Every professional engaged in public speaking should have an answer for the pivotal question “What do I do with my hands while I talk?” Few speakers know the answer, and few trainers are equipped to confront the question with effective teaching. Yet gesture and speech are fundamentally connected neurologically and linguistically. To train for public speaking without using good data on gesture is to ignore almost half of the task. This article draws on data from recent research and on decades of observation of lawyers engaged in speaking in the courtroom and elsewhere; it describes techniques for teaching gesture that yield measurable results. The discussion here is about gesture during extemporaneous speech, which includes the majority of legal professional speech from the courtroom to the boardroom. This article is not about writing and delivering a speech — or reading from a text. It is about what lawyers do for hours on end: talk.

Gesture Is Everywhere

Paul Clement gestures for a living. He also talks, of course, and surprisingly, he cannot do one without the other. A former Solicitor General of the United States, Mr. Clement has appeared before the United States Supreme Court dozens of times, and is a respected and successful advocate in any forum. In a profile of Mr. Clement by The New York Times, Kevin Sack observed, “Mr. Clement is admired by colleagues and adversaries for the straightforward clarity of his presentation. He famously argues without notes, leaving his hands free to jab and gesticulate, sometimes as if wringing an imaginary neck.” When Paul Clement argues, he talks with his hands.

All day every day, all around you, people gesture as they speak just like Paul Clement. Your children, your spouse, and your friends all gesture. At work, your boss and colleagues engage in ubiquitous patterns of arm and hand movement. On the streets outside your office, people gesticulate while on the phone, walking dogs, driving, and asking for directions. Police officers gesture. Checkout clerks gesture. Bankers, farmers, scientists, waiters, doctors, lawyers, judges, defendants, and plaintiffs — all are moving their hands in the predictable, elegant, evolutionary, and unavoidable act of gesticulation.

Why is everybody talking with their hands? They do it because they are human. For Homo sapiens, language and gesture are inseparable. Some people are big gesturers, some are small. But there are no exceptions. Weirdly, most gesture goes unnoticed. It is virtually invisible because it is an automatic function. Our hearts beat faster with exertion, our neurons fire when we calculate sums, and our hands move as we talk.

In the law, the topic of gesture is controversial. There is still a strong outdated belief that lawyers should be able to speak without gesturing — a powerful myth that still hands are preferable. Law professors instruct students to grip lecterns to prevent their hands from moving. One theory of legal training embraces acting techniques, following the false logic that
because actors are trained to speak without gesture, lawyers should mimic that behavior. Some judges have tyrannical views toward gesture. On the website of the United States Court of Appeals for the Federal Circuit, a page entitled, “Court Decorum” states, “Inappropriate facial gestures or exaggerated gesticulating is forbidden.” A student of mine clerked for a judge who threatened to hold lawyers in contempt for gesturing during argument. Hands were to stay firmly joined to the lectern — language, individual style, and scientific evidence be damned. A mountain of gesture research proves not only that this idea is wrong, but also a relic of class prejudice dating back to at least the Middle Ages, when peasants were presumed to talk with their hands, while landed gentry and nobles were not.

Such notions were debunked decades ago. It is time for the legal profession to wake up to reality. It is useless and even damaging to instruct lawyers that clinging to lecterns will prevent their hands from moving while they speak. Judges who forbid gesture must look at the evidence. Law professors should examine the science. As a communication consultant in the legal profession, I call upon my colleagues who are trainers and professional development managers to improve how we train lawyers. We should not train lawyers to behave like actors who declaim their memorized lines from a stage. The magical thinking that hands have no part in language should be banished. The notion that lawyers should not move their hands when they speak is hearsay, with not a shred of evidence to support it.

Preventing speakers from gesturing is not only an arcane notion, it can trigger significant problems. Attempting to talk without moving one’s hands robs lawyers of confidence and ensures that they will not speak as well as they might. In my communication consulting practice with Brian K. Johnson, we see lawyers every year who suffer distress from being told not to gesture. Some have even sought medical and psychological help. Imagine if a young associate needed beta-blockers in order to write a memo! In 2014 alone, I have coached two attorneys who report feeling extremely awkward, as if in a straightjacket, as they attempt to think and speak without their normal gesture.

Teaching gesture, then, is partly about education, but also about breaking through this odd belief that hands should remain still as a lawyer speaks. There are other topics to cover in public speaking and advocacy training, of course. There is the rest of physiology, including how to stand, breathe, focus one’s eyes, and display the proper game face. There are cognitive issues, such as how to think clearly when the pressure mounts, how to organize ideas, and how to respond to questions or objections. One must learn to speak loudly enough, and fluently, with proper emphasis and prosody. The linguistic challenge of courtroom procedure is a major topic. Without gesture, however, none of these other skills will flourish. Natural gesture is the golden key to articulate speech.

The word “natural” implies that nature, not nurture, lies at the heart of this discussion. But nature and nurture are both present in the impulse to gesture. A trainer must be able to perceive both. She must determine if a student is gesturing in a fashion that appears to be relaxed, productive, and unconscious. This behavior is observable and quantifiable. On the other hand, if a student is stiff, with fast, small, jerky hand movements, appearing ill at ease and inhibited by anxious movement, this too is quantifiable behavior. A coach must discern gestural nuance and prescribe a remedy.

Why can’t we revert to what some law professors, judges, and legal trainers espouse? Why can’t we just impose a new, non-gesturing style? We cannot do it because it cannot work. Seasoned lawyers who appear often in court gesture, like Paul Clement. Fluent, polished attorneys who are confident, experienced counselors talk with their hands.

When I first began teaching for the National Institute for Trial Advocacy in 2000, I was eager to study the speaking styles of my faculty colleagues. It was immediately apparent that their personal gestural styles were all different. One had long, graceful fingers and circular gestures. Another’s hands moved horizontally, smoothly emphasizing words and ideas in a large area in front of his torso. Another stood still with feet almost touching, gesturing in a small zone, hands repeatedly opening...
in a palms-up motion, as if literally giving information to listeners. One had big, strong gestures that would pause and hang in midair, then move on as a thought concluded. Several turned their hands sideways in a chopping motion that emphasized passion, outrage, relief, or humor, depending on the moment. Some literally drew pictures in the air — tracing timelines, following the money, or showing where to write on an imaginary jury form.

The one thing they did not do was stand with their arms straight down at their sides while speaking. They sometimes listened in that position, or dropped hands to their sides when interrupted by an objection or a judge. But as soon as they had the floor again, hands rose immediately to assist with speech.

After 14 years of intense observation, I now estimate that speakers move their hands upwards of 95% of the time they are talking. For many speakers, the number is nearly 100%. They never stop using their hands to think, emphasize, organize, shape, and conjure language. Most amazing, both speakers and listeners are mostly unaware of the elaborate choreography of moving hands unfolding right under their noses.

This invisibility factor has several explanations. A large percentage of gesture occurs in a listener’s peripheral vision. The center of our visual field has the best focal clarity, with peripheral vision less sharp. Our visual system softens the periphery to keep us from becoming distracted by it. We are not very aware of gesture because we do not see it clearly. We process the information gesture contains, but mostly beneath conscious access. Combine peripheral vision, the false belief that hands should not move, and the mistaken notion that lawyers should mimic actors, and it is easy to see why misconceptions about gesture accumulate. Luckily, we have a rich body of research to explain the underlying processes.

The Science

My adventures in gesture research began in the mid-1990s. I was pursuing an advanced aerospace degree in the human factors of flight operations. While teasing apart the intricacies of air traffic control communication, I happened upon studies linking language and hand movement. I am married to Brian K. Johnson, who was keenly interested in this research because it was strikingly relevant to his interest in how lawyers gesture. We eagerly followed the studies into the fascinating world of gesture science. It explained more about speaking than we could have imagined.

As I’ve written elsewhere, books by David McNeill, Susan Goldin-Meadow, Frank R. Wilson, Jana Iverson, and Adam Kendon, as well as articles by these researchers, their colleagues, and students, confirmed the theory that Brian had developed — that is, that people cannot speak fluently without moving their hands. Research affirms that hands facilitate cognitive word search for a speaker, and they work in advance of speech. Hands often move before lips open to enunciate the fetched words.

When the instinct to gesture is unleashed, language flows more easily. According to David McNeill, “The extremely close synchrony between gesture and speech indicates that the two operate as an inseparable unit, reflecting different semiotic aspects of the cognitive structure that underlies them both.” Gesture and speech are a single system. Put your hands away, and you’ll degrade your ability to speak well. Talk with your hands, and you’ll be more fluent.

In our routine reviews of gesture research, we are still delighted to find scholars who are new to us. Spencer Kelly uses the classification “co-speech gesture,” which occurs while people are talking and is clearly directly connected to language. Co-speech gesture includes all of the hand movements lawyers engage in. Professor Kelly’s studies show that such gestures help people think as well as learn. We have adopted this term to describe the hand and arm movements of lawyers and find it resonates with them.

Jürgen Streeck, a linguist and professor of communication studies at The University of Texas at Austin and the founder of the International Society of Gesture Studies, emphasizes that
before our ancestors spoke, they gestured to each other, and we are still doing it today. We do not think solely with our brains, he asserts, but also with our bodies. He has studied an auto mechanic who pantomimes carburetor repairs in an elaborate accompaniment to his narration. Professor Streeck has studied architects who talk about design by drawing diagrams in the air, a habit we see consistently with IP attorneys. For a normally shy electrical engineer-cum-IP-lawyer, it is second nature to draw a virtual picture and fluently describe its detail. Once hands are liberated, language follows. Streeck sees gesture and language as a chicken-and-egg communication loop.

Anthony Corbeill’s research examines “emblematic” gestures, or those we all recognize as having a specific meaning. Emblematic (or “iconic”) gestures depict shared semantic images, serve as shorthand for these ideas, and evolve over time, along with language. The thumbs-up sign was emblematic in ancient Rome as a sign to spare a life in gladiatorial battle. In the 20th century it morphed into an aviator’s gesture for “good to go,” and in the 21st century is widely recognized as a symbol for “I like this.” We still have a shared gesture for talking on the phone which looks more like a relic from the dial-phone era than like mobile cellular technology. Even small children use this gesture without ever having seen or used a handset with a dial phone attached by a cord. I see lawyers use this emblematic gesture many times each year.

Our colleague Jo Ann Harris from the U.S. Department of Justice has been a source of links to articles about gesture in police interviews in which gestures are manipulated to mislead listeners. There is strong evidence that listeners in police interrogation scenarios can be fooled. The idea that a speaker might use gesture to manipulate a message is an understandable concern for lawyers and judges. We have heard anecdotes about jurors who are suspicious of lawyers’ gestures at trial. But isolated issues with gesturing trial lawyers are far from proof that gesture should be banned from courtrooms, any more than spoken language should be limited because a lawyer could use words to mislead a jury.

One intriguing bit of research focuses on electronic “badges” that transmit data about the wearer during a day’s work. Among other things, a badge records speech and gesture patterns. The purpose? To define specific behaviors of successful leaders. I’m looking forward to reading more about experiments like this. Transactional lawyers gesture just as often as courtroom lawyers, and more data about gesture in all professional settings would be extremely valuable.

Several studies, as well as participants in our programs who have young children, confirm that children learn sign language early and easily. Gesture facilitates learning a spoken language, and very young babies quickly learn a few hand signs for “juice” or “more,” indicating that communication flows first as hand movement. We all learn to gesture before we learn spoken language. Both evolve together. We must not ask lawyers to stop doing something they learned to do when they first acquired words as infants.

Lawyers occasionally ask us about the term “body language.” This is a separate area of study from gesture. In my opinion, the best in that field is Joseph Navarro, a former FBI agent whose What Every BODY Is Saying is an accessible, excellent book on the topic. His approach is clinical and fact-based. Navarro himself recommends Nonverbal Communication in Human Interaction, Eighth Edition, for a scholarly approach.

Legal Gesture: Our Student Notes

Brian and I have years of handwritten notes about individual students (he has been training lawyers for 34 years). We hesitate to discard them because they show patterns of communication issues for lawyers, and they now constitute an extensive record. Some are faculty critiques from trial skills programs, while others were taken in individual coachings. We strive to write down the exact language a student uses for each teaching point. We listen carefully to get a sense of a lawyer’s style, hear or see something that could be fixed, and record our observations. We offer a critique based on our notes in class or in a one-on-
What Do You Do with Your Hands: Hunter

one coaching. It is a straightforward technique, and though certainly not original with us, is the best we’ve used.

Years ago, we also started drawing. We sketch what we see and insert a caption of what we heard. We draw specific gesture patterns to show either idiosyncratic or archetypal hand movements. Without our cryptic cartoons, we cannot give a complete critique — language simply doesn’t exist in a verbal vacuum. Our sketches show abstract movements that illustrate words and ideas in an almost dance-like fashion. Choreographers use a similar system called dance notation, akin to stenography, comprised of symbols and drawings that record the sequence of movements and make a permanent record of a given dance. That’s the basic idea of our gesture sketches. They record on paper how a speaker uses gesture to enhance language and serve as shorthand to suggest improvements.

Video, of course, is an indispensable teaching tool, but it must be interpreted properly. Notes and drawings help serve that purpose and take up much less bandwidth in storage. Storing student video clips for future reference isn’t practical.

For solving certain problems, we have our own style of language “notation.” At a trial skills program, Jason was struggling with the form of direct examination, and he couldn’t decide what to do with his hands. Here are my notes from his class presentation. I omit the legal substance to record the speaking issues:

pen, holds lectern, um, weight shift, OK, so um, did, do, do, OK, um, now, um, can, um and uh, when, hands in pockets, OK and uh, what, hands in back pockets, arms folded in front, back pockets, OK, um, now, what, hands on lectern, and um, why arms folded, pen still, um what, pockets, parade rest, um, um, found a question with his hands! pockets front, pockets back, front again . . .

Though Jason’s brain couldn’t settle on what to do with his hands, his fidgety body vainly tried to solve the problem. Meanwhile, his voice couldn’t find the form of the question without effective use of his hands. He stumbled through a verbal thicket of ums and OKs. In a private coaching he was initially skeptical that gesture was relevant. We focused Jason on talking with his hands in front of his torso, and language began to flow more easily. Jason is typical of many lawyers who mistakenly believe there is one magical place — lectern, pockets, straight down — where their hands will keep still.

The instinct to gesture cannot be extinguished. Time and again, we watch lawyers try, but they merely displace the gestural impulse to other body parts. I once watched an entire cross-examination as a lawyer clapsed her hands in front of her in a prayerful death grip. Her elbows and shoulders twitched and jerked as her gestural instincts made themselves manifest elsewhere in her body. Had she released her hands, she would have been fine. It is challenging for any lawyer to think of legal substance and physical issues simultaneously. Our job as educators is to find technical solutions to their conundrum.

Teaching Gesture

How do we tackle training for a virtually invisible skill? We have been refining our methods for years, and continue to be energized by the complexities of the challenge. Come with me to a day of work teaching speaking skills to lawyers. This morning my lecture will be followed by individual coachings with litigators and transactional lawyers. Later, I have one small-group session with litigators. Meet me in the lecture hall.

As my lecture gets under way, I speak about bodies and about the demands public speaking puts on physiology. After covering stance, adrenaline, breath, and facial expression, I approach the topic of gesture and glance at the clock. This is my favorite section and I can linger here too long, shortchanging other topics. Launching into gesture is a crossroads for me. How shall I approach it? There are gesture skeptics out there, but I also know there are those who will be greatly relieved by my message. From experience, I know there are three groups listening: (1) lawyers who have been told not to gesture by a law professor, trainer, or judge, (2) those who haven’t given it any thought at
all and who hang onto a lectern, pen, or legal pad as they speak, and (3) those who are perfectly comfortable gesturing and who don’t think twice about it. Group 3 is usually the smallest.

**Lawyers seeking comfort that gesticulation isn’t a character flaw need reassuring data, and gesture science is filled with great stories.**

A quick review of the science tends to put lawyers’ minds at ease, so I choose this route. Lawyers seeking comfort that gesticulation isn’t a character flaw need reassuring data, and gesture science is filled with great stories. Congenitally blind children gesture to one another while speaking. People allowed to gesture while retelling a story remember more facts. Grade schoolers solving multiplication problems gesture more just before they find the answer. When I demonstrate the concept of “mismatched” gestures, it provokes laughter. When I show an elegant, spontaneous gesture I’ve seen recently from a lawyer, heads nod. My listeners now seem curious and more open-minded. They are beginning to understand what they could not see before.

Next, I ask for a show of hands: Who thinks they gesture a lot? A little? A medium amount? How many have no idea? As they begin to judge their own gestural instincts, we confront this “naturalness.” Since we all want to feel natural and relaxed when speaking under pressure, I could say, “Just be yourself and act naturally, the way you do in everyday conversation.” But people do not know how they gesture! They do not know what they look like, and probably do not even know what it feels like. It just happens in the course of daily conversation. My lecture may be the first time they have contemplated it in depth. To be clear, some people can, at this point, happily go off and gesture naturally. They are the lucky ones. Most people need more instruction, because now that they are thinking about it, they are also self-conscious and likely uncomfortable. In a sense, I’ve made it harder for them, and I’m now obligated to help them work their way through the issue.

Next comes a discussion of prototypical human gestures. These are easy to demonstrate and ideal for a lecture hall full of lawyers to try from their seats. Each commonplace movement is directly connected to language, so it is best to get the feel of each gesture attached to a word or phrase. Our labels for quintessential lawyer gestures are *give*, *chop*, and *show*. *Give* is a palms-up, forward motion which looks like the speaker is presenting an object to listeners. *Chop* is a hands-sideways motion. *Show* gestures can be realistic or abstract, but they illustrate what a speaker intends with drawings in the air.

Next I emphasize that prototypical natural gesture is wide, slow, and loose. When hands and arms are held tight against the torso, gesture is constricted, fast, and jerky, conveying nerves or anxiety. This, I’m sure, is why lawyers are instructed not to gesture: nervous speakers project tightness, making listeners themselves nervous. Watching stiff, strained speakers puts people off instead of putting them at ease. But the solution is not to stop gesturing. The actual solution is counterintuitive— to move arms and hands more slowly and smoothly, and to expand one’s arms into a larger “zone” of gesture.

We’re almost at the end of my lecture about gesture, but there is always this question. Someone asks, “Aren’t there bad gestures?” Yes there are, and they must be controlled. People don’t like to be pointed at, for example. It isn’t acceptable to make rude or obscene gestures. Some cultures have specific gestures to avoid. Repetitive movements, which gesture researchers call “baton” gestures, are monotonous and meaningless, and emerge when a speaker talks too fast, fails to make eye contact with listeners, or doesn’t speak with proper emphasis.

My goal in lecturing about gesture is to promote awareness about it in everyday speech so that professional speech can employ the natural, lifelong movements that all of us use. Everyone gestures, and everyone looks different when doing so. If I can open minds to that possibility, the rest of my day will be easier.

Now, let’s proceed to individual coachings and the small-group session. I will see all levels, from partners to associates. Those
in practice longer usually have a more wide-ranging gestural instinct, having spoken professionally for a number of years. But even they probably have no working awareness of how gesture functions with language. Younger lawyers are often relieved that gesture can be a tool to help them speak, rather than a natural instinct to be quashed.

Individual coachings last 45 minutes, and small-group sessions two to three hours. Video is crucial for both settings. Small groups tend to help one another endure the unpleasantness of watching oneself on a large screen, and they also learn from each other. Once they are called upon to describe what they see, they all begin to develop a vocabulary to describe gestural instinct.

For many lawyers in these coachings and small groups, gesture is likely the first order of business. Though much of my job is to improve thinking and speaking, if a lawyer is physically uncomfortable the other skills cannot easily be fixed. Once the uncertainty about what to do with hands has been dealt with, we can move on to cognitive and verbal skills.

In these more intimate settings outside the lecture hall, lawyers can confront an issue that is central to gesture: their stance. If feet are still, speakers gesture more and language improves. Brian Johnson and I are currently designing a research project to find out exactly why. We see this phenomenon so often that we take it as a given, but I haven’t found studies that explain it.

Restless feet are a pitfall for anyone who speaks in public. Trial lawyers often wander about the courtroom, meandering with no purpose but to try to feel better in the midst of excitement or nerves. Once feet are in motion, gestures become constrained. Feet in motion tend to stay in motion. Feet at rest tend to remain at rest.

Wandering feet short-circuit meaningful gestures that would otherwise be rich in information for both speaker and listener. Still feet, on the other hand, help channel energy and movement upward, into hands that then move with real purpose. Thus we have a surprising paradox in the relationship between feet and hands while speaking. Feet are not related to language, while hands are deeply related to extemporaneous language and word search. Put another way, feet can’t talk, but hands can. Coachings and small-group sessions are the perfect time to work on keeping feet comfortably planted in a natural stance. Later, purposeful movement to change locations in a courtroom or on a dais can enhance a presentation.

**Conclusion**

As with everything in the law, the answer to teaching legal public speaking lies in the evidence. The experts are here to guide us. In the legal “new normal” we should rely on data. Gesture lies at the heart of the public speaking challenge. It is a complex topic worthy of our attention.

Gesture researcher Robert Krauss, professor emeritus at Columbia University in New York, heard this story as a child. Two men walked down a street together on a cold winter day. One talked and talked. The other, with his freezing hands in his pockets, listened and nodded. At last the talker asked, “Shmuel, why aren’t you saying anything?” His friend replied, “I forgot my gloves.”

**Bibliography**


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