	1	1		1	1				1		5
Non-verbal Communication	1			1	1	1	1	1	1	1	8
Body language	1	1			1	1	1	1	1	1	8
Facial Expressions				1		1	1		1	1	5
Culture							1			1	2
Caution	1	1							1	1	4
Silence	1										1
Confusion	1	1		1	1	1	1	1			7

Table 1: Themes extracted

All the participants in this study (100%) experienced working as an attorney extremely challenging. It appears that different components of their profession such as court work and consultations with clients caused the greatest difficulty for them. These areas of difficulty appeared to contribute to a general feeling of inadequacy and low morale amongst many of them. The younger attorneys found the job especially challenging. It appeared that this was due to a modest degree of training in respect of certain legal skills as well as the lack of experience in practice.

Moral dilemmas around representing guilty clients appeared to contribute significantly towards feelings of guilt and anguish. One of the participants indicated to the during a follow-up informal conversation that she did not want to reveal the internal conflict and stress that she goes through on a daily basis because she may be deemed a ‘weak attorney’ by her colleagues. It became apparent that some of the participants chose to detach themselves from their ‘work society’ for fear of complication and emotional attachment with their clients. A discussion with the supervisory attorney confirmed that some of the participants appeared cold and impassive during their interactions with their clients. The researcher was told that they failed to display any emotion during the consultation process.

The majority of participants (70%) indicated that interacting with clients during the consultation process posed the greatest challenge for them. Some of the participants found the experience of dealing with different personalities cumbersome. Levels of tension increased when there appeared to be a ‘breakdown in communication’ between the attorney and the client. The participants indicated that they experienced humiliating treatment at the hands of some clients who felt that they lacked the experience and skill to represent them. Communicating across different language barriers exacerbated the process of ‘getting through’ to client on a personal and professional level. Gaining the trust and confidence of the client posed a serious challenge to most participants.

Some of the participants (50%) found the experience of dealing with different personalities cumbersome, especially those who were hesitant to divulge the truth. Many of the participants felt that their clients were not being truthful during the initial consultation. The theme of deception remained prevalent during the interview process.

At least 40% of the participants indicated that they experienced humiliating treatment at the hands of some clients who called them ‘state

attorneys' and at times asked for them to be replaced by a more qualified attorney. The clients by and large failed to 'open up' during the consultation process. They remained cautious during the consultation process. The participants were asked for their input as to what caused their clients to refrain from 'opening up'. Many felt that the legal process is not 'user-friendly' for the client. It was mentioned that the clients were unwilling to divulge information because they are fearful of the attorney and the legal process. It is only once they gain your confidence and relax do they become more comfortable.

There was a general feeling by 70% of the participants that confusion and a lack of understanding of the communicative process hindered their ability to effectively interact with the client during the consultation process. Many of the challenges experienced by the participants during the consultation process can be attributed to a 'communicative ineptness' on their part. This appears to correspond with the views of Rostain *et al.* (2012) that looked at the concept of 'communicative ineptness' and suggested that it stems from the client's reaction to the attorney's failure to communicate effectively. Such attributions, they theorise, can be dealt with by lawyers communicating in such a way as to deal successfully with those clients who are not themselves good communicators and this will result in the feeling of failure becoming less frequent.

Awareness of the different components of the attorney-client communicative process and the improvement of communicative techniques are paramount in addressing some of the challenges facing attorneys who grapple with the interactive process (Rostain *et al.* 2012). As mentioned earlier, communication comprises of both a verbal and nonverbal component. The participants revealed a basic understanding of non-verbal communication. By their own admission, their use of the nonverbal component during the consultation process was limited. This was mainly due to a lack of training and understanding of nonverbal communication.

Fuller and Quesada (1973: 361) in their studies revealed that communication whether it is verbal or nonverbal, between lawyer and client is necessary in order to determine initial needs and expectations of both parties during the interaction process. They indicated that if the communication is lacking, then the hope of success and satisfaction is negatively affected. The 'communicative ineptness' on the part of a number of the participants may be attributed to their failure in recognizing and understanding the binary thought

patterns, sign systems and semiotic processes that are embedded in the attorney, client consultation process.

The majority of participants revealed a basic understanding of nonverbal communication. At least 50% of the participants mentioned that facial expressions were an integral part of their consultation technique. By their own admission, their use of the nonverbal component during the consultation process was limited. This was mainly due to a lack of training and understanding of nonverbal communication. They referred randomly to body language techniques and signs that they used during the consultation process. Some of participants indicated that they used nonverbal communication at times during the consultation process and to a lesser degree at trial. Of concern to the researcher was that none of the participants made any mention of other non-verbal components such as time, space or attire which is vital cogs in their communicative process.

It became clear that the participants definition of nonverbal communication merely 'scraped the surface' in terms of a true understanding of the intricacies of non-verbal communication. As mentioned earlier, there was a lack of mention of key primary nonverbal functions such as physical appearance, personal space, facial expressions, posture, eye contact and vocal cues. Only 20% of the participants mentioned culture as a factor that is crucial to the communicative process.

Only one of the participants (10%) regarded silence as important component of nonverbal communication. One other participant (10%) considered physical appearance as a non-verbal component that is crucial to the communicative process. This indicated a lack of awareness and understanding of essential cogs in the communicative process. However, Bittman and Thomas (2014:34) views silence as an important component of legal proceedings where some legal systems consider the silence of the accused as an expression of guilt whereas other systems do not consider silence as a key negative factor. It is therefore imperative for the attorney to interpret silence in the correct context and this may lead to more meaningful interactions between the attorney and client.

The findings of this study suggest that the majority of participants perceive their involvement in the consultation process as being controlled by the verbal component. This is corroborated by the researcher's observation of some of the participants. Two of the participants were not conscious of their appearance during the interview process. Their shirts were not tucked in and

their gowns were strewn across the table. They displayed very few ‘warm’ gestures such as forward leans, upright posture and decreased distance. The supervisory attorney told me that some of the participants always appeared cold and impassive during the consultation process.

Significantly, absent from the participants accounts of nonverbal communication was the issue of perception. Studies done by Hickson and Stacks (1993:11) revealed that perception is an important part of nonverbal communication. By being attentive and utilizing nonverbal behaviours that show propinquity one sends out positive signals. Other sign systems that impact on the communicative process include the physical environment, the intensity of the setting and the maturity of the individual.

All the participants felt that an understanding of nonverbal communication was vital to lawyers as it would broaden their communication skills. The participants made it quite clear that non-verbal communication did not form part of their legal studies at tertiary level. The researcher noted that the participants completed their LLB degrees at different institutions in Kwazulu-Natal. This indicates that nonverbal communication does not form an integral part of the LLB curriculum at most tertiary institutions across KwaZulu-Natal. This is startling considering that the ‘art of communication’ is an integral part of the legal process.

It was interesting to note that despite none of the participants having studied nonverbal communication during their LLB studies, all of them expressed the opinion that it such training should be introduced at tertiary level. There was a general feeling amongst most of the participants that you could obtain more information from clients by using non-verbal communication. Those participants with legal experience were able to call on that experience when relying on nonverbal communication during the court and consultation process. The participants expressed genuine interest in getting to understand nonverbal communication and using that knowledge as a means of improving their communicative legal skills.

Evaluation of the Study – Strengths and Weaknesses

It is important for the researcher to provide an evaluation of the present study in terms of its relative strengths and weaknesses. The study commenced with a theoretical overview of the existing literature on nonverbal communication.

People know from the literature available on non-verbal communication that it plays an important role in the process of social influence, communication of emotion and interpersonal relationships. The study focused on a relatively 'untouched' area of legal communication. Even though there has been limited work done on nonverbal communication in the legal arena, one knows from the literature available on non-verbal communication across various other disciplines that it can play a vital role in improving the communicative legal skills of the attorney. A platform has been created for contributions towards theory-building practices in this field.

A qualitative phenomenological approach broadened the understanding of the participant's experiences and was allowed to be privy to their personal interpretations and perspectives on non-verbal communication in the legal arena. By recording and documenting their experiences participants gained valuable insight into their emotional and psychological responses as part of their legal practices. The analysis of their experiences yielded unique and distinct themes to emerge, which was then formulated into a theoretical experience.

The 'purposive sampling' approach was followed. This approach permitted the selection of a specific sample group (attorneys with varying degrees of experience) and this allowed for a greater understanding in respect of their outlook on the importance and relevance of non-verbal communication to the attorney and the legal profession in general. From experience as a practicing attorney combined with one of the researchers employment at the Justice Centre has provided the ideal background for him to understand his research question. The participants represented samples from different cultural and ethnic backgrounds. In being given the opportunity to understand their experiences in their legal setting, it was possible to achieve many of the aims and objectives of the study. The decision to adopt the interview design as compared to a questionnaire format allowed the immediate and true experiences of the participants to emerge.

It was therefore possible to establish the lawyers' perceptions of the implementation of nonverbal techniques during the consultation process. Many of the participants expressed difficulty in interacting with the client. By their own accord, most of them lacked any understanding of the different components of nonverbal communication and its sign structures. However, all the participants acknowledged the important role that nonverbal communication could play in the development of their communicative legal

skills. They were unanimous in their call for the introduction of nonverbal communication into the LLB curriculum at tertiary level.

It is important to focus on possible weaknesses of the study. Given the modest number of participants in this study, it would be iniquitous to generalize these findings to legal professionals from different sectors of the legal spectrum. The experiences of presiding officers for instance may vary from the experiences of attorneys and advocates in respect of their nonverbal communicative techniques. The experiences of the client in addition to the attorney would have provided a more holistic understanding of nonverbal communication during the consultation process.

Another issue with regard to the limitations of this study is the subjective influence of the researcher. One had been a practicing attorney in the past, and his presence and contributions during the interview and entire research process may have had an influence on the outcome of the findings. However, the phenomenologist views subjectivity as the ‘stepping stone’ to achieving true objectivity and it is impossible to eliminate the subjective influence of the researcher in its entirety. From a phenomenological perspective, true objectivity involves using every possible means to be as true to the phenomenon as possible. In this respect, different means was used such as coding, follow -up interviews, transcripts as well as independent assistants to verify the findings of the study and provide an even-handed viewpoint of the experiences of the participants.

Conclusion

The study indicates that there needs to be a paradigm shift towards the recognition of nonverbal communication in the legal arena. An understanding of nonverbal communication is crucial to the process as it cuts across methodological boundaries and illustrates how ‘thought, knowledge and behaviour’ interact to create meaning. In applying nonverbal legal communication, one concept that is central to the process is that of interpretation. For the attorney, the interpretation of nonverbal signs is crucial to the legal communicative process. The apparent lack of nonverbal communication in the legal process is due largely to a failure to recognize and interpret these nonverbal signs in the legal communicative process.

One can therefore fashion conjectures based on clues that are visible

throughout the consultation until a match is made and a conclusion reached. Law students need appropriate and professional training in respect of nonverbal skills. This can be done at tertiary level as well as professional legal training during articles of clerkship. Adequate support must be available to assist mainstream lecturers in developing their skills and competencies required to teach nonverbal communication. The legal profession needs to be positive in terms of their perceptions towards this form of communication, which has received very little attention in the past.

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