



AUGUST 2005 -- VOL. 47 No. 8

Building Trust among the Jury: Creating Positive Impressions

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Expecting a juror to find for your client based solely on the evidence is a lot like asking a person to buy a used car without a test drive and only a promise from the used car salesman seems to be; in both cases, the audience must trust the seller in order to trust the product. Trust in the attorney and in the litigant, whether plaintiff or defendant, is critical to persuading a jury because to jurors, psychologically speaking, the most persuasive component of evidence is the source that presents it. Building trust among your jurors is an indispensable part of success in trial, and it is impossible to let strong evidence build your trust for you or speak for itself. If your jurors do not trust you or your client from the get-go, even the most compelling evidence will be rejected and your case dismissed.

At the start of trial, the jurors know nothing about the attorneys, the litigants, or the case. However, the jurors are anything but a blank slate; they enter the courtroom with preconceived ideas about good attorneys and dishonest attorneys, honest plaintiffs and serial plaintiffs, legitimate lawsuits and frivolous lawsuits, and ideas about doctors, lawyers, business executives, contractors, large corporations, insurance companies, and every entity that may be involved in a trial. Every juror, because of their experiences and opinions, is predisposed to trust some and distrust others. Because jurors are not permitted to conduct their own impartial investigation of the case, they are forced to rely on the word (and presented evidence) of the attorneys and the litigants. And because jurors do not have the opportunity to get to know the attorneys and the litigants over time, they are forced to rely on quick judgments and visual and behavioral cues to determine who is trustworthy. As a result, it is crucial to create positive first impressions of your client, your witnesses, and yourself to build the trust required for your jurors to trust in your evidence and your case.

First, let's discuss creating positive first impressions of your witnesses. When preparing any witness, especially a first-time, non-expert witness such as your plaintiff or defendant, to testify in court, the savvy attorney would be wise to consider working just as much, if not more, on their witness' demeanor as on the content of their testimony.

Jurors have the option to believe or disbelieve what a witness says; in making this decision, jurors rely more on their impression of the witness' credibility than on the content of their testimony. Although obvious, this point bears repeating: jurors will believe the entire testimony of an "honest" witness and discredit the entire testimony of a "dishonest" witness. But what makes a witness honest or dishonest? The answer is the impression that the jurors create based on the demeanor and the perceived personality exhibited by the witness.

Because jurors lack the opportunity to get to know the witnesses, they are forced to scrutinize them with a sensitive, judgmental eye during their few moments of opportunity at trial. This is why it is absolutely crucial for your witnesses to appear professional, courteous, composed, and confident on the witness stand at all times. A witness whose demeanor is composed and gracious is a likeable, honest person to jurors. A witness who gets angry during cross-examination is an angry person at all times, in the minds of the jurors, because this is their only impression of this person. To jurors, demeanors such as anger, hostility, impatience, condescension, defensiveness, nervousness, hesitation and uncertainty are reflections of dishonesty. Remind your client and other witnesses that their outside feelings should be left at the courtroom steps; if your client is upset because they were cut off in traffic that morning, spilled coffee on their clothing, or had a fight with a spouse and bring that anger into trial, the jurors will interpret that anger as permanent reflection of their personality that will damage their credibility.

One of the most helpful pieces of advice to a first-time witness is to remind them that they are speaking to the jurors, not to the attorneys. Deposition was the time for discovery; once in trial, both attorneys already know the answers to their questions. Knowing that, your witnesses need to treat the opposing attorney the same way they would treat you or the foreperson during cross-examination. A witness who testifies in a compliant, patient, communicative manner, especially during hard questioning, gives the jury the impression that they have nothing to hide and no reason to become upset or defensive. Creating a positive impression for the jurors will assure that the witness' testimony will be believed and remembered.

Although the litigants are the centerpiece of the trial, the attorneys are their active advocates. The jurors not only hear from you the most but, perhaps more importantly, hear from you first. Building trust among the jurors by creating positive impressions of yourself is critical to your success; in actual and mock trials, jurors have knowingly based their decision on which attorney they liked more during voir dire or opening statements.

Your first opportunity to build trust among your jurors is during voir dire. Besides using voir dire to elicit insightful information from your jurors to eliminate biases during jury selection, the attorney should use voir dire to build a rapport with each juror. Building rapport with your jurors during voir dire builds trust in you as the attorney and in your case by extension. Techniques as simple as thanking jurors for their time, remembering (and correctly pronouncing) their names, making eye contact, smiling, and taking an interest in what they have to say during questioning makes an extraordinary difference in how likely the jurors are to like and believe you.

From the start of trial, jurors judge the honesty and likeability of attorneys by scrutinizing minute visual and behavioral cues such as dress, the expression of emotions, and confidence. Jurors expect honest attorneys to dress and behave professionally yet modestly. Extravagant suits and Rolex watches are often interpreted as visual cues of dishonesty; jurors psychologically equate opulence with greed, which subconsciously reminds jurors of the stereotype attorney who is motivated by money rather than truth and justice. Likewise, emotional expression by attorneys can either build or destroy trust among the jury. Jurors expect attorneys to show some emotion, particularly in emotional trials, but are wary of excessive emotion—too much emotion from an attorney is interpreted as manipulative, while too little may be interpreted as callousness.

Always keep in mind that your jurors' impressions of you and your client are forged at the earliest opportunity and that creating positive impressions start immediately. The first interaction with the jury sets the framework for your jurors' trust in you, your client, and your case. This is why it is imperative to carefully consider the impressions you make during voir dire and opening statements as the attorney, and the impressions your client makes during those few moments that they play an active role in trial, in testimony.

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