



STICKY NOTES ACTUALLY

For advocates in the courtroom, Post-it Notes trump online chats every day of the week. Here's why.

The sticky note is a major player in the drama of the courtroom. In the context of virtual hearings, you don't know what you've got 'til it's gone.

Sometimes it's hard to put a finger on exactly what we're missing when we shift court trials and arbitration hearings online.

This paper presents a light-hearted analysis of the way advocates use Post-it Notes in-person, examined through the lens of vision science and social cognition.

This analysis makes one thing clear: millions of lines of computer code simply cannot replace the depth and complexity of social data we are able to exchange in a matter of milliseconds when we are in each other's physical presence.



KEY: Relevant aspects of visual processing and social cognition



Detecting motion is one of the primary functions of peripheral vision. Motion increases our ability to detect objects appearing in the periphery.



We have the ability to infer or attribute mental states (such as emotions, knowledge, beliefs) to others. This capacity is called "theory of mind". It is uniquely human and relies on processing multiple social cues.



Body language is another rich source of social information. Rapidly and automatically, we are able to communicate a vast range of messages using physical behaviour.



Certain visual properties, such as motion, are known to "capture" (i.e. involuntarily direct) our visual attention.



Eye gaze is a critical social cue. It tells us information about someone else (what they are thinking or feeling) and allows us to signal similar information to others.



Mutual gaze or eye contact is a powerful means of nonverbal communication. The eyes convey complex emotions and eye contact allows immediate and deep connection.



Shared attention is where two (or more) individuals look at the same object, knowing that they are together sharing the same focus.



Facial expressions are a form of body language. They are our primary method for conveying and comprehending social information without words.

THE ADVOCATE'S POST-IT NOTE: A PSYCHOLOGICAL ANALYSIS

STAGE 1

Director's Note: All cast members (Lead Counsel, Supporting Counsel & Sticky Notes) appear physically on set together. The full sequence of actions takes place in a matter of seconds.

Lead Counsel appears to have missed a killer point during cross-examination.
Supporting Counsel cannot let this slide. Supporting Counsel hastily scribbles on a Post-it Note: "C-156". Leaning forward across the desk in a bid to conceal the urgent communication, he surreptitiously edges the Post-it Note into Lead Counsel's field of vision.



STAGE 2

Lead Counsel has not seen the Post-it.
Supporting Counsel edges the Post-it Note further into her field of view. Supporting Counsel holds it patiently, along with his breath.
➔ Repeat Stage 1



Lead Counsel has seen the Post-it. She moves her head almost imperceptibly towards the note and her eyes glance down to read the secret scrawling. Lead Counsel's eyes stay focused on the note for some seconds.
Supporting Counsel has seen that Lead Counsel has seen



STAGE 3



Lead Counsel does not understand. How is she meant to be intimately familiar with C-156? It's not even in the core bundle, let alone the top 20 Claimant's Exhibits. Lead Counsel lifts her head to look at Supporting Counsel.
Supporting Counsel lifts his head to meet her gaze. Eye contact is held for long enough to telegraph the urgent message:
"I don't have a clue what you're on about – give me more".



Lead Counsel gives a near-imperceptible nod and orients her head quickly back to the witness.
Lead Counsel understands and Supporting Counsel knows it.
➔ Skip to Stage 6



STAGE 4



Supporting Counsel swiftly retracts the Post-it Note and urgently scrawls a few choice words. Equally swiftly, the updated Post-it Note is placed once again before Lead Counsel. Supporting Counsel focuses his gaze like a laser on the Post-it Note.

Lead Counsel looks at the Post-it Note. Both are aware the other is studying the Post-it Note, though currently with differing degrees of understanding.



STAGE 5



Lead Counsel still doesn't get it. At this point though, she risks losing her train of cross altogether. She gives a quick, micro-shake of the head and snaps her gaze back to the witness. Supporting Counsel is dismissed.

Supporting Counsel feels immense and entirely misplaced guilt. He wishes he were doing the cross.



Lead Counsel has finally understood. Hallelujah. She gives one deep, slow nod of the head and looks away.

Supporting Counsel sees the head bow, understands that confirmation is received and exhales.

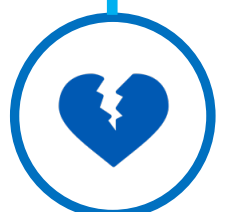
The rest of the hearing room just think Lead Counsel is a bit tired.



STAGE 6




Lead Counsel makes Supporting Counsel's day by switching track to deliver the killer question.




Lead Counsel breaks Supporting Counsel's heart by rejecting C-156 and reverting to the cross script.

THE ONLINE VERSION

Where all cast members are physically separate from one another in a fully remote virtual hearing, the psychological features of the interaction are altered fundamentally (see analysis below). For instance:

 The nature of the visual cues makes the message significantly less likely to capture Lead Counsel’s attention (i.e. message alert on a mobile phone vs. moving sticky note in the peripheral visual field).

 The large majority of social cues, and the many channels of communication they afford, are missing. The power of the Post-it Note is therefore significantly diluted, if not annulled, in the online alternative.

For this reason, where local rules allow, Lead Counsel should sit with Supporting Counsel physically in the same room to allow the magic to happen.



Supporting Counsel types a message into the online chat. To be communicated effectively, Lead Counsel must actively disengage from their cross and orient their head + eyes towards the sacred online chat screen. This is a tall order for any advocate in full flow grilling a witness.



Supporting Counsel can’t read critical social cues like body language and eye gaze. They cannot know if or when Lead Counsel reads the message.



Current online platforms do not enable eye contact so everything must be communicated by text. Lead Counsel does not have time or opportunity to ask for clarification or explanation.

Supporting Counsel is left in a nail-biting situation – never knowing if their message has been seen or not, understood or not, taken on board or not.



Not Delivered



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