

Communication is the Key—Tips for the Judge Advocate, Staff Officer and Leader*

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I. Introduction

Yogi Berra and Rudyard Kipling do not have much in common. They likely never imagined they might combine sentiments to influence the way Army lawyers practice law. In a surprisingly lucid ‘non’ non-sequitur, Berra observed “you don’t have to swing hard to hit a home run. If you got the timing, it’ll go.”¹ When we recall Rudyard Kipling’s timeless charge to “fill the unforgiving minute with sixty seconds worth of distance run . . .”² we find the perfect inspiration for our dual professions of the Law and Arms.

For me, Berra’s highly nuanced skill of hitting a ninety-five-mile-an-hour baseball combines perfectly with Kipling’s ethic of relentless diligence: Both are at the very core of skilled lawyering and rigorous staff work in the American Army at the dawn of the twenty-first century.

One trait Berra and Kipling obviously do share with peculiar polarity is artful *communication*. As powerful as their messages are, it is their *ability to communicate* the message that really matters.

And so it is no surprise that the unifying theme in the lessons I have learned over the years, is the importance of our ability to communicate—what we say, how we say it and with whom—in both our skilled legal advice and rigorous staff work. Although this may seem self-evident, the art of communication is sometimes overlooked and is, as well, so fundamental to our practice that it is worth periodically examining.

This article offers tips that spring from what I have learned from my nearly thirty years of success and failure as a staff officer and judge advocate in the Army. I offer in this article seven tips that may help you achieve both professional and personal success as judge advocates.

1. *Understand Intent*
2. *Anticipate, Anticipate, Anticipate*
3. *Who Else Needs to Know?*
4. *Communicate Directly*
5. *Writing—Even Email Is an Art*
6. *Rank Work, The Boss’s Work and Gut Checks*
7. *Find Your Inspiration—and Inspire Others*

1. Understand Intent

So obvious we sometimes forget it: You must always understand your boss’s intent. If you do not—ask. Most responsible supervisors will not mind you asking for clarity. Done properly, your query shows efficiency and “smarts” (and a certain amount of courage, as most staffs are inclined to not ask the boss until much later). Done too much, it suggests you do not listen well. The sweet spot is, of course, the art. If you cannot get the boss’s intent, fill the vacuum and then see if you were right.

If the staff is going down a path you do not think was intended, consider it your job to stop and ask the boss if this is what she wants. Most of the time, the boss did not want to go down that path and did not know the staff was on it, leading to an Abilene Paradox.³ Additionally, many times, your boss wants you to challenge her, wants you to check her own manner of thinking without tainting your view of an issue. Be honest and give your true assessment of the issue or situation; do not just tell the boss what you think she wants to hear. “If everybody is thinking alike, then somebody isn’t thinking.”⁴

Many times, your boss will simply ask the question and listen to the debate so she can hear the differing views. This is a productive technique—not a trick or a waste of time. It is a decision-making process. Embrace it.

When the time comes for an answer, be sure to answer the question the boss actually asked. We are exposed daily to, and sometimes enamored with, the artful non-answer. Our role, though, as both a lawyer and staff officer is to answer the

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* It is also inherently risky. Anyone who writes about what good “anything” is, especially staff work or lawyering, treads on the thinnest of ice. What makes my views any more important than another’s? Quite simply—nothing. However, I have been doing it for a long time. By analogy, even the best professional batters only get a hit about a third of the time, and fewer still hit home runs regularly. On the assumption that time on the field, regardless of how well you hit, grants perspective, not perfection, this note offers some timeworn, proven techniques to consider as each of us, every day, try to be better staff officers.

¹ Yogi Berra, *The Showman*, in *ESQUIRE THE MEANING OF LIFE* 145 (2004).

² Rudyard Kipling, *If*, in *REWARDS IN FAIRIES* (Doubleday, Page & Company 1910) (1895).

³ JERRY B. HARVEY, *ORGANIZATIONAL DYNAMICS, ABILENE PARADOX: THE MANAGEMENT OF AGREEMENT* 17-43 (Summer 1988), <http://www.rmastudies.org.nz/documents/AbileneParadoxJerryHarvey.pdf>. The Abilene Paradox is when “[o]rganizations frequently take actions in contradiction to what they really want to do and therefore defeat the very purposes they are trying to achieve.” *Id.* at 18.

⁴ *General George S. Patton, Jr. Quotations*, GENERAL PATTON, <http://www.generalpatton.com/quotes/> (last visited June 8, 2016).

question. Every time. Answer “yes” or “no” to questions that call for succinct answers—perhaps in a tactical operations center (TOC) or around the table at a staff meeting.

The boss is often interested *only in* ‘the time of day, not how to build a watch’ or even what time it was earlier. Provide depth, nuance, background, history, etc., when warranted or sought. As a fundamental principle, understand what your boss is asking for and *answer that question*.

2. Anticipate

The notion of anticipation is the beating heart of good staff work. We do this habitually in our legal practice: What questions must I prepare for? What objections must I respond to? What have I failed to consider? This same sort of red-teaming⁵ approach applies to staff work as well, and it should be repeating itself in your mind. It is a sort of role-playing. Spend time thinking like the boss and determine what questions you would ask. Then answer them. Be prepared to know what is coming before it arrives.

As Napoleon is reputed to have said, *anticipate, anticipate, anticipate*. Well, not exactly. Napoleon actually intoned the famous, “L’audace, l’audace, toujours, l’audace.”⁶ Anticipation is simply the staff officer’s corollary to Napoleon’s martial maxim for commanders.

3. Who Else Needs to Know?

Regularly ask yourself, “Who else needs to know?” This question must animate and consume you. It is on a Post-It on my computer screen, constantly reminding me of this foundational staff officer maxim. Communicating often and early, particularly on a staff, maximizes the probability that your legal and staff recommendations will influence decision-makers before problems arise. Communicate concerns, identify solutions, and provide options at the staff-officer level before anyone asks the commander to make a decision.

The corollary, of course, is to never pose a problem without a recommendation. Ever. And don’t make the boss always ask for a recommendation; because you begin to look reluctant when you omit the recommendation at the onset. Additionally, when you do not present a recommendation, you look like you are letting the boss do the hard work or, worse, waiting for an azimuth check before committing to your recommendation. Neither is good. Anticipate the issues,

communicate with anyone else who needs to know, and offer solutions.

4. Communicate Directly

General Martin Dempsey has remarked,

During the Revolution in Military Affairs of the late 1990s, the U.S. developed an almost unquestioning faith in technology. We came to believe that technology would allow us to achieve a “quality of firsts” the ability to see first, understand first, decide first, and act first. We became apostles of knowledge dominance and worshippers at the altar of stand-off and precision strike. But our imagination failed us. . . .⁷

Overreliance on technology creates the grave risk of losing meaningful contact with our clients. So many of our communication tools today attenuate human contact—create some measure of distance between people. The essence of the lawyer-client relationship is trust. Trust is built through rapport. Which impels my next unshakable principle of practice.

A lawyer’s advice is always best-delivered face-to-face. Anything short of face-to-face is a compromise. You have shaved some perceptible effect off of your advice and counsel when you do not deliver it face-to-face. As your stock in trade, your advice must be the focus. Why diminish its effectiveness? Only presence with a client ensures your nuanced delivery of advice, tailored to the real time reactions of your client. If you sense you are losing your client, you adjust content, language, modulation, pace, body position, intensity. Little of this is available over the phone or thru correspondence. A client can sense your commitment, can see it, can even *feel* it when you are there, with them, in the moment. There is no real substitute. *However, I recognize in our world today, and in our practice and in our Soldiering, face-to-face is not always practical or possible.*

When face-to-face is not an option, the next best solution to being there in person is picking up the phone. Why do we text or send email? Oftentimes, it is because we do not want to subject or expose ourselves to a lengthy conversation, waste time chatting about nonsense, face an awkward moment, or for countless other unfortunate reasons. You might rationalize that you can knock out five emails coordinating meetings in the time it takes you to have one

⁵ See U.S. DEP’T OF ARMY, UNIVERSITY OF FOREIGN MILITARY AND CULTURAL STUDIES, THE APPLIED CRITICAL THINKING HANDBOOK (Jan. 2015), http://usacac.army.mil/sites/default/files/documents/ufmcs/The_Applied_Critical_Thinking_Handbook_v7.0.pdf. “Red teaming is a function that provides commanders an independent capability to fully explore alternatives in plans, operations, concepts, organizations and capabilities in the context of the operational environment (OE) and from the perspectives of partners, adversaries and others.” *Id.* at 2.

⁶ See PAUL JOHNSON, NAPOLEON: A LIFE 22 (2006). The quotation translates to “audacity, audacity, and ever more [always] audacity.” This quote is also attributed to General George S. Patton. See, e.g., PATTON (20th Century Fox 1970).

⁷ General Martin Dempsey, *A Campaign of Learning*, 155 RUSI JOURNAL, no. 3, June/July 2010, at 7.

conversation. And, in moderation, this may be true and prudent.

Unfortunately, over time this approach retards the fundamental skills of communication. So when your evil twin suggests a call would “waste time” or present an awkward moment, push him off your shoulder and pick up the phone. Odds are, you should work through the awkward moment as a professional and get on with the business of the day building rapport and relationships.

Resist the various temptations that nag us all. Pick up the phone. Reconnect with your client and hone your fundamental communication skills as a lawyer.

5. Writing—Even Email Is an Art

Although regularly up to my neck in email, it is my least favorite way to communicate. It enables the most curious paradox to seep into our staff work. When you ask a colleague to “check on the status of the work order” or “see what time is best for Joan to hold the meeting” we immediately regress about one hundred years in communication and efficiency. While our technology permits neck-breaking speed, we adopt one of the slowest methods to accomplish the task—we email. Then we wait for a response, and wait, and wait. Finally, we forget what we are waiting for until someone asks about it again.

Further, there is no context, no tone, and no interaction. The stock in your trade is advice, which is best rendered, as discussed above, by presence and availability. The written word can be enormously effective in some contexts (like motions, for example). But it can also become victim to sloppiness and inattention to detail in others. The nuance of advice, the tone and tenor of advice, is lost in email. There is no body language; no perceived impact on the recipient.

It Is Art. Writing is an art. It is and should be an iterative process. That means as a staff attorney, you will get multiple edits, multiple times—not because your boss knows what it is supposed to look like at the beginning or that you are a terrible writer—but because it takes shape through the process of writing and rewriting. “There is no great writing, only great rewriting.”⁸ Editing makes you a better writer and, in turn, a better communicator. Look at the edits and learn from them. There is no room for pride in authorship.

The key to the “art” is knowing when to pull the trigger. That is, when to end the editing process and submit or send your work. You will know it when you see it, which is either

a nearly blown suspense or satisfaction in the results of your process.

Bottom Line Up Front. The hallmark of good Army writing is hitting the reader with the Bottom Line Up Front (BLUF).⁹ Any memorandum, any email, and any communication should contain a BLUF. Work it into your practice. Avoid the long list of reference citations that no one will read. Hit the boss or the client with the BLUF.

Specific to email, do not forward a string of emails without a BLUF. We do not forward emails to anyone senior to us with “FYI.” We need to put the BLUF at the top of the string of emails. Then, the boss knows the purpose of the email and has the information in the string if she has the time and inclination to read them. You must assume she does not have the time. Remember to screen the string of emails as well; are you sure you want the boss to see all of it? The BLUF is an essential element of an email, especially when the boss does not have the time to read the entire email.

Brevity. “If I’d had more time I would have written a shorter letter. . . .”¹⁰ Always practice brevity. However, your style will often depend on the audience. It is easy to write a five-page legal opinion. It is much harder to condense the five pages to one page without losing the tone, accuracy, or cogent recommendation. Remember the single page will likely be consumed, but the five-page opinion will be avoided.

Clarity. “Writing must be clear, concise, and effective” and easily read and understood in a single reading.¹¹ This can vary by degree, depending on the audience. Writing for another lawyer should not be the same as writing for a client, an investigating officer, or the court. Academic writing is altogether different from appellate writing or a note to a commander. An ethics opinion to a commander is necessarily different from a memorandum for record that supports the more easily understood commander’s note. Knowing your audience is imperative, but the axiom remains the same: easily understood in a single reading.

For Others. “Tear lines” and ghost writing emails are part of the job. Anytime your boss tells you to prepare an email for her, you must pause and remember you have just been told to do a tear line—a note the boss can cut and paste with minimal editing and send. Therefore, you must write in your boss’s style. Edit and re-edit. Any mistakes will be attributed to your boss. If done well, this is a practiced art. Your boss will know if you tried to mimic her style and see the level of effort you invested. And, of course, if you did not, she will notice that, too.

⁸ Justice Louis Brandeis, *Words of Wisdom*, BRANDEIS UNIVERSITY, <https://www.brandeis.edu/acserv/fellowships/essays.html> (last visited June 8, 2016).

⁹ U.S. DEP’T OF ARMY, REG. 25-50, PREPARING AND MANAGING CORRESPONDENCE para. 1-36.b. (17 May 2013) [hereinafter AR 25-50].

¹⁰ Mark Twain, *Letter to James Redpath*, MARK TWAIN PROJECT (June 15, 1871), www.marktwainproject.org/xtf/view?docId=letters/UCCL00617.

xml;style=letter;brand=mtp. Although this quote may not be directly attributable to Mark Twain, Twain wrote regarding the length of his letter, “You’ll have to excuse my lengthiness—the reason I dread writing letters is because I am so apt to get to slinging wisdom & forget to let up. Thus much precious time is lost.” *Id.*

¹¹ AR 25-50, *supra* note 11, para. 1-10; *see also* Plain Writing Act of 2010, Pub. L. No. 111-274, § 3, 124 Stat. 2861, 2861 (2010).

Edits. Return edits to written work with previous edits. Do not make the boss ask for them. She will not remember all the edits she made and we should not expect her to. If you are proficient in track changes, ensure the boss knows how to use the function—accepting or rejecting your edits and comments. More importantly, if the boss’s edits do not work or make sense, then take the initiative and write it better. However, be sure to point it out and explain the changes so the boss does not think you ignored or missed the edit.

Errors. Proof and spell-check before sending. Errors can take away from the entire meaning of your communication.

Respond. Acknowledge email taskings with “acknowledged,” “got it,” “wilco,” etc. Do not fear cluttering the boss’s inbox; he wants to know you have the task. If you were standing face-to-face and received the task, would you turn and walk away without uttering a word or at least nodding acknowledgement?

Think Twice and Use Caution. Email after 2100 is usually fine to compose but a bad idea to send. Sleep on it, reread it, and send in the morning. Or do not.

Understand that every email you send to a commander or staff member, to include the staff judge advocate (SJA), may be viewed as a legal opinion. Email has many dangers, not least that it can be forwarded in pieces and parts. If you send an email, be prepared to see it again—anywhere. While email is a vital feature of our practice landscape, and life in general, exercise caution. Being mindful of its pitfalls and weaknesses, compensate through balance. And, when necessary, write and sign a memorandum instead of sending an email.

Along the same lines, watch the staff’s email traffic. We all know that email lives forever and while the tone and content can be informal, it should always be professional. If you see an email that skirts the line, discuss it with the sender.

General Dempsey’s admonition from above resonates for email as well. Understand our environment, use its tools, but do not let the tools become your master. You must think beyond the technology to understand how to use it best, and how to be ready for the next fight, whether it be the next deployment or the next deposition or cross-examination. Email is as much a blessing as it is a curse. Maximize the blessing and minimize the curse. Renew your relationship with Bell’s greatest invention. Better yet, have a face-to-face conversation.

6. Rank Work, the Boss’s Work and Gut Checks

Having answered the question, and communicated that to the boss, periodically consider whether you are actually doing

the work the Army is paying you to do. If you are a colonel, then do not do the work intended for majors and lieutenant colonels. The Army promoted you to do colonel’s work. The same is true for every grade. Even though you know you can¹² produce the slidedeck for the briefing, *that* may no longer be your job. Depending on your job, you may be the person who now *reviews* the deck, *reacts* to what was created, and *teaches* others how to properly create the slidedeck. The difference is critical, and you must be smart enough to know the difference. However, never be too above it all to get your hands dirty. Just understand the point of departure.

Work at Your Level. Field grade officers exist to “see above the fray.” They are there to view to the field and direct the interplay between larger formations; to digest data from broader input sources and make sense of it as part of a larger whole. You cannot direct the movements of battalions if you are standing in front of a company. This principle is so fundamental it should not need elaboration, but we constantly live to repeat the error. If you are not looking beyond the 50-meter target, you cannot anticipate what the 300-meter target looks like or where it will be.

You owe your boss operational or strategic vision. If you are doing all the legal reviews on investigations, who is looking for trends, training requirements, and resourcing to fix the trends? As a Deputy SJA, if you are reviewing every action that leaves the office, you paralyze the office. Also, you cannot evaluate the effectiveness of legal writing or a slidedeck if you created it. Teach others in your office how to fish, and then spot-check the fishing lines, the fishing hole selections, and the cooking of the fish. You will have to prioritize your work to ensure the office runs smoothly.

You will do it all, so embrace it. No drama, no whining. Just ensure the weight of the effort is in the right place, given your grade and duties.

Do the Boss’s Work First. Prioritize your efforts in the right way. A simple, age-old adage that is often ignored or simply not understood or appreciated. If in doubt how to prioritize, you must ask. “Got it Ma’am. I’m working an action for the Deputy right now on the fuel contracts; do you want me to pause on that action to work this?” Whatever prioritization you settle on, you own an action until it is back on your desk, signed and complete. If it is waiting on someone’s desk for review or signature, it is your job to keep it moving, which means you pester the Deputy. Keep pushing until the action is complete. If no one is asking for the action, then the boss is going to assume it is routine and can wait, or worse, that you do not care.

Gut Checks. Know that your boss trusts your judgment and you should trust your instincts. A good staff officer, like a good SJA or commander, will do a gut check prior to

¹² This is a common lament among senior officers. Candidly, it’s entirely possible I cannot produce the notional slidedeck—at least not as effectively as others in the office. This footnote should serve as a reminder to JA

leaders that believing you can produce slides as well as your subordinates may be founded on hubris rather than reality.

making a decision. Your “spidey sense” is invaluable in the practice of law and soldiering. If something does not feel right, it probably is not right. Note that the gut check is fundamentally different from guessing. Do not guess. However, make calculated decisions based on your expertise and experience. That is, after all, a large part of what the Army pays you to do. I have witnessed a superb trial attorney, during strategy sessions, do gut checks on different aspects of witness decisions—whom to call, what order, areas of focus, whether to even use the accused’s statement to the investigator, etc. I have emulated his practice ever since that moment. There is the law, there is the regulation that might allow you to do something, and then there is the gut check.

7. Find Your Inspiration—and Inspire Others

It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, and comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows the great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat.¹³

Exhilarating. On the order of the Saint Crispin Day speech¹⁴ or Churchill’s “Finest Hour,”¹⁵ Roosevelt’s *Man in the Arena* speech resonates in so many places in our practice—from gut checks prior to cross-examination to those dark moments as an SJA when you stand seemingly alone in the world with a piece of advice no one wants to hear. As we soldier, as we practice law, there will be many moments, if you are doing it correctly, where our faces will be “marred with dust and sweat and blood.”¹⁶

Your proudest moment will arrive when, having delivered your advice, you find that you and your team are the only ones who could deliver that advice, and you suddenly realize that your years of training brought you to that point. It arrives a second time, more forcefully in the hallway conversation with other officers, who say afterwards, “I am glad you said something because no one else was going to.”

Figuratively, every day in court, or in rigorous preparation for the next great case, should have each of us “daring greatly.”¹⁷ Every new venture improving the warrant process in some foreign land, or trying to bring the interagency together for its inevitably dysfunctional best effort, will push us to make the incremental, or, every so often monumental, difference. For that is where the real job satisfaction awaits you. That is where you finally realize you are in that moment in time when your training, skills, intellect—and the Army’s investment in you—have conjoined to allow you to achieve great things.

So, have something that inspires you. Whether it is Roosevelt, Churchill or Kipling’s famous poem, *If*, have *something*. Risk of failure is ever-present. Inspiration is the highly enriched fuel that overcomes the fear of taking risks—and will make you a better lawyer.

Interest in Others, and Being Interesting. Good lawyering means getting clients comfortable talking to you, anywhere, anytime, about anything.

This means you have to be interesting, which in most human interaction means you take an interest *in them* and *their interests*. So, while I do not like watching or reading about baseball, if my boss does, then I am going to learn about her favorite team and know how they did last night; so in our warm up conversation I can *participate*. If you find yourself saying, “I shouldn’t have to do that to do my job,” or “I hate football,” that is your evil twin talking again. Brush the evil twin off—this is not a waste of time.

Since all armies march on their stomach, it is no surprise that so much of our work gets done in the vicinity of food. Whether it’s the M&M jar or the dining facility, some of your best advice is conveyed in the mess hall or over coffee in your office. The identification of an investigating officer, a candid discussion with the intel officer or someone in the targeting cell, or talking the public affairs officer out of a magazine interview with the commanding general. Making people feel comfortable around you and learning about them only improves your ability to communicate with them.

II. Final Thoughts

The crossroads of our practice of law with our staff officer responsibilities is communication. If information is the coin of the realm then communication is our stock exchange. Figuring out who else needs to know—and artfully communicating with them—will pay immense and

¹³ Theodore Roosevelt, Citizenship in a Republic, The Man in the Arena, Address in Paris, France (Apr. 23, 1910).

¹⁴ WILLIAM SHAKESPEARE, HENRY V, act 4, sc. 3.

¹⁵ Winston Churchill, Their Finest Hour, Address Before The House of Commons of the Parliament of the United Kingdom (June 18, 1940).

¹⁶ Roosevelt, *supra* note 15.

¹⁷ *Id.*

immeasurable dividends. Moreover, artful communication is the lifeblood of good leadership.

Think about Berra's charge of competence to hit home runs and Kipling's immortal anthem to relentless diligence, self-improvement, and self-awareness setting each of us on a path to "meet with triumph and disaster and [to] treat those two imposters just the same"¹⁸

You are, and will always be, the "unfinished symphony." You are always under construction. Let this notion animate you every day and in so doing emulate the lawyer you admire, steal from the leader you respect, and operate in a way your mother or father would brag about.

¹⁸ Kipling, *supra* note 2.