

The Art of Courtroom Demeanor

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When caught up in the actual substance of a case – jury selection, theme presentation, witness examination, opening and closing – even experienced trial lawyers can forget the critical need for respect toward the one individual in the courtroom who can have the most influence on jurors: the judge.

Studies have shown that jurors have high regard for both the judge and the court process. Jurors feel they and the judge are on the same side. They link the judge's role as a fair and impartial upholder of truth with their role of fair and impartial decision makers.

Not surprisingly, jury studies have also shown jurors have considerably less regard for attorneys. The lawyer who can foster a perception of approval, or better yet, alliance, with the judge acquires a significant advantage over the lawyer who does not.

One of the more obvious ways to create a favorable impression with jurors is for attorneys to treat the judge and court with demonstrated respect.

When jurors are ushered into the courtroom, they know two things:

- 1) Court is serious business; and
- 2) The judge's word must be believed and obeyed.

Dressed in their solemn black robes as they take their seat above the rest, they cease to be mere mortals; they become a paragon of impartiality. To jurors, they are the only sure thing in a room full of warring litigators, paid experts, and plaintiffs and defendants ready to do what it takes to win. True or not, this is the way it often looks from the jury box.

Jurors are never given the opportunity to learn the foibles and shortcomings of a judge. Jurors only know the judge has ultimate authority and power, who appears and disappears somewhat mysteriously and around whom everything else is arranged.

Lawyers may know a very different judge. Lawyers see judges at social gatherings and professional functions, and have probably interacted with them on a variety of different matters. Because of this relationship, lawyers tend to interact with judges during trial as they would with ordinary mortals.

Lawyers may become impatient with a judge's ruling, be defensive when over-ruled, and in various other

ways treat the judge like a colleague. However, the jury expects better. In fact, lawyers with a casual approach to a judge can do damage to their case.

How to Show Jurors You Respect Judge and Court

Juries watch lawyers constantly. They see everything. When the judge speaks to lawyers, lawyers should respond with clear and direct eye focus, still their body movements and be completely attentive to what is being said.

If lawyers become annoyed at a judge's instruction, they should not let it show, for example, by tapping a pencil against the table or making a grimace. Lawyers can always let off steam later in private, but when in court, it is wise never to let the jurors see annoyance against the judge.

It is important for lawyers to thank judges for their comments whenever possible. This does not mean that to win jurors' approval, lawyers must be passive. Jurors have no problem with a lawyer disagreeing with the judge, or even entering objections to what the judge has said or ruled. Jurors wince, however, when these objections are done without sufficient regard for the "status" of the judge.

Lawyers who incur the judge's wrath for matters of form will also be looked upon with great disfavor by jurors. Lawyers who are admonished by judges for "wasting the court's time" by being late, not having witnesses available as scheduled or being disorganized will find jurors scowling with displeasure.

Lawyers need to extend courteous behavior to all court personnel: bailiffs, court reporters, assistants and colleagues. Juries can more often relate to the courtroom "staff" and legal associates than to lawyers.

Showing court personnel respect tells jurors that an attorney is considerate to all, regardless of standing. This politeness is part of the "professionalism" expected by jurors and counts in their favorable assessment of an attorney.

Interactions With Opposing Counsel

Politeness is also the key to finding favor with jurors when interacting with opposing counsel, even when opposing counsel does not return the favor. Hemingway's "grace under pressure" applies: if the lawyer is polite and courteous in the face of opposing counsel's rudeness, the courteous lawyer scores points.

However, being too chummy with opposing counsel can also cause jurors to be disconcerted. Joking with opposing counsel does not reinforce the image of lawyering as an intense, dedicated profession.

Jurors may realize that attorneys know each other and are often friends outside the courtroom, but they do not want to see lawyers strike up a friendly conversation in a courtroom setting. This takes away, in their minds, from the lawyer's appreciation of the seriousness of the matter being decided.

Behavior outside the courtroom matters too. A lawyer can destroy credibility by being respectful and courteous in the courtroom, but unprofessional in the hallway. Reading a newspaper on breaks, talking about non-case issues with co-counsel, texting and making personal calls on cell phones make jurors doubt the lawyer's dedication to the case.

Lawyers must, at all times, convey that the present case has their complete attention. If the lawyer does not care, why should the jurors? While a trial may be all in a day's work to an attorney, to jurors it is a huge responsibility.

Jurors are much like an audience, watching events unfold on the courtroom stage. The interaction between the characters that make up a trial help shape how the jury perceives the content of the trial. Maintaining a respectful, professional courtroom demeanor is one of the most simple yet impactful courtroom techniques that trial attorneys have at their disposal.

About the author: Noelle C. Nelson, Ph.D., is a Southern California trial consultant who provides trial and jury strategy, witness preparation and focus groups for attorneys, and was named one of Lawdragon's "100 Trial Consultants You Need to Know." Her published books include "A Winning Case" (Prentice Hall), "Connecting With Your Client" (American Bar Association) and "The Power of Appreciation in Business" (MindLab Publishing), and the booklet, "101 Winning Tips: How to Give a Good Deposition and Testify Well in Court." Her email is nnelson@dr.noellenelson.com.