



The Practical Wisdom of Listening

Abstract: In order to determine what kinds of legal problems a situation may involve, attorneys must listen carefully to their clients. By engaging effective listening resources and practices, attorneys can proactively increase their professional competence and enhance the quality of service provided to clients, as well as promote and encourage elevated standards of professional conduct—ultimately improving their ability to practice law and advance the administration of justice. The following communication perspective narrative describes a client-lawyer interaction, highlighting effective and ineffective listening through observations made by the protagonist—a Mr. Byron Willoughby III.

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The obligation to communicate has been recognized throughout the history of the legal system and the profession as the lawyer's duty.

(American Bar Association, *Annotated Model Rules of Professional Conduct*, p. 34)

Human beings are connected in complex webs of relationships, or patterns of interaction. The communication patterns that form our relationships, sometimes at home and sometimes across vast psychic and geographical territory, create our social worlds. Communication is the glue that holds the system together, and the character of communication determines the quality of these worlds.

(Stephen W. Littlejohn & Kathy Domenici, *Engaging Communication in Conflict*, p. xiii)

The Introduction

Rule 1.4, *Communication*

a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(American Bar Association, *Annotated Model Rules of Professional Conduct*, p. 33)

How communication works

Patterns of social action are co-constructed in sequences of evocative and responsive acts; these patterns comprise an ecology that is our social worlds. This ecology includes systemic relations and is the site of co-evolutionary processes.

(W. Barnett Pearce, *Interpersonal Communication: Making Social Worlds*, p. 19)

Stepping from the elevator I was greeted by a smiling receptionist and a full bowl of candy (Skittles—a personal favorite). “Welcome to Dewey, Cheetum, & Howe! My name is Tracy. How can I help you today?” Even though she’d said it a thousand times before, her words seemed genuine and comforting.

“I have an appointment to see Danuta Bukowska. My name is Byron Willoughby III.” I replied somewhat timidly, feeling awkward for having to consult a lawyer in the first place. The fiasco in question had been blown way out of proportion, but when the summons and complaint arrived I knew I needed professional assistance. I’ll get into the details later, but for now suffice it to say that I’m a defendant in a case involving a cat, a neighbor, and an impromptu piercing.

“I’ll let Ms. Bukowska know you’re here,” Tracy smiled as she deftly fingered her switchboard.

After tossing one piece of candy into my mouth (and several others into my pocket for later), I gazed around the firm’s lobby. It was suitably lawyer-like in its conservative orderliness. The walls were adorned with original artwork, a combination of non-descript abstract and landscape paintings in coffee tones. The firm occupied portions of the eighth and ninth floors in a modern high-rise centrally located just outside a major metropolitan hub. A panorama of floor-to-ceiling windows just behind the



receptionist's desk offered an impressive view of the surrounding countryside. It was rather as I'd expected, having dealt with lawyers infrequently. Conservative plush might be a good way of describing it.

Noticing an assortment of magazines, I wandered over to the firm's waiting area. An end table connecting two rather comfortable couches held an array of magazines, including Fortune, Money, the ABA Journal, the Economist, Cruising World, Islands, and Golf Digest. I'd always dreamed of sailing to Bora Bora, so I settled down with the cover story of Islands. Just as I'd begun the fourth paragraph describing a native's favorite island dishes (including "canned tuna, canned Spam, and canned corn beef"?), my lawyer appeared from around a corner. "Welcome!" she said as she shook my hand confidently. "I'm Danuta Bukowska."

"Byron Willoughby III," I replied. "Please to meet you. That's quite an interesting name you've got. I'm sure I butchered it earlier when I said I was here to see you." I saw Tracy smile knowingly out of the corner of my eye.

"It's Polish," she replied proudly.

"Do you speak Polish?" I asked.

"Fluently and without a foreign accent," she laughed. "My parents spoke it at home and we visited relatives in Poland regularly. Would you like something to drink before we get down to business?"

"Sure, what do you have?" I replied.

"Let's see... coffees, juices, sodas," she said, "hot cocoa, and hot tea."

"I don't suppose you have root beer?" I inquired.

"Actually we do. One of the senior partners is rather picky about his root beer. Do you like IBC?"

"It's one of my favorites!" I affirmed.

With drinks in hand, we headed back to her office. The view was equally impressive as that in the lobby. "Isn't it pretty?" she commented (noticing my gaze at the window). "It's one of the perks. They figure you'll be spending a significant portion of your life here, so you might as well have a view."

Much as I'd expected, Ms. Bukowska's office was traditionally adorned with the trappings of her position. Numerous framed diplomas were displayed above the desk, attesting to her credibility—a B.A. from the University of Krakow, an M.B.A. from Harvard, and a J.D. from Suffolk Law. Ms. Bukowska had arranged the room with her desk against the wall to the left and two comfortable sitting chairs against the wall to the right. Two large bookshelves overflowing with folders, papers, and legal volumes stood to the immediate left and right just inside her office door, with numerous boxes neatly stacked in the corners. An original abstract painting of three hearts hung above the door (initially hidden from view to visitors), a shock of vibrant color in an otherwise conservative climate. Three large houseplants hung lazily from the ceiling, centered to each of the three panes of glass that made up the outer wall of her office. Though subtle, the plants added an air of home in an otherwise professionally sterile environment. (It was a law firm after all.)

From the clutter, it was obvious that the firm kept Ms. Bukowska busy. It was equally obvious, however, that Ms. Bukowska was well organized. Her desk appeared in order with her computer monitor's screensaver scrolling through a series of family photos (including her cats). "I like your decorating theme: organized chaos. From the look of things they keep you quite busy."

"My cup runneth over," she laughed wryly. "Some lawyers cope by playing golf, others by shopping. Me? I meditate daily, stretch nightly, and laugh often... mostly at myself." Motioning to the two chairs opposite her desk, Ms. Bukowska suggested, "Please, won't you take a seat?"

"Thank you," I replied.

Just before sitting down, Ms. Bukowska closed her office door then stopped at her desk. "Do not disturb..." I could hear her saying to herself just under her breath as she set her telephone to send



incoming calls directly to her voicemail. She then retrieved a few things from her desk and turned to me. “Don’t want anyone interrupting us while we’re talking,” she smiled. “Here’s a copy of today’s meeting agenda along with a pad and a pen, courtesy of the firm.” As I’d neglected to bring anything to take notes on, the pad was much appreciated.

Accepting the items, I nodded politely. “Thank you. By the way, I also wanted to thank you for emailing me our meeting agenda in advance. After we spoke on the phone a few days ago I felt a bit overwhelmed, but your email helped put things into perspective. I’ve gathered together the paperwork you requested, along with some photos and some notes I’ve pulled together.” I smiled and patted the briefcase at my side.

“You’re very welcome!” Her sentiment felt genuine. Just then she reached into her pocket, took out her mobile phone, and started fumbling with it. “I always forget to mute this,” she admitted humbly. “But not today!” I liked her attention to detail. Seated there in comfortable chairs side by side, I felt at ease. I liked that Ms. Bukowska sat next to me, with me, not across from me, separated by an acre of authority.

“Before we begin I’d like to address some things that I consider to be personal ‘best practices.’ Ideally, the client-lawyer relationship is one of trust, respect, and mutual understanding,” Ms. Bukowska paused and took a sip from her tea. “With that in mind, I make a point of hearing my clients through before jumping to conclusions. Unlike so many lawyers who listen selectively for what *they* deem ‘the relevant details’ at the expense of the client, I’ve found that keeping an open mind is of critical importance. Clients are unique and so are their stories. As you explain your case to me, as you share your ‘stories’ with me, we will address the relevant details *together*.”

“Also, please feel free to stop me at any time and ask any questions that you have, even if you’re not quite sure what the right question might be. I’m professionally bound to respond, ‘willingly, candidly, and truthfully.’ It says so right in the ABA’s Model Rules of Professional Conduct!” she intoned with feigned seriousness, laughing at herself. “I had a law professor who loved that phrase. Seriously, if you have questions, please ask. If I have any questions (which I’m sure I will) I plan to do the same. It’s important that you feel comfortable to share any and all relevant information related to your case. In turn, I will provide you with my best legal counsel.”

Taking her pen in her hand, Ms. Bukowska leaned slightly forward in her seat and asked, “So what’s this about your cat, your neighbor, and an impromptu piercing? It sounds like a case I can really sink my teeth into!”

The Case

Rule 1.1, *Competence*

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(American Bar Association, *Annotated Model Rules of Professional Conduct*, p. 1)

A Discussion of Competence

The concept offered here is a radical contextualist one because the acts that are considered “competent” derive from the characteristics of the situation. In another sense, however, it focuses on the individual, making the distinction between game playing and game mastery. The combination is a relational model, in which competence is determined by the “fit” between the situation and the mode of acting by the communicator.

(W. Barnett Pearce, *Interpersonal Communication: Making Social Worlds*, p. 82)

“That’s one way to put it,” I laughed. “Not to help the plaintiff’s case, but my cat’s nickname is Cujo.” With that, I proceeded to recount the torrid details of the matter.



Roughly two and a half years back, a neighbor decided to pay me a housewarming visit. Unfortunately, I'd only moved in the day before. At this stage, the house was nothing more than a repository of boxes and furniture, along with litter boxes and cats—four to be exact. The move had involved a six-hour drive accompanied by an additional eternity unloading box after box from the truck. As can be expected, the cats were more than a little on edge in their new environment.

“Hi, my name’s Lois! I’m your neighbor,” I remember her saying. Glass of wine in hand, she’d attempted to invite herself into the apartment. Though I’d hesitated, my girlfriend swung the door wide open.

It was obvious that Lois had already indulged in several glasses of wine. With grandiose waving of her arms and hands, she proceeded on a self-guided tour of my home. As she shuttled from room to room, I noticed her closely eyeing the contents of my belongings. “So much stuff!” she kept saying over and over to herself. In the bedroom she came face to face with our kitten, Emily. “What a cute kitten!” she cooed. In a sweeping motion, she whisked the cat off the bed and cradled it close to her chest. Unfortunately, the kitten had other ideas. In the blink of an eye, the kitten let out a growl. There was a flurry of movement, and by the time Lois turned around there was blood on her nose. “The damned thing bit me!” she raged as she threw the kitten onto the bed. Before we knew what to say, Lois had finished her drink and stormed out of the house. Though the incident was quite awkward, I never heard from Lois again and so I didn’t think anything more of it.

A few months ago, I received a phone call from a personal injury lawyer claiming I needed to reimburse Lois for medical expenses incurred “as a result of the attack.” I brushed it off because I thought it was ridiculous; how could she have racked up \$10,000 in medical bills?! Then I got the complaint and summons, and I knew I needed to consult a professional. “So you see,” I concluded, “that’s why I’m here.” I felt silly recounting the story to a lawyer, but circumstances demanded it.

“I see,” Ms. Bukowska nodded in understanding as she turned the page of her yellow legal pad for a new blank sheet.

“If you don’t mind, I have a couple of questions for you,” she said politely. I nodded my consent and she continued. “Had Cujo... I’m sorry, Emily,” she corrected herself, “ever bitten or scratched anyone else before the incident, including you and/or your girlfriend?”

“Well, sure, she play-bites and scratches,” I replied. “It was a kitten. That’s what they do!” Admittedly, I felt a bit defensive and found Ms. Bukowska’s question rather accusatory. She obviously sensed my defensiveness.

“So you’re saying her biting and scratching was average as far as kittens go?” she paraphrased in a conciliatory manner.

“Correct,” I replied.

“Has Emily bitten or scratched anyone since the incident with Lois?” Ms. Bukowska questioned.

“Hang around a barber shop long enough and you’re bound to get a hair cut. When you live with cats, you’re going to get scratched on occasion. It just happens. As for biting, she only bites my girlfriend (and that’s only when they’re playing rough). For the most part, she knows better,” I said.

“So your girlfriend encourages aggressive behavior?” Ms. Bukowska asked in an effort to clarify the matter.

“Not really, but yeah,” I stumbled, not helping the situation. “You see, sometimes cats get in these moods where they just want to play. They know not to bite or scratch *me*. My girlfriend, however, doesn’t mind minor scratches. The cats even go so far as to close their jaws lightly on her hand, but they never actually pierce the skin. Do I consider Emily aggressive? She’s mauled a couple of flies, but that’s about it.”

“I see,” Ms. Bukowska nodded in understanding. “Up to the point when your neighbor dropped by, had anyone ever complained that the kitten seemed unusually vicious or aggressive?”



“No,” I said. Ms. Bukowska continued to jot still more notes on her yellow legal pad.

“And how badly was Lois’ nose bleeding that night?” Ms. Bukowska continued.

“There was blood,” I confirmed, “but it wasn’t much. And as I said, Lois turned and ran out, so I really didn’t have a chance to examine the injury up close.”

Ms. Bukowska paused and sipped her tea. In the silence I could hear the hum of the air conditioning. Suddenly the silence was ruptured by a muffled but booming voice. “WE’LL TAKE THEM FOR EVERY DOLLAR THEY’VE GOT!” Ms. Bukowska’s co-worker in the office next door howled to the walls. “THEY DON’T HAVE A LEG TO STAND ON!” Her neighbor laughed in an annoying, almost diabolical fashion.

“I sincerely apologize for my co-worker’s volume,” Ms. Bukowska said pointing to the office wall. Shaking her head and shrugging her shoulders in a look mingling embarrassment and frustration, she continued. “Charlotte *discovered* the speakerphone about six months ago and we’ve suffered ever since. I’ve mentioned it politely to her, and she’s good for a few hours. Then it’s back to her old tricks. I know her patterns—her ‘peak hours’ are late afternoons or anytime there’s an NBA game,” she joked.

“Today, however, I’m prepared! Just before our meeting I checked and one of the conference rooms is available. It’s an inside room, but what it lacks in a view it makes up in comfort. Would you be up to relocating our meeting there?” she asked.

“That sounds like a great idea,” I agreed. “I remember going to a job interview once for a retail sales position. The store was small, so the manager asked me if we could step outside. Clipboard in hand, she led me a short distance to some benches. Unfortunately, the benches were right next to a playground. Offhand, I don’t remember if I even got the job. What I’ll never forget is how distracted I was.” With that, we gathered our paperwork and headed down the hall.

The Relocation

Rule 1.4, *Communication*, COMMENT

[1] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.

[2] The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client’s best interests, and the client’s overall requirements as to the character of representation.

(American Bar Association, *Annotated Model Rules of Professional Conduct*, p.33)

Stories of Agreement & Disagreement

People’s understanding of their experience is reflected in their stories. Mediation and facilitation are processes in which stories that are important to the clients can get told and heard. Mediators do not act to “find” or “discover” the “facts” as they “really are,” but act to expand awareness and possibility by exploring stories. Sometimes a “story of agreement” is constructed, and the participants draft a contract to settle their disagreements. Sometimes not.

(Stephen W. Littlejohn & Kathy Domenici, *Engaging Communication in Conflict*, p. 17)

Ms. Bukowska’s assessment of the conference room was on target. Once inside with the door closed, the only sound to be heard was the quiet hum of ventilation and overhead lighting. Ms. Bukowska stepped to the center of the table and pulled two chairs out. “If all goes according to plan,” she said, “we should now be able to finish our meeting distraction free.” I was glad that she sat where she did. More often than not, when I’m in a conference room sitting opposite someone it’s usually a manager and I’ve done something wrong. It smacks of formality, like the manager is trying to distance him or herself (from me? from responsibility? from bad news?). Sitting next to Ms. Bukowska made me feel comfortable, as though I was seeking the advice of a close friend rather than a complete stranger. I liked that. Once



again, I found myself having to re-think my stereotypes of lawyers. Maybe they're not ALL bloodthirsty, money-grubbing leeches.

Thumbing through her copious notes, Ms. Bukowska muttered to herself, "Where were we? Ah, yes!" Turning to me, she began, "Ideally, how would you like to see this case resolved?"

"Quickly!" I exhorted. "I have enough problems in my life as is, and the last thing I want to deal with is a litigious loon."

"Since you admit that your cat inflicted some form of wound, would you be willing to discuss a settlement with Lois at this point?" asked Ms. Bukowska.

"Absolutely not!" I said in stunned amazement. "She picked the kitten up; she provoked her! And it was nearly THREE YEARS AGO!"

"So are you prepared to go through a trial over this?" she continued.

"Do you think that's necessary?" I asked.

"Probably not, but at this point what's important is that we're in agreement concerning your expectations surrounding the case," Ms. Bukowska noted. "So in an ideal world, how would you like to see this matter resolved?"

"That's why I pay you the big bucks," I replied smartly. "I'm not a lawyer, so I don't really know how to resolve the matter. Any suggestions?"

"We have a couple of options," she replied calmly. "Would you be interested in trying to resolve this case through alternative dispute resolution methods such as mediation or arbitration?"

"I suppose, if that's what you would recommend," I answered. "Bottom line? I would be more than happy to apologize to Lois for my cat's behavior, but she must be crazy if she thinks I'm going to pay her anything NOW."

"Are you interested in maintaining any kind of friendship or amicable neighborly relationship with Lois?" Ms. Bukowska inquired.

"I couldn't care less," I answered coldly. "The cats and I are actually moving to my girlfriend's place next month."

She scribbled illegibly still more notes on her yellow legal pad, stopping just long enough to sip her tea. On more than one occasion when I stretched, I leaned toward her to sneak a peek at her notes (out of curiosity). Taking such detailed notes showed me that she was really interested in what I had to say and that she was mindfully engaged in my case. (That, or she was writing a really long letter to a friend and she faked it well.)

"Here's where we stand," she began. "Basically, as the owner of a domestic animal (in this case a cat) you may be liable for injuries caused by the animal if you knew that it was especially dangerous or vicious, but you didn't take proper precautions to prevent the injuries. Even if the pet is not exceptionally dangerous, you can be liable for negligence if the court determines that you reasonably could have anticipated an incident of this nature. In your situation, the fact that you nicknamed the kitten 'Cujo' would be a little incriminating if the other side's attorney asked a question to that effect. It would tend to show that you knew the kitten was more likely to bite or scratch a person than another cat, and that you had a higher duty to warn visitors of that fact."

"But it's just a nickname we gave her because she growled at the other cats when I first brought her home," I protested in earnest.

"While that may be the case," she calmly explained, "do you understand how Lois' attorney could 'spin' it otherwise?"

"I guess," I admitted begrudgingly.



Ms. Bukowska paused a moment before continuing, “There’s a rule of law called the ‘Eggshell Plaintiff Rule.’ The premise of the rule is that you take the plaintiff as you find her. Essentially, that means if Lois had some medical condition before the incident that was aggravated by the incident, you can be held responsible for the pre-existing injuries as well.”

“I don’t get it,” I stammered anxiously. It didn’t sound good, and I could feel a panic attack quickly approaching. My palms began to sweat, my heart began to pound rapidly, and I felt overwhelmed. My mind raced into the future and on to the worst. I could already see it. The judge would rule in Lois’ favor, and I’d be left bankrupt. And all because of a kitten!

Noticing my reaction, Ms. Bukowska calmly explained that it wasn’t as bad as it sounded. “In your case, Lois claim that she had a pre-existing skin sensitivity to cats. She is also alleging that her condition has worsened significantly since the incident, racking up huge medical bills. To make things even more confusing and bizarre, Lois is also saying that at least one or two of the cat’s baby teeth remain embedded in her face, causing recurring infections as well as constant pain and suffering.”

“Yeah, that one seems pretty sketchy,” I chuckled, albeit nervously.

“Fortunately,” she continued, “there are factors that work in your favor to deflect at least part of the blame from you to Lois. First of all, there’s Lois’ claim that she had a pre-existing allergy to cats. She probably contributed to her skin condition and assumed the risk that it would be aggravated by burying her face in a little ball of fur. Second, that she was drinking wine and was possibly intoxicated is a weak excuse on her part. That could take care of part of the claim.” Ms. Bukowska paused to let me digest her legal discourse and to make sure that my panic had subsided.

“As for the biting part, you could be held responsible for the actual bite wounds and the medical expenses of treating the bites (apart from any long-term or pre-existing stuff). While it doesn’t seem that she provoked the kitten (based on how you’ve described the incident), this portion of the medical damages are not that significant.”

I could feel myself relaxing a bit more. “Okay, I’m with you,” I nodded, jotting down some notes.

“Then there’s the issue of the cat teeth she claims are still embedded in her face, which she claims have caused recurring infections and gigantic bills. If she can prove there are actual cat teeth in her face, that’s a direct connection to the incident. We could argue the teeth do not belong to your cat, but that would necessitate DNA tests which you can imagine are quite costly.

“I would also recommend hiring our own medical expert to report on her interpretation of Lois’ medical records. What puzzles me is why she has gone almost three years without having surgery to remove the teeth? That raises a big red flag for me. I’m willing to bet that once we get her medical records—along with any x-rays or cat scans—pardon the pun, there’ll be much more to the story than they present in their complaint.”

“So she may be even crazier than we thought,” I mumbled. Ms. Bukowska laughed, “Well, it’s people like her that keep us in business!”

I particularly liked the way Ms. Bukowska explained the legal side of things. She reserved the legalese for her fellow lawyers. She had three diplomas on the wall attesting to her credibility. When we spoke, she had a way of making sense that I never expected from a lawyer. She broke things down for me and connected the dots in a way that I understood, and she did so in a professional yet amicable manner.

Suddenly and without notice, one of the conference room doors swung open, bouncing with a thud against the wall. A younger, well-dressed man in his mid-20s stumbled in, unaware of our presence. “Oh I’m sorry,” he fumbled once he noticed us. Upon recognizing Ms. Bukowska, however, he seemed to gain new animation. “Hey Danuta, I’ve been meaning to tell you about the Jackson case. I spoke with a former co-worker who has new evidence. It doesn’t look good.”

“Excuse me, Ming,” she interrupted politely but firmly. “Why don’t I stop by your office a little later and we can discuss it in more detail then?”



“Oh, I see,” Ming apologized realizing that I was likely a client and ours was a private meeting. With that, he exited the room, closing the door firmly behind him.

“Sorry about that,” she apologized.

“No apologies necessary,” I smiled. “So you were saying?”

“Back to the matter at hand, do you have any questions about anything?” she asked.

I thought for a moment. *Of course I had questions!* There was so much to consider that my mind raced to conclusion upon conclusion, and I quickly found myself living in the train wreckage of the future. “Not right now,” was all that came out. I knew it was something that I’d mull over for the next few hours and days following our meeting, and when questions came to mind I’d make a note to follow-up with Ms. Bukowska.

“Okay. If you DO think of anything, you have my contact information; feel free to call or email me.” Ms. Bukowska thumbed through a pile of papers on her lap, pulling one from the bottom and placing it on top of her yellow legal pad. “Reviewing our original meeting agenda, there’s only one thing left to do. It’s what I refer to as ‘next steps.’ I’d like to suggest an action plan for us to follow from here.”

“Sounds like a plan!” I quipped, smiling and winking to let her know I was joking. She smiled out of professional courtesy.

Leaning forward in her seat and holding out her yellow legal pad, Ms. Bukowska described the plan. “First, we’ll prepare an answer to the complaint. I’ll send you a letter next week outlining in greater detail our anticipated course of action and providing an estimated budget over the course of the case.

“Second,” she continued, “we’ll enter the discovery phase of the case. It’s where we exchange documents and information with the other side. We can expect to get the medical records at that point and determine the merits of Lois’ claims from there. If there’s nothing to support any evidence of cat teeth in her face, we could try to get at least part of the case dismissed.

“Third, if the case is not dismissed, we will select an expert to review the records and documents that we’ve gathered and prepare a report on her findings.” As she explained each “next step,” Ms. Bukowska pointed to a sketch she’d made on her yellow legal pad. She’d mapped out our strategy on paper in a timeline with circles and arrows and notes of explanation. Seeing her strategy outlined there on the yellow legal pad somehow made things easier to understand. I like seeing things visually, like the diagrams in instruction manuals. I rarely read the text. I just look at the pictures and get hands on. That’s how I learn best.

“Can I get a copy of that?” I asked, pointing at her timeline.

“Of course!” she nodded and smiled. “It’ll be included in our meeting notes. I usually email clients a summary of my meeting notes within 24-48 hours. I find that it helps to coordinate client-lawyer communication. Any other questions about anything related to the case?”

“I think that covers it,” I said. We both gathered our papers and rose from the chairs. “Thank you so much for everything. Ideally, I wish we’d never met (no offense or anything). Since that’s not an option, however, I feel comfortable working with you on this matter. It may not be a big case like O.J. or Enron, but it’s important to my fiancée and I.”

“Fiancée?” Ms. Bukowska questioned with a puzzled look. “I thought you said she was your girlfriend?”

“She is,” I stumbled. “Well what I mean is, she’s my girlfriend... for now... today. I plan to ask her to marry me.”

“Congratulations!” she cheered. “I wish you two the best of luck!”

“Thank you,” I replied. “Just do me a favor? Don’t mention anything to her. I want it to be a surprise.”



“Your secret is safe with me,” Ms. Bukowska confided with a smile. “After all, I *am* your attorney.”

With that, she escorted me back to the front lobby. I grabbed a few more candies from the receptionist’s desk, Ms. Bukowska and I shook hands, and I stepped back into the elevator.

The Follow-Up

Rule 1.4, Communication, LEGAL BACKGROUND, Paragraph (a): Duty to Keep Client Reasonably Informed

Communication before taking legal action also prevents later misunderstandings by a client who, after the fact, may believe the lawyer did not consider certain alternatives or even know they existed, or who may think the lawyer’s after-the-fact explanation is an attempt to excuse what the client now believes was incompetent handling of the matter.

(American Bar Association, *Annotated Model Rules of Professional Conduct*, p. 35-36)

Stereotypes, Prejudgments, and Inaccurate Assumptions

We lawyers are often viewed as heartless in just this respect: bloodless, briefcase-carrying automatons, savaging opposing parties, taking no prisoners, and, above all, “doing whatever is necessary” for our clients without concern for the true merits of their cause or the overarching interests of justice. We’re portrayed as Gordon Liddy-style professionals: Mom better watch out when she crosses the street in front of our cars and, we’re in a hurry to get somewhere.

It’s certainly clear to me that many, many people—real, flesh and blood, non-Hollywood people—view lawyers in just this way. Self-centered. Obsessive. Uncaring. Unethical. Lacking common sense. It’s just as obvious to me that this is hardly Hollywood’s fault: stereotypes often (stereotypically) are based on some grain of truth.

(Professor John M. Burkoff, *If God Wanted Lawyers to Fly, She Would Have Given Them Wings*)

Just as she’d promised, Ms. Bukowska followed-up with an email the next afternoon summarizing her meeting notes. She even attached a .pdf scan of the timeline she’d sketched on her yellow legal pad! The email included observations made during our meeting along with the plan clearly detailing the “next steps” we’d discussed for dealing with Lois’ summons and complaint.

All in all I felt like the meeting had gone well. I’d had some initial apprehension about having to hire a lawyer, but after meeting with Ms. Bukowska I felt secure knowing I had a competent professional handling our case. Ms. Bukowska was neither Harry Mason nor NY District Attorney McCoy from “Law & Order,” but this wasn’t a television show. Ms. Bukowska wasn’t what I’d expected, but the bottom line was that I was being sued and I liked her particular brand of lawyering. It was more than just her legal knowledge. It was the way she treated me—with respect, dignity, and a practical wisdom. Bring it on, Lois, bring it on.



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About the Authors

In 2003, Jowita L. Wysocka and Eric Paul Engel founded Ketchcom Development, Inc. — a professional and organizational communication development practice. We help individuals and organizations improve their written and spoken communication. Locating communication as a primary process fundamental in the healthy evolution of individuals and organizations, Ketchcom Development works with professionals to develop their communication competence by providing theory-driven, applied communication services, including Core Communication Workshops, Communication Consulting, and Communication Audits.

Eric Paul Engel is a communication scholar, author, publisher, and artist living in sunny St. Petersburg, Florida. Prior to founding Ketchcom Development, he provided organizational development, training, and communication consulting to the Army's Information Technology Agency located in the Pentagon. He has taught communication at Purdue University (where he earned his Master of Arts degree in Communication) as well as at the University of Missouri. His research has been presented at national communication conferences and can be found in several peer-reviewed applied communication anthologies. Mr. Engel is currently pursuing his doctorate in Communication at the University of South Florida. Additionally, he has authored four volumes of poetry, including *Come With Me, Imagination & Inspiration*, *Negotiating Chaos*, and *Harmonious Cacophony* (co-authored with J. Wysocka).

Jowita Wysocka is a dancer, author, and artist. She also finds time to serve as a legal recruiter for Special Counsel. After receiving her undergraduate degree in English and a certificate in Communication in 1994 from the University of Massachusetts, Ms. Wysocka graduated with honors from Suffolk University Law School in 1999. Over the past twelve years, Ms. Wysocka has worked as a paralegal, trainer, billing coordinator, and associate at a panoply of small, medium, and large law firms and corporate legal departments. Ms. Wysocka is admitted to practice law in New York and Massachusetts.

A former professional ballet dancer, Ms. Wysocka is a member of Volunteer Lawyers for the Arts. Ms. Wysocka has authored numerous articles on topics ranging from international moral and copyright protections to government contract preferences for small businesses. Her most recent article, "E-Discovery: The Final Frontier" (in publication) addresses how emerging legal guidelines regarding electronic document production reduce the risk of sanctions through proper planning and communication.