

Using Body Language With Your Client: a Controversial Soft Skill?

DR. HARRY WITCHEL

University of Bristol

Executive summary

Using body language with clients is a controversial soft skill because lawyers may disagree on the priorities they have for their work. The ambiguity intrinsic to interpreting and using body language impedes routine use of voice tone adjustment when telephoning clients or other lawyers. Collaborative law and mediation are likely contexts for the explicit use of body language skills because of their stress on negotiation.

Dr. Andrew Bass and I were co-presenting for Resolution's 2005 programme for teaching soft skills, but we disagreed as to when body language would be most useful in family law. As such, we were keen to find out how these soft skills were already being used by Resolution members. When we facilitated our workshop entitled "Your client's body language and you" at the three Resolution meetings in Cheltenham, London and Manchester, we asked whether those family solicitors present already used body language for:

- **Pastoral care**, particularly of clients in an emotionally charged state.
- **Detection of hidden agendas**, and detecting clients' lying about their asset position.
- **Sales**, when engaging and keeping clients during the first interview.
- **Negotiation**, to learn and influence what the other side will currently accept.

I personally assumed that because they often work with distraught clients, most family solicitors would informally use body language with their clients as a pastoral adjunct, and that a handful of very perceptive solicitors would deliberately use body language to detect whether their clients were lying about their asset position. I thought that the main professional resistance to formally employing body language would be when doing the "dirty work" of sales or negotiation. I also suspected that most solicitors would doubt the efficacy of working on their voice tone when on the telephone with other solicitors. In a nutshell, I believed that family lawyers would be comfortable with the idea that body language techniques lead to rapport, but not with the idea that rapport leads to professional trust and even to professional respect. Dr. Bass disagreed with me.

We probed for what the solicitors were already doing with body language when they were performing the exercises. We trained the groups with exercises to detect subtle signals that may be clues for lying or ambivalent feelings. For example, incongruity is when the body language includes mixed messages; in some cases the body language or voice tone does not match what is being said, and sometimes the body language does not even match itself — such as when people have asymmetric facial expressions, as per Figure 1. If someone answers yes to a critical question incongruently, that is a good place to explore the client's issues with further questions.



Figure 1. An incongruent facial expression. This often occurs when "yes" does not really mean yes. If the answer to the previous question is crucial, this indicates a good time to explore the issue with more questions.

As they did the exercises, I spoke privately to many delegates about how they might find it valuable to use this skill in order to know whether their client was making a complete presentation of his financial situation or whether the client was lying. I was surprised that about half of the family solicitors did not want to know *at all* if their client was lying, although the other half thought this skill would be intrinsically useful for them to know. One solicitor put it quite bluntly and said, "If they lie to me and then later get caught, that's not my problem."

All family solicitors want to obtain the best results for the client and for the other people involved, to serve the law appropriately and professionally, and to bill well for the firm. However, few openly talked about how these three professional values are prioritised, or about occasions when they might be in conflict. The result was that some solicitors questioned the value of knowing more about their clients and of being able to influence them, rather than questioning how well the body language techniques actually worked. The differences of opinion centred on goals rather than on efficacy.

This highlights some of the intrinsic conflicts involved in disseminating soft skills such as body language to members of the legal profession. Although many family lawyers are personally very interested in learning about body language, and we were able to fill the workshop room twice over in Cheltenham, how these soft skills fit in with billing and with practising the black letter of the law is a matter for personal discretion.

Since the use of soft skills seems to be controversial, it might appear that body language would be more easily disseminated within collaborative law and mediation rather than within traditional practice. In these newer developments in family law, in which matters are less contentious, or in which the principal participants fundamentally agree in areas of mutual interest, the professional culture is more in tune with soft skills. Especially in matters where the skills of negotiation come to the fore, the emotional dynamics and non-verbal skills are recognised as being critical. Whilst using body language may be obvious for recognising when your opposing negotiator is either about to crack or to walk away from the table, more finely honed observational skills deployed earlier in the negotiation can be even more useful in determining which points of contention your opponents are likely to be flexible about. In order to make such judgements, body language must be used in motion and must not be used in isolation, as if in a foreign language phrase book.

On television and in many popular books on body language, non-verbal communication is presented in a "phrase book" style. A phrase book approach involves a single static picture in which a single meaning is directly ascribed to it. The idea is

that you can use body language to ascertain a person's overall disposition to an entire situation, and, therefore, to predict their overall actions. For example, in Figure 2, a man is leaning back with his hands behind his head; this pose I have jokingly nicknamed "the American lawyer pose" because when I lived in America I saw many lawyers who did assume this pose. In a phrase book approach to body language this pose would be interpreted as a signal of intellectual superiority, as if to say, "I am *SO* much smarter than you"; the phrase book might go on to say that the degree of intellectual superiority is directly proportional to how far back the person leans in their chair, such that two lawyers might actually do battle to see who was smarter by each one folding their hands behind their head and leaning progressively further and further back, each trying to outdo the other.

But things are rarely so simple. The undeniable caveat in the use of all body language is that it is ambiguous, and consequently it definitely is *not admissible in a court of law*. You are allowed to rebuke your child with the words "I don't like the tone of your voice," but outside a family situation it is not considered acceptable to hold people to account for their body language.

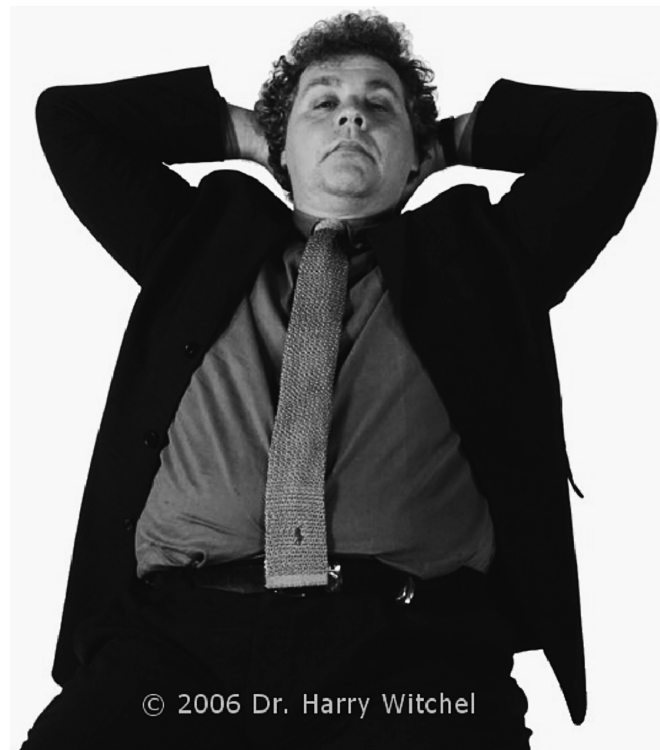


Figure 2. Is this man really smarter than you? "The American lawyer pose." The *phrase book* approach to body language couples static pictures to their supposedly unambiguous meaning.