

# Keeping Your Client's **TRUST** Even When Things Go Wrong

CONTINUING LEGAL EDUCATION  
ETHICS: 1 HOUR  
Client Communications

PRESENTER  
FRANCINE TONE



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LUNCHING LAWYERS



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## Who ARE These Clients?

- Unreasonable Demander
- Constant Caller
- Challenger
- Nit-picker
- Threatener
- Take-Matters-Into-Own-Handser
- Stop-Payer
- Don't Listener
- Don't Doer
- And more ...



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**WHY???**

Why are these clients acting this?



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**Simple Answer**



Anger  
FEAR  
Survival



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**Client's Perception**

Keeping Your Client's **TRUST**  
When they  
**PERCEIVE**  
Things are Going Wrong



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## Basic Human Emotions

- Happiness
- Anger
- Fear
- Sadness
- Disgust
- Surprise




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## Basic Human Emotions

- Happiness
- Anger
- Fear
- Sadness
- Disgust
- Surprise

Confusion

Unease

Worry

Anxiety

Frustration

Annoyance

Despair

Animosity

Exasperation

Resentment

Acrimony




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## Basic Human Emotions

- Happiness
- Anger
- Fear
- Sadness
- Disgust
- Surprise






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## Results

# LOSS OF TRUST

FRANCINE TONE  
ESQ. ATTORNEY AT LAW

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## Why Listen to Me?

FRANCINE TONE  
ESQ. ATTORNEY AT LAW

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## Why Now?

FRANCINE TONE  
ESQ. ATTORNEY AT LAW

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**Seminal Case**

<b>CEREBRAL CORTEX</b>	Cerebral Cortex Strategy Center of the Brain
v.	v.
<b>LIMBIC SYSTEM</b>	Limbic System Emotional Center of the Brain



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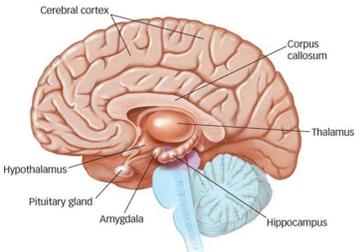
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**Seminal Case**

<b>CEREBRAL CORTEX</b>	
v.	
<b>LIMBIC SYSTEM</b>	



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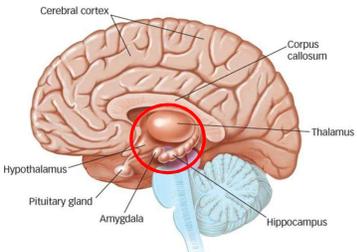
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**Seminal Case**

<b>CEREBRAL CORTEX</b>	
v.	
<b>LIMBIC SYSTEM</b>	



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**Seminal Case**

**CEREBRAL CORTEX**

V.

**LIMBIC SYSTEM**

**AMYGDALA**

FRANCINE TONE

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**Cerebral Cortex v. Limbic System**

**PARALYSIS**

FRANCINE TONE

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**Cerebral Cortex v. Limbic System**

- Amygdala *perceives* danger
- Danger *triggers* Limbic System – Primitive Brain
- Primitive Brain *overrides* the Strategic Center

FRANCINE TONE

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**Cerebral Cortex v. Limbic System**

THE CLIENT

~~REASON AND EXPLAIN~~

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**Cerebral Cortex v. Limbic System**

LIMBIC SYSTEM

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**Client's Perception**

- > Why can't we get to court NOW?
- > Why does it take so long to get a hearing?
- > Why is the deposition being put off so far out?
- > You took how long to write this brief?
- > With today's technology, why ...?
- > I want a damn apology!
- > But I know what he was thinking when he said ...
- > I keep telling you this is what happened; I don't need any documents!
- > You need to be more firm with the judge!
- > You're commiserating with the enemy when you chat with the other lawyer!
- > Why are you talking to me about settlement? I want justice!
- > My plumber told me this is a SLAM DUNK!
- > I want punitive damages! Jim got them!
- > I saw on TV ...
- > The law is just wrong/stupid ... do something!
- > But I was injured and someone needs to pay!
- > But they are wrong and they should pay!
- > I want them to suffer!
- > What if I need to talk to you when you're in Brazil?
- > I want you to ask for sanctions!
- > I just threw all the documents in a pile, but I put them in this box for you.
- > I got your letter, but didn't open it.
- > I want to convince the other lawyer I'm right
- > Here's research I did for you - I found this on the internet
- > ...

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### Cerebral Cortex v. Limbic System

- FAMILY LAW
- CRIMINAL LAW
- PERSONAL INJURY
- ESTATE PLANNING | PROBATE
- BUSINESS OWNERS
- REAL ESTATE TRANSACTIONS
- CORPORATE | BIG BUSINESS



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### Cerebral Cortex v. Limbic System



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### Cerebral Cortex v. Limbic System



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**Cerebral Cortex v. Limbic System**



JUDGMENT FOR THE  
**LIMBIC SYSTEM**



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**Cerebral Cortex v. Limbic System**

A WINNING STRATEGY

**CEREBRAL CORTEX**



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**Cerebral Cortex v. Limbic System**

A WINNING STRATEGY

**HIGHLY EFFECTIVE  
CLIENT COMMUNICATION**



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**Cerebral Cortex v. Limbic System**

A WINNING STRATEGY

**GOVERNING RULES  
ETHICS**




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**ABA Model Rule 1.4**

*Client-Lawyer Relationship*  
Rule 1.4 Communication

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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




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**ABA Model Rule 1.3**

*Client-Lawyer Relationship*  
Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.




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**“Reasonable”**

**Who Decides what is  
“Reasonable”?**




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**California Rule 1.4: Comment**

**COMMENT**

[1] A lawyer ***will not be subject to discipline*** under paragraph (a)(3) of this rule for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code, § 6068, subd. (m).) Whether a particular development is significant will generally depend on the surrounding facts and circumstances.




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**Discipline**

**LITMUS TEST?**




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**Rules**

**NOT GOOD ENOUGH**



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**Beyond the Rules**

**WHAT'S MISSING?**



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**What's Missing?**

**ADVANCED  
WARNING SYSTEM**



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**Advanced Warning System**

**PRE-EMPTIVE STRIKES**



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**Advanced Warning System**

**10 YEARS WATCHING**



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**Advanced Warning System**

**30 YEARS IN ACTION**



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**Advanced Warning System**

# WROTE THE BOOK

FRANCINE R. TONE, ESQ.

FRANCINE TONE

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**Advanced Warning System**

A WINNING STRATEGY  
**CEREBRAL CORTEX**

# EXAMPLES

FRANCINE TONE

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**Advanced Warning System**

You go to court and shake hands and chat with opposing counsel

MY ADVANCE WARNING

"Clients are often taken aback when they see their lawyers being friendly with the opposing side's lawyer and wonder why their lawyer is 'fraternizing with the enemy.' Your lawyer is not fraternizing; your lawyer is being cordial, civil and respectful because that is how good lawyers conduct themselves. ...

Clients may feel that their lawyer should exhibit the same level of passion that he/she feels when the lawyer goes to court or to a meeting with opposing counsel. You do not want your lawyer adopting your level of emotion ...

There are many instances when a simple agreement between the lawyers can eliminate the need to go to the judge for something the judge is likely to grant anyway ..."

(Tone, *What Every Good Lawyer Wants You to Know* (2016) pp. 58-59)

FRANCINE TONE

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## Advanced Warning System

You go to court and shake hands and chat with opposing counsel

### UNWARNED CLIENT

MY LAWYER IS AGAINST ME!

Why is my lawyer being nice to the other lawyer? She's commiserating with the enemy. Great, my lawyer is just part of the system that's against me.



### WARNED CLIENT

My lawyer is such a pro and gets along with everyone in the legal system. She must have a good reputation. I picked a good lawyer and I know I can trust her.



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## Advanced Warning System

You Reschedule a Deposition and it's Delayed 2 months

### MY ADVANCE WARNING

"In every lawsuit, outside of the courtroom, there are many instances when the lawyers from both sides must coordinate their calendars to take depositions, set up mediations, arbitrations, and even trials. All of these situations involve other persons who may include you, the other side, witnesses, expert witnesses and court reporters. When scheduling any of these events, your lawyer has to find a date that works for everyone involved. Coordinating all these calendars takes time. Once a date is set, if something were to happen to any of the players, it has to be reset. In a typical lawsuit, having to postpone events and resetting dates is common practice."

(Tone, *What Every Good Lawyer Wants You to Know* (2016) pp. 48)



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## Advanced Warning System

You Reschedule a Deposition and it's Delayed 2 months

### UNWARNED CLIENT

Are you serious? Why is this being delayed so long? Why can't you get to this sooner. I'm suffering here and you just keep dragging your feet and running up my fees!



### WARNED CLIENT

With all those people involved, my lawyer was able to get the deposition rescheduled in two months. Good work. I'm glad my lawyer works hard for me to go as fast as he can. I know it's a slow process.



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**Advanced Warning System**

**You Encourage Your Client to Settle**

**MY ADVANCE WARNING**

"In business transactions, settlement is a way of life. ...

As previously mentioned, since lawsuits are all about money, whether it involves you or your business, the lawsuit is about business decision-making. Treat it like a business. ...

At some point in every decision, we all have to do a risk-cost-benefit analysis. ...

One of the major benefits to settling is having control over the outcome of your case. ..."

And more...

(Tone, *What Every Good Lawyer Wants You to Know* (2016) pp. 60-62)




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**Advanced Warning System**

**You Encourage Your Client to Settle**

**UNWARNED CLIENT**

What? Why should I settle? I'm right and the other side is wrong! Why do you keep bringing me back to talking about settlement. Either you aren't competent to handle my case or you're just trying to sell me out!



**WARNED CLIENT**

Yes, let's look at settlement and see where we can compromise. I understand going to trial can be a gamble and this way, I may have some say in the outcome. I may also put all this behind me sooner.




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**Common Theme**

**UNWARNED CLIENT**

SETTLE?

YOU DON'T BELIEVE IN MY CASE

**UNWARNED CLIENT**

DELAYS?

YOU MUST BE DRAGGING YOUR FEET

**UNWARNED CLIENT**

PROFESSIONALISM?

YOU'RE AGAINST ME






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**TRUST-O-METER**

The image shows three gauges, each with a semi-circular scale from E to F. The top-left gauge has a needle pointing to approximately 1/4 of the way from E. The top-right gauge has a needle pointing to approximately 3/4 of the way from E. The bottom-center gauge has a needle pointing to approximately 1/2 of the way from E. Each gauge has a red needle and a black dial.

FRANCINE TONE

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**Your Noble Duty**

"And make no mistake: no profession is more honorable than law. The defenders of the Constitution, the guardians of our liberty, the advocates of just causes, no matter how unpopular, the protectors of the powerless, the wise counselors of society – that is the role of America's lawyers."

Bob Wright, University of Virginia Law School Graduation, 2002

Bob Wright was a lawyer, businessman, philanthropist and author. Since the late 1960s, Wright has served in numerous business and media roles, and founded an autism-awareness foundation, NBC executive including chairman and CEO 1986-2007.

FRANCINE TONE

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**Your Noble Duty**

**BEYOND RULES?**

FRANCINE TONE

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## Your Noble Duty

- High level of ethics, duties, fiduciary ... beyond the bare minimums
- Our calling
- Nobility
- Why did you become lawyer
- Mundane day-to-day – we forget




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## Trust: Client's Perception

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|---|--|
| <ul style="list-style-type: none"> <li>➤ I understand the legal system moves slowly</li> <li>➤ I understand court congestion</li> <li>➤ I understand calendaring nightmares</li> <li>➤ I understand good briefs take time</li> <li>➤ I understand technology does not solve all</li> <li>➤ I understand that my remedy is money</li> <li>➤ I understand you need facts</li> <li>➤ I understand you need evidence</li> <li>➤ I understand your reputation in court is important</li> <li>➤ I understand your reputation in the community is important</li> <li>➤ I understand settlement may be a viable and good option for me.</li> <li>➤ I understand that my case is not likely a slam dunk</li> </ul> | <ul style="list-style-type: none"> <li>➤ I understand I may not get punitive damages</li> <li>➤ I understand TV is not real life</li> <li>➤ I understand you can't change the law</li> <li>➤ I understand injury and fault are not always existing at the same time</li> <li>➤ I understand we need communication boundaries</li> <li>➤ I understand you decide tactics and strategies and will not compromise any of my rights without my consent.</li> <li>➤ I understand if I organize my facts and documents, I might save some money</li> <li>➤ I understand I need to stay active and organized while you are handling my case</li> <li>➤ I understand to just answer the question and it's not my job to convince the other lawyer the rightness of my position.</li> </ul> |
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## Advanced Warning System

### WAYS TO EMPLOY AN ADVANCED WARNING SYSTEM



BROCHURE



BOOK



BOOKLETS




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## Advanced Warning System

### WHAT TO INCLUDE

- Proudly Introduce Your Profession
- Why Do Lawsuits Take so Long?
- Realities of Money v. Apologies
- Facts
- Evidence
- Professionalism
- Case Resolution
- Damages
- Benefits of Settlement
- Objectives and Motivation
- Communication Ground Rules
- Client Roles
- Client Traps
- Specific Nuances About Your Area of Practice

STORIES




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## Advanced Warning *BUILDS TRUST*




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## RESULT

Keeping Your Client's  
**TRUST** Even When  
 Things Go Wrong




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**THANK YOU**  
FRANCINE TONE

- Managing Partner of Tone & Tone, Attorneys at Law | Appellate Law Specialist Certified by the California State Bar Board of Legal Specialization.
- Principal Strategic Advisor, Francine Tone & Associates LLC.
- Judge Pro Tem, Superior Court of Nevada County, Truckee Division
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FRANCINE TONE ATTORNEYS

Being a Lawyer is A Great Gig isn't it?

YUP ... my clients are AWESOME!

**LUNCHING LAWYERS**

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**Complimentary  
Copy of Book**

**WHAT EVERY  
GOOD LAWYER  
WANTS YOU TO KNOW**

An Insider's Guide on  
How to Reduce Stress,  
Reduce Costs and  
Get the Most  
From Your Lawyer

#1  
BESTSELLER

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AS SEEN ON

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