Legal Writing & Effective Persuasion

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Persuasive Advocacy

WARM UP ACTIVITY

Let's eat Grandma!

Let's eat, Grandma!

Eat, you're dinner, Baby!

Eat your dinner, Baby!

Say "No" to drugs from Officers of the VIPD Crime Prevention Program.

Say "No" to drugs. A message F From Officers of the VIPD Crime Prevention Program.

I love eating my family and my dog.

I love eating, my family, and my dog.
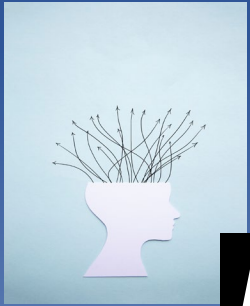
Woman without her man is nothing.

WOMAN: WITHOUT HER, MAN IS NOTHING !!!

Woman: without her, man is nothing.
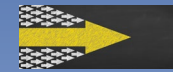
AWARENESS . . . Influences on Communication

Encoding

Decoding

SENDER → **MESSAGE** → **Channel** → **RECEIVER**

Filters / Noise in Communication

Tone

Credibility

Clarity

Language / Mode

Errors

Openness . . . Listening . . . Comprehension
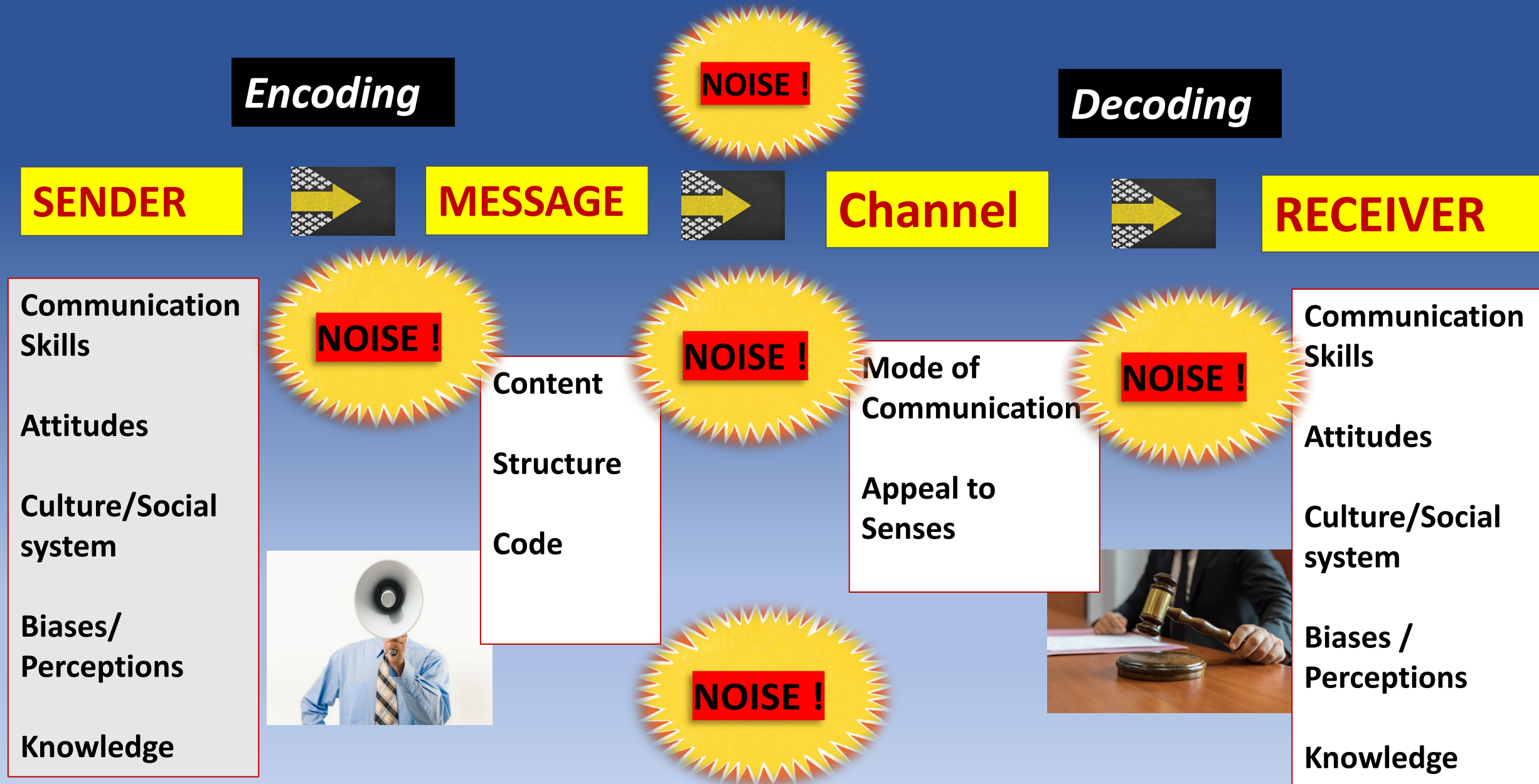
Biases / Attitude

Perceptions

Knowledge & Authority

Symbols

Acknowledging opposing views

OtherDistractions

Structure /Organization

AWARENESS . . . Influences on Communication

Encoding

NOISE !

Decoding

SENDER → **MESSAGE** → **Channel** → **RECEIVER**

NOISE !

NOISE !

NOISE !

NOISE !

Communication Skills

Attitudes

Culture/Social system

Biases/ Perceptions

Knowledge

Content

Structure

Code

Mode of Communication

Appeal to Senses

Communication Skills

Attitudes

Culture/Social system

Biases / Perceptions

Knowledge

R.E.S.P.E.C.T

a n d

CREDIBILITY

Built Over Time

Colleagues . . .

. . . Judges

KNOW YOUR AUDIENCE . . .

Building Credibility . . .

Preparation

Accuracy (facts, law, citations)

Reputation for Truth/ candor

Demonstrate Commitment
& Effort in researching and
writing.

Integrity with colleagues

Candor in Arguments

Timeliness

A View From the Bench

Video: Justice John Roberts

https://youtu.be/ZIjBzn7rbPE

CREDIBLE ADVOCACY = EFFECTIVE ADVOCACY

1. Develop a Roadmap

   -Strive for clarity and understanding

   -Organization (i.e. Build a **"Logos"** House)

2. Address the Issues

3. Controlling authority (i.e. judicial hierarchy)

4. Acknowledge Weaknesses in Argument

5. Deal with contrary precedent

6. Argue Credibly and Acknowledge/correct prior errors.

7. Remove Negative Filters

   (i.e. language, tone, grammatical and punctuation errors).

8. ONE LAST LOOK in the proverbial mirror !

1. Provide Roadmap

- ## Where are we going?

  Provide Summary / City map . . .
  to our destination (the conclusion)

- ## How are we getting there?

  Lists/ numbers; Transitional phrases
  Use "turn signals"

- ## Conclusion !

  What should reader/listener take away from each turn

  /each stop along the way? (each section and in totality?)

2. Stick to the Issues !

-Focus on strongest/best issues

-Hit strong points

-Avoid side arguments and personal attacks

Avoid Ad Hominem Arguments

"When the debate is lost, slander becomes the tool of the loser."

-*Socrates*

WARNING:
WILL RESORT TO AD HOMINEM ATTACKS WHEN CORNERED

Also Avoid Other Fallacies in Argument?

- **Strawman argument**
- False Dilemma
- **Circular Arguments**
- Generalizations
- **Red Herring**
- Causal Fallacy
- **Equivocation**
- Appeal to pity or emotions
- **Bandwagon**

3. Provide Appropriate Authority

- **Adds Authority & Credibility**

    - **Controlling Authority**

        *Adhere to Judicial Hierarchy

        *Mandatory v. Persuasive

        * Credible Argument for Change

4. Acknowledge Weaknesses

- Sometimes, we just have to concede a point . . .

Acknowledge weaknesses in your argument, while highlighting strengths (i.e. why it does not matter in outcome)

-Avoid Weakening Argument with Unreasonable Points

5. Deal with Contrary Precedent . . .

- **Dissimilar facts ? Differences in prevailing law?**

- **Not controlling authority ?**
- Non-precedential?

- **Wrongly decided ?**
  (i.e. statutory construction issue w/o defering to, or applying, highest local court, etc.)

- **Party relies on dicta?**

- **Holding should not apply here?**
  - **Limiting language in opinion?**
  - **Specific circumstances driving decision?** – i.e. equity, age of decision/ court & society has changed & issue not contemplated

- **Intervening circumstances** (i.e. law amended; overturned by later decision, etc.)?

6. Credible Arguments . . .

- **<u>Support arguments</u>**
  Build a "Logos" House; avoid logical leaps /unreasonable points

- **<u>Acknowledge/correct errors</u>**

- **<u>Be Accurate</u>**: Do NOT stretch or misrepresent facts or the law.

- **<u>Be Prepared</u>** – Show commitment to research and to the law

CONCLUSION

INFERENCES/ SUPPORTING EVIDENCE

PREMISES

7. Remove Negative Filters & Distractions . . .

- **Errors or misrepresentations in facts and the law**
- Incorrect citations
- **Inapplicable citations that impact on credibility; professionalism**
- Grammatical & punctuation errors
- **Logical Leaps**
- Lack of Clarity or Organization
- **Wrong tone**
- *Ad hominem & other fallacious* arguments
- Lack of professionalism

Etc. . ..

NOISE !

8. One Last Look in the "Mirror"

Proofread/Edit.
- Factual Accuracy
- Accuracy in law and citations
- Logic
- Grammar & Punctuation
- Tone (suitable for audience?)

Professionalism.
Adhere to rules
Avoid Personal attacks

Accountability Partner.
Review by colleague for tone and   logical leaps, etc.

PREPARE, PREPARE, PREPARE.

- **Know the record**

    -Know facts and governing law;
    - Know what you briefed
    -Be able to discuss cases cited.

- **Anticipate questions and disputed issues; Rehearse responses**

- **Develop a theme for argument**

- **Distill argument** to key points
    AND **Give Roadmap** early

- **Set tone/stage with strong opening**

- **Advocate only reasonable positions.**

- **Acknowledge weaknesses**

- **End strong !**

    (Sum up; remind judges of rules and why your position is best outcome)

Answer Questions . . .

- Immediately
- Directly (no avoidance)
- Concisely

Maintain Professionalism.

- Know your Audience -- Opposing Counsel, the Court and court staff
- Professional presentation
- Stay out of the gutter!
- Watch nonverbal communication
- Maintain eye contact
- Reflect enthusiasm and commitment
- Be on time

Professional Appearance/Grooming

WRITING ACTIVITY

a n d

WRAP UP

Questions ?