

# **BODY LANGUAGE AND TELLING APPEARANCES: EFFECTIVE COURTROOM PREPARATION**



**PRESENTATION TO THE  
GEORGE MASON AMERICAN INN OF COURT**

**Presenters:**

*Wednesday, February 17, 2010*

## Appearance in the Courtroom

- I. Why Does Appearance Matter?
  - A. Research shows that people unconsciously judge competence within one-tenth of a second and physical appearance is perhaps the most influential aspect of nonverbal communication because it's the first cue received when encountering a speaker.
  - B. Also, the style of your workplace attire has a significant impact on the way you feel. Studies have shown people feel more competent and authoritative in formal business attire.
  - C. People expect their lawyers to be conservatively dressed. It is a mark of their seriousness and professional standing – it gives reassurance to the client.
  - D. Studies have shown that being attractive increases your effectiveness as an advocate.
  - E. While we can't all be Tom Cruise, you do have control over some aspects of attractiveness.
    1. Code § 8.01-4 permits any Virginia district or circuit court to adopt rules “necessary to promote proper order and decorum and the efficient and safe use of courthouse facilities and clerks’ offices ...,” which could include adoption of rules for the attire of lawyers, litigants, jurors, and witnesses.
    2. A number of Virginia jurisdictions (including Fairfax, Arlington, Alexandria) have posted on their websites instructions or guidelines about proper courthouse attire for parties, witnesses, spectators, and jurors.
    3. One court’s local rule states: “All attorneys shall dress appropriately when appearing in court. Male attorneys shall wear coats and ties; Female attorneys shall wear business attire, a dress or a business suit consisting of either pants or a skirt.” Uniform Rules for the U.S.D.C. for the State of Louisiana, Local Rule 83.2.15W
- II. Women
  - A. Some of stereotypical negative comments heard from jurors :
    1. “She was too stern.”
    2. “She was dressed too sexy.”
  - B. When jurors judge female attorneys, they comment on everything visible! Hair, shoes, jewelry, clothing, facial expressions, and more are all scrutinized.
  - C. Think about developing your own signature item of clothing. (i.e. colorful shoes, an unusual brooch, or a patterned scarf ) that jurors associate with you and look forward to seeing on you. Jurors like female attorneys that show their “personality” through their attire.

- D. Based on jurors' comments, it is advisable to leave the designer duds at home since jurors can be quick to criticize women for wearing their success.
- E. More than one very accomplished and highly skilled female attorney has been criticized (by the female jurors) for having a Chanel handbag or expensive looking jewelry.
- F. Women with short hair are perceived as more competent than those with long hair. Body Language experts advise woman with long hair to wear it 'up' in some way when trying to create a professional impression.
- G. Appropriate attire includes a suit (skirt or pants and a jacket, either with a top/shirt/blouse or buttoned jacket), or an appropriately businesslike dress, with or without a jacket.
  - 1. A Roanoke Judge also has seen women attorneys in the courtroom wearing a formal-looking blouse or tunic with a skirt or pants, and has thought that they looked entirely appropriate and completely professional.
- H. An attorney's clothing must be neither too short, too tight, nor too sheer.

### III. Men

- A. When jurors judge male attorneys, they comment on their ties and shoes.
- B. Men with shorter hair are rated as more competent, intelligent, masculine, mature, and attractive than long-haired men.
- C. Women tend to pay more attention to attire – if there are mostly women on your jury be cognizant of your appearance
- D. A man should wear a suit or sport coat (one that he actually is wearing), a tie (actually tied around his neck), and remaining attire of comparable level of business formality.
- E. String ties, bolo ties, or hanging gold medallions don't count. See *Sandstrom v. State*, 309 So.2d 17, 23 (Fla. App. 1975). Neither does a bandana. See *Purpura v. Purpura*, 847 P.2d 314 (N.M. App. 1993).

### IV. Colors

- A. Black- "Black suits top one stylist's "don't" list. "Never, ever wear black. It's a rigid, aggressive, nonverbal form of communication to your clients and peers," he says. Plus black shows dirt and wrinkles, discolors, and needs to be paired with the exact same shade and fabric of black."
- B. Red-The Color of dominance and power, attention, health, determination, passion, and energy. Many consider Red Neckties the ultimate "power tie." For conservative business choose a slightly darker shade of red such as cherry, maroon, or burgundy - unless you want to stand out.
- C. Orange-Often times called "The Happy Color". It also resembles success, courage, adventure, warmth, and enthusiasm.
- D. Yellow-Yellow is a very playful color that often times is associated with anxiety, alertness, optimism, and confidence. For your necktie, choose lighter & warmer shades for the sunny days.
- E. Green-The color of prosperity, prestige, vitality, and harmony.

- F. Blue- creates trust and peace. It is also associated with loving, high regard, knowledge, social status, good health, happiness, and integrity. Blue is one of the most popular color on neckties that matches well with almost any suit. Light blue is a great color for the spring and summer. It has the effect of peace, affection, and sincerity.
- G. Purple-Purple is a very spiritual and powerful color. Purple is much less common on neckties. Some can wear this color quite well and it looks best with navy blue and light gray suits. Adolescent girls are most likely to select nearly all shades of purple as their favorite color.

## **Behavior in the Courtroom**

- I. Televised Debates Change the Way Americans View Candidates<sup>1</sup>
  - A. The first televised debate occurred in 1960 between Richard Nixon and John F. Kennedy.
  - B. Those who *listened* to the debate on the radio believed that Nixon was the victor, or at least that the candidates were evenly matched.
  - C. Studies indicate, however, that the 70 million who *watched* the debate perceived Kennedy as the winner by a large margin.
  - D. Nixon was the favorite going into the debate, but eventually lost the election to JFK.
  - E. After losing the 1960 presidential election, Nixon famously stated, “I believe that I spent too much time in the last campaign on substance and too little on appearance.”
  - F. In the courtroom, social scientists encourage attorneys to analyze verbal and nonverbal communication together, because the two modes of communication compliment each other.
  - G. Non-verbal persuasion is an important skill for attorneys because receivers are likely to put more weight on information gained through the speaker’s nonverbal cues. It is natural for people to assume that nonverbal cues are more genuine because they are more difficult to manipulate.
  
- II. Seeing – Not Hearing – Is Believing<sup>2</sup>
  - A. Sixty percent of a message is conveyed by body language and visual appearance generally.
  - B. Thirty percent of a message is conveyed by tone of voice.
  - C. Only ten percent of a message comes through the words used.
  - D. Attorneys are under the scrutiny of the jury from the moment they step into the courtroom. This means that an attorney is conveying visual messages to the jurors all day.
  - E. Watching a videotape of yourself in the courtroom is the best way to understand what messages you are conveying to the factfinder. Observe

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<sup>1</sup> Michael J. Higdon, ORAL ARGUMENT AND IMPRESSION MANAGEMENT: HARNESSING THE POWER OF NONVERBAL PERSUASION FOR A JUDICIAL AUDIENCE 456 (2009).

<sup>2</sup> Keith Evans, *The Common Sense Rules of Trial Advocacy* (1994).

how you move your head, what you do with your mouth, how you move your hands, arms, and body.

- F. Simple rules for effective behavior in the courtroom:
1. Do not appear too friendly with your opponent.
    - i. Be pleasant but not friendly
    - ii. Plain courtesy rules apply here
    - iii. If a juror happens to see you in an obviously friendly encounter with your opponent and later sees you in an adversarial situation, the juror will wonder about your sincerity
    - iv. You do not want to give jurors *any* reason not to trust you
  2. Do not smile, laugh, or joke with co-counsel
  3. Appear at all times to be absolutely sincere
    - i. All it takes is one instance of insincerity for the jury to lose trust in you
  4. Never convey any visual signal you do not intend to convey
  5. Use visual signals to your advantage by ensuring your factfinder has something to look at
    - i. Use visual aids – people listen more intently if they can look at something that is connected with what they are hearing
    - ii. Maintain eye contact with the factfinder
      - a. A regular glance is long enough where you will not seem shifty, but short enough where you will not seem threatening
  6. Because people generally mistrust attorneys, it is your job to work against the prejudice
    - i. Search for ways to present your case with sincerity – you must believe what you are asking the factfinder to believe
    - ii. Do not appear to be manipulative
  7. Understand the power of a good pause
    - i. Timing is everything and a well-timed pause can create a dramatic impact
  8. Before the trial begins, figure out how this particular judge feels about you moving about the well
    - i. In some jurisdictions it is regarded as discourteous to step into that space
  9. Beware of getting too close to the jury box or to the witness
    - i. If you invade the jury's space, some jurors may feel hostility towards you
    - ii. If you are too close to the witness, this may leave the jury with the impression that you are bullying the witness on cross-examination or identifying too closely with the witness on direct
  10. Be likeable –nice guys do finish first!

- i. If you are likeable, you will evoke your factfinder's nicest feelings and they will want to believe you
- ii. Avoid being insincere

### III. The Art of Persuasion

- A. The Seven Basic Codes of Nonverbal Behavior<sup>3</sup>
  - 1. Kinesics – what a speaker does with his body
  - 2. Physical Appearance – what a speaker looks like
  - 3. Vocalics – what a speaker sounds like
  - 4. Haptics – How a speaker physically touches an audience member
  - 5. Proxemics – How a speaker uses physical space
  - 6. Environment and Artifacts – How a speaker uses instruments and his environment
  - 7. Chronemics – How a speaker manages his time
- B. Any and all seven codes influence a speaker's perceived persuasiveness
- C. Even if an attorney's movements are restricted (e.g., being forced to stand behind the podium during oral argument or in federal court), what the attorney does with his/her body will still play a large role in persuasion.

### IV. Kinesics<sup>4</sup>

- A. Includes movement of the head, face, eyes, and limbs
- B. This is the single richest form of communication
- C. Estimates show that a human can produce up to 700,000 different signals by manipulating his/her body
  - 1. The human face *alone* can produce 250,000 expressions, which add up to 20,000 different emotions
  - 2. For this reason, the face is regarded as one of the biggest sources of nonverbal communication
- D. Facial Signals
  - 1. "Facial Primacy" – Studies show that receivers put more weight on a person's face than on any other form of nonverbal communication
  - 2. Eye Contact
    - i. Studies have found that there is a strong correlation between eye contact and persuasion
      - a. Those who make eye contact are more likely to solicit a charity donation
      - b. Jurors rate attorneys who *avert* gaze as less credible
    - ii. This correlation exists because
      - a. People respond favorably to speakers whom they find attractive and eye contact is a powerful indicator of attraction

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<sup>3</sup> Higdon, *supra* note 1, at 8.

<sup>4</sup> *Id.* at 9-18.

- b. People find dominant individuals more credible than submissive ones and eye contact is a way to communicate dominance to your audience
- 3. Facial Expressions and Head Movements
  - i. A speaker can persuade by displaying energetic behavior through his/her facial expressions and head movements
  - ii. Studies suggest that head nodding by a speaker can increase persuasion. People are more likely to be persuaded by those whom they find warm and approachable. Head nodding conveys approachability and warmth, whereas tense movements convey coldness and disinterest.

#### E. Body Posture

- 1. The factfinder reacts positively to an attorney that appears relaxed because he/she will perceive the attorney to be dominant and of high status
- 2. A “relaxed” attorney is perceived as more persuasive because a tense posture can be associated with self-doubt
- 3. Good posture, even while standing, displays security and self-assurance
- 4. Easiest way to relax your posture and increase your persuasiveness is to lean forward slightly

#### F. Gestures

- 1. When done properly, gesturing can be effective and can increase an attorney’s persuasiveness
- 2. Advantages of gesturing:
  - i. Regulate the flow of the interaction
  - ii. Maintain the factfinder’s attention
  - iii. Add emphasis or clarity to speech
  - iv. Make the content of the speech more memorable
- 3. Gestures that are “synchronized with and supporting the vocal/verbal stream” are associated with greater persuasiveness
  - i. If the gestures are not in synch with the attorney’s message, they may appear as nervous gestures which can reduce the attorney’s appearance of relaxation or they may become a distraction
  - ii. Nervous gestures are:
    - a. Lip licking
    - b. Postural sway
    - c. Shifting gaze
    - d. Blinking

V. A jury will respond more favorably to an attorney who appears assertive and powerful<sup>5</sup>

#### A. Keys to Appearing Assertive

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<sup>5</sup> Celia W. Childress, *Persuasive Delivery In The Courtroom* (2004).

1. Keep verbal and nonverbal components of your message consistent
2. Have a relaxed posture
3. Use firm but not overly expansive gestures
4. Sustain eye-contact, but avoid staring
5. Use illustrator gestures to emphasize key words and phrases (this should match your vocal inflection)
6. Use an appropriately loud voice

B. Nonverbal Cues to Avoid

1. Nervous gestures such as hand wringing and lip licking
2. Hunching the shoulders
3. Covering the mouth with the hand
4. A wooden posture; body is rigid
5. Out-of-context smiling
6. Frequent throat clearing
7. Deferentially raised eyebrow
8. Evasive eye contact
9. Staring
10. Assuming a closed posture (elbows close to chest, arms across chest, small gestures, hands clenched)
11. Continuous visual attentiveness while others are speaking
12. Looking down frequently