

# Body language: an essential skill to master in witness preparation



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One juror in the Conrad Black trial explained the guilty verdict very simply — he was “arrogant, I would say would be the main word I would come up with.... arrogant.” The juror also said that she had no sympathy for the defendant.

The explanation makes perfect sense. Attribution theory documents that we make quick decisions on little information. The classic tale is that the flying public assumes that the airline with the cleanest lunch tray is also the safest. Clean trays have little to do with safety. But then again, what other criteria would a lay passenger use to judge the safety of an airline? We all use the information available to us.

But this quote is curious on another level. Conrad Black said a grand total of absolutely nothing during his lengthy trial. So how could a juror come to the conclusion that Black is arrogant?

This is explainable by reference to any good non-verbal dictionary. Regrettably these don't exist and one must rely on academic literature or psychology books to piece together the non-verbal clues a witness or defendant might give off to transmit arrogance, or better yet, contrition, expertise or likeability.

Even the legal journals and articles on witness preparation mainly speak of the need to exhibit “positive” body language without defining what this means.

In fact, in the legal literature on

witness preparation, there's a further dilemma about body language and demeanor. Child witnesses and the victims of sexual assault and rape can lower their credibility if they appear too comfortable and composed, even if they're testifying years after the incident. Such victims are supposed to be rattled and juries expect them to show the signs of trauma.

But that special case aside, how can someone like Conrad Black help his case just by walking in and out of the court room, sitting in a chair and saying nothing?

The social science literature is pretty clear about what is positive in non-verbal communication. First, in western culture, one of the most commonly understood gestures is arms outstretched, elbows at 90 degrees, forearms rotated so that the inner arm is showing with the palms at an angle of 45 degrees. This is commonly understood to mean such things as: “I'm here. I'm with you. I'm open, have nothing to hide, am communicative and have no weapon.”

Another very commonly understood non-verbal signal is leaning forward a couple of degrees off the perpendicular. Imagine standing around a house party trying to strike up a conversation with someone standing ramrod straight, or worse, leaning back imperiously. You'd warm much more to the person leaning forward a little, but not so much as to invade your space.

Stay with the house-party analogy and you'll agree that about 50 to 75 per cent of your impact as a person is non-verbal and about 50 to 75 per cent of that is eye contact. If the person you're speaking with is looking over your shoulder for someone

more interesting, you will probably not think well of that person.

So how does this translate into court? How to walk in is a strategic decision. The accused should be purposeful and deliberate. This means walking directly to his chair without sweeping the room with his eyes. Arms should be at the side of the body with a gentle swing matching the gate, but they should not cross in front of the body. Brief case or papers should be put on the table purposefully without noise. A neutral or slightly positive facial expression is best.

At the table, the accused can approximate positive body language by sitting forward in his chair, feet flat on the floor, back straight and tilted forward. Arms can rest gently on the desk, shoulder width apart with the palms rotated as described above. Note taking shows interest and respect, so long as it doesn't look as if you're making a transcript to check up on those speaking.

Occasional looks at the judge, witness, counsel who are speaking and the jury can show interest and respect for the process. But the looks must not be challenging and the eyes should not dart around. The gaze should linger and be purposeful.

Everyone knows the old expression “It's not what you say, but how you say it that counts.”

According to the literature, it's also how you go about saying absolutely nothing.

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