

Make the Most  
out of Your Face  
Time with a Jury

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Your story and how you tell it, including body language, imagery, technology, and preparation, affect your ability to present the best case possible for your client.

# Speak Psychology

Persuasion is an art that many attorneys work toward perfecting throughout their careers, but we often forget that it is also a science. In trial, attorneys can use the science behind persuasion to reach juries and convey their

messages effectively. Studies have shown that 80 percent of jurors make up their mind during opening statements. Hunt, *Litigation News*, *Use of Videotape in Opening Statement* (May 1997); Bernstein, *Lawyers Alert*, *Presenting Time Lines* (June 1992). Everyone has heard advice or statistics about the importance of charisma and nonverbal communication, but this article aims to give you practical advice about how to make the most out of your face time with a jury.

## Tell a Story

Juries want a story. In a study designed to understand the most effective way to present a case, participants were asked to read a description of an actual murder trial. In the trial, evidence was presented in either (1) in a chronological sequence or (2) in a nonchronological sequence. The evidence presented in both sequences was identical.

The only difference was the order in which it was presented. The study found that 78 percent of participants found the defendant guilty when the prosecution evidence was presented in a story-like chronological sequence and the defense evidence was presented a non-chronological sequence.

In contrast, only 31 percent of participants voted guilty when the prosecution evidence was presented a non-chronological sequence and the defense evidence was presented in a story-like chronological sequence. The information presented in a chronological story format was more persuasive than information that violated this paradigm. This chronological story model of presenting information to jurors to process is an instance of a more general phenomenon known as “framing.” People’s decisions are influenced by the way that information is presented, or framed. Many issues can be



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framed in different ways without changing the objective characteristics. Although people's decisions should not be sensitive to changes in framing features, such as sequencing, since the objective characteristics remain the same, it is critical to always remember that studies have shown that people are influenced by framing. Jury Trial Innovations (G. Thomas

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Munsterman, *et al.* eds. 2d ed. 2006) (citing Nancy Pennington, Reid Hastie, *Explanation-Based Decision Making: Effects of Memory Structure on Judgments*, 14 *J. Experimental Psych.: Learning, Memory, and Cognition* 521 (1988)).

When telling your story, begin with your conclusion. Do not underestimate the significance of primacy and recency, also known among researchers as the "serial position effect." At its core, this principle states that people recall that which they hear first and last. Therefore, start strong and end strong. Speech coaches often say to tell your audience what you are going to tell them, tell them, and then tell them what you just told them. In other words, provide a roadmap for your audience so that they know which key points to take away from your message, and then, after you have provided your message, sum up

the same key points again to remind your audience about the information that they should take away.

Without a roadmap, your audience may lose focus or wonder where your message is going instead of focusing on how your message confirms the key points. In the case of a jury, this is critical. Let them know which conclusion they should reach with the information that you are about to provide them. Then provide the puzzle pieces that easily fit the conclusion that you intend for them to draw. Finally, remind them of the ultimate conclusion so that what they remember most are the key conclusions that you presented. You want them to take those simple conclusions back to the jury room as sound bites that can be easily repeated.

Within your story, it is important to paint a picture of your client as a likeable person. Clarence Darrow famously said that "the main work of a trial attorney is to make a jury like his client." You control at least half of the story that the jury will hear, and it is important that your half has the right effect. Try not to let yourself become so caught up in the legal theories and details that you forget to sell your client. Make a list of the positive attributes that you can focus on throughout a trial that portray your client as relatable, likeable, and appealing. Incorporate your client's family life, school history, career aspirations, life goals, and other information that helps a jury see your client as a relatable person.

In addition to tailoring your message to paint a likable image of your client, you also need to advise your client how to help him or herself through his or her own appearance and behavior. This may require more or less work depending on each individual client, but make sure that at the very least a client understands basic courtroom etiquette and the dress code. Inform a client of the effect that the client's behavior and appearance may have on a jury.

With all this information that you intend to convey at once, it is also critical to remember that jurors' time is valuable because attention spans are limited. When was the last time that you watched the news and wished that there were more words on the screen? Today we are accustomed to so many stimuli confronting us

at once that we have slowly begun to alter our attention spans to suit these needs. As a result, our attention spans have shortened. In a courtroom, remember that less is often more. The human attention span has limits, especially if the material confronting it is new, complicated, and uninteresting or irrelevant to its audience.

There is no one-size-fits-all formula to tell you how much detail is sufficient, but we can begin to fashion an idea if we look to the average attention span, which research indicates has fallen to 20 minutes or less. Rudolph F. Verderber, Deanna D. Sellnow, & Kathleen S. Verderber, *The Challenge of Effective Speaking* 42 (15th ed. 2012). Studies suggest that the Internet, DVRs, smartphones, and other modern devices are shortening our ability to concentrate. *Id.* The next time that you draft what you believe to be the perfect opening or closing statement, give it at least one more revision. Is every single thing that you say in that statement necessary and effectively increasing the persuasiveness of your message? If it's not necessary, you will run the risk that you will extend your message beyond the scope of the jury's attention span.

## Body Language

A jury needs to relate to you as a person, not as a lawyer. Your credibility and likability can affect your client's case. Researchers believe that persuasive lawyers display qualities such as trustworthiness, impartiality, dynamism, relatability, and personal attractiveness. Thomas Mauet, *Fundamentals of Trial Techniques* 46, 279 (3rd ed. 1992). The jurors trying your case must perceive you as a fair, sincere, and honest advocate who is truly pursuing justice. *Id.* To expand upon this, jurors want to see exactly what you are already feeling at trial, enthusiasm for your case. However, they want your enthusiasm to be countered by your sincere interest in fairness and justice. An example of the portrayal of fairness would be the frank admission of a weakness in the case. Allowing opposing counsel to draw a jury's attention to your weakness can appear as though you purposefully concealed it from them, thereby detracting from your credibility. Michael Frost, *Ethos, Pathos & Legal Audience* 99 *Dick. L. Rev.* 85 (Fall 1994).

Facial expressions are one way to help reinforce your verbal message. They allow you to connect with jurors through visual and audio learning, thereby increasing their understanding and reception of your message. Accordingly, you want to make sure that your facial expressions are appropriate for your message. Whether you want to convey anger, sadness, joy, or excitement, using an appropriate facial expression will hint to a jury that the information you have conveyed should invoke that emotion. Practice your expressions in the mirror to make sure that you convey the message that you intend. Also, while facial expressions are a very useful tool, be wary of appearing overdramatic. Strive to be a compelling storyteller, not an actor.

Not all body language reinforces a message. In fact, some of the most obvious body language can detract from an attorney's message and, consequently, a juror's retention. Some of us talk with our hands. Some of us stand paralyzed in fear. Some of us play with our hair, twirl or click our pens, or use a unique gesture repeatedly. All of these public speaking tendencies can be distracting to your audience. Talking with your hands is less distracting than most others, but too much of it can detract from your message. Remember that gestures are intended to enhance your message. Be mindful of your mannerisms and practice using them effectively every time you rehearse.

Some common mannerisms that exude nervousness and risk conveying insecurity about your case include crossed arms, hands in pockets, fidgeting or clasped hands, or playing with some accessory to your attire. Women, especially, need to be mindful of their tendencies to play with accessories or hair. If you find that you pull on a long necklace or push your hair behind your ear frequently, adjust your wardrobe and grooming to remove all temptation.

Your body language is not the only body language that matters at trial. Watch your audience for indications of how the audience perceives your message. Take note of anything that indicates disinterest, such as yawning, looking around the room, or looking down at the floor. Adjust your pace, volume, or proximity to your audience to renew their attention, and try to engage the uninterested in direct eye

contact to draw them back into your message. Look for facial expressions indicating confusion, such as a tilted head with a tense brow. When you perceive that your audience seems confused, take the opportunity to clarify your previous point, or use an analogy to help your audience fully grasp your argument. Do not leave them behind.

Negative body language from your audience may include crossed arms, facial expressions indicating skepticism, slight shakes of the head, or even eye rolling. While not every juror with crossed arms negatively perceives your message, it is important to watch the overall message that a jury sends you so that you know your trouble areas and what needs either more support or perhaps needs to be approached differently to reach them. Positive feedback is also important. Nods, smiles, and open body language with good eye contact usually indicate someone is receiving your message in a positive manner. Know where your allies are and continue to engage them. They will be your advocates in deliberation.

### Imagery and Language Techniques

Evoking certain images and using particular language techniques can help you make your case to a jury persuasively. Some of these will sound familiar because they draw from literature.

### Who Doesn't Like Rhetorical Questions?

Rhetorical questions can have a lasting effect on jurors if used properly. Researchers studying the use of rhetorical questions in persuasive arguments have learned that the effect on the audience depends on the salience of the tactic. Gabriel H. Teninbaum, *Who Cares?*, 3 Drexel L. Rev. 485 (2011). If your attempt to persuade your audience is particularly obvious, they will shift their focus away from your message and onto you and your tactics. *Id.* Needless to say, your audience's opinion of you will then affect your message. In the alternative, if used in a subtle manner to support a strong argument, rhetorical questions can increase your ability to persuade an inattentive audience. *Id.*

To use rhetorical questions effectively, always use them at the end of your argument as a way to bolster the understanding of the message that your audience just

heard. Ask the question in the second person to make it more relevant. Lastly, do not overuse rhetorical questions because they can detract from the assertiveness of your message.

### Analogies

Analogies offer two benefits to your story. First, they give a jury a familiar concept

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that mirrors an often difficult one, thereby allowing them to simplify and understand your argument better. Second, by relating your arguments to a familiar concept, you allow the jury members to become more engaged in your argument and feel as if they have reached their own conclusions. When using analogies, the only word of caution is to make sure that the analogy fits comfortably. Do not try to fit a square peg into a round hole. Your analogy will be ineffective, and perhaps harmful, if you have to explain it in too much detail. Think of analogies as jokes: if you have to explain why it works, it probably does not.

Juries presented with complex information tend to feel less confident in their abilities to issue a verdict properly based on the judge's instructions. Richard J. Crisp & Rhiannon N. Turner, *Essential Social Psychology* 171-72 (1st ed. 2010). As a result, it is an attorney's job to present the information necessary for a jury to make an informed decision while still keeping that information simple enough so that it does not confuse members of the jury.

Two ways to simplify are to use synonyms when the technical jargon becomes

too bulky and to use analogies to explain complex processes. Make sure to explain all technical jargon that is raised in a concise and plain manner using as few words as possible, and try to come up with other words to refer to the same concepts.

For example, if you need to use a long technical term repeatedly, first refer to it, explain it, and then establish an analogy

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for it by saying something comparable to "this concept is similar to..." and pick a familiar concept. From that point on, as you bring up that term, you can refer back to that analogy so that the jury can follow along.

### Metaphors and Similes

Metaphors are verbal images that assist your audience in engaging in your message. Consider the following example:

**Option 1:** "When the police opened the warehouse, it was full of money."

**Option 2:** "When the police opened the warehouse, there was a sea of cash from wall to wall."

Both sentences say essentially the same thing, but one allows an audience to envision the scene more artfully than the other, thereby engaging them in your message. This must be done carefully and without resorting to exaggeration. Choose metaphors wisely and purposefully.

### Antithesis and Contrast

Contrast is a tool to be used sparingly, partly due to its powerful effect. John F. Kennedy's famous statement, "ask not what your country can do for you, ask what you can do for your country," is a great example of the use of antithesis. Think about the effect of the following:

Ma and Pa's store is closed indefinitely. As you assess their damages, the closing of the store is not what matters. What matters is that Ma and Pa may never be able to continue their work in this community.

Contrast can be simple, or it can be less black and white, as illustrated by the examples. The important thing to remember is to use contrast only when you have an interest in shifting the perception of your audience.

### Humor

In the George Zimmerman trial, Zimmerman's defense attorney infamously opened with a knock-knock joke that went as follows: "Knock-knock. Who's there? George Zimmerman. George Zimmerman, who? All right, good. You're on the jury."

The following silence prompted him to jump in with "Nothing? That's funny!" Clearly, his audience did not agree. Anytime you use humor in the courtroom, you will take a risk. Your audience does not know you, and for most of them, the environment is out of their comfort zone. These conditions are generally not in favor of humor.

Humor, when successful, can be a tool for increasing your likability with a jury. However, it is tough to appeal to everyone's brand of humor. If you feel compelled to use humor, stay away from anything off-color, anything that is at the expense of someone else, or anything that tends to insinuate that you are smarter or one step ahead of others, such as tongue-in-cheek self-deprecating humor.

### Power Speech

One study found that the powerfulness of a speaker's language can affect jurors' assessment of the speaker's credibility. W. O'Barr, *Linguistic Evidence Language, Power and Strategy in the Courtroom* (1982). Powerful language is direct, and it avoids fluff and filler words that convey insecurity, such

as "sort of," "kind of," "you know," and "sometimes." Victor Gold, *Covert Advocacy: Reflections on the Use of Psychological Persuasion Techniques in the Courtroom*, 65 N.C. L. Rev. 481 (Mar. 1987). Powerless speakers tend to use words that intensify their speech, such as "very," "totally," and "really." Powerful speakers avoid ending their statements with an inquisitive tone that would imply they seek approval or confirmation. *Id.* Researchers have found that powerful speech makes a speaker more credible to a jury; however, this does not mean that the jury is more likely to find the speaker truthful. It is directly linked to the jurors' perception of social status, education, and background. *Id.*

### Tone, Pitch, and Pace

Pace and cadence are critical parts of delivering your message effectively. Many people speak too quickly when they become nervous, ultimately reducing their audience's retention and understanding of their message. Others speak too slowly as they struggle to recall the perfect words and phrases. Practice before a friend and have the friend tell you if your pace is comfortable or if it needs adjusting. Usually, slower speakers benefit from extra practice and memorizing key words and phrases that prevent the mental hang-ups that cause them to pause.

Fast speakers can remind themselves to slow down by reminding themselves to do so in their notes. Practice timing yourself and spacing out your message so that it fills an allotted time frame. Additionally, throw in key words intentionally to enunciate clearly or to highlight, or phrases that require a certain rhythmic attention that force you to slow down. Memorize those phrases and intersperse them throughout your notes.

To engage a jury, you want to make the members feel as though they are taking part in a conversation with you. Do not speak *at* them. Use a tone that conveys a conversational quality to relax them and help them follow along. In this vein, rhetorical questions can be useful to convey your interest in a jury's conclusions. Be careful not to present a speech to them as you would to members of a large crowd. Presenting in a manner similar to the style of a politician or a public figure giving a

speech alienates a jury and makes you less relatable. Maintain eye contact and vary your tone and inflection just as you would in conversation with a friend.

Volume is, by far, one of the most powerful tools at your disposal. First off, you cannot be too soft or too loud. Make sure that you do not cause your audience to strain to hear you or to wish that you were not yelling at them. Both speaking too softly and speaking too loudly have the effect of irritating some people, and that is a risk that you do not want to take. Once you find a good baseline volume, fluctuate appropriately to draw attention to crucial points, create dramatic, affecting statements, and keep a jury focused and interested. Low, rather than high-volume sentences are often the most powerful. When you suddenly drop below your baseline volume and speak clearly, softly, and slowly, an audience will tend to focus on your message. Increases in volume create a more obvious drama that can easily be overused. Balance the two appropriately, occasionally against each other for contrast.

Voice inflection is also important to avoid boring your audience. Monotonous speeches and arguments are painful to listen to and rarely leave a lasting impression on their audience. For those who struggle with inflection, many speech coaches recommend singing. While this sounds silly at first, it helps several key characteristics: your breath control, your ease of switching between notes and pitches, and rhythm. Practice singing in your car once in a while to loosen yourself up and expand your comfort with your own vocal abilities.

## Technology

Today, more than 40 percent of all jury panels consist of Generation X—the 78.2 million Americans born between 1966 and 1976. Generation X jurors want more data; however, they want it presented in a concise, technological way. Generation X jurors want trial exhibits and information in sound bite form: 30-second clips and preferably on a television screen. Generation Y jurors, born after 1978, are the youngest jurors. Generation Y jurors want even more evidence presented technologically than the technologically savvy

Generation X jurors. Edward J. Walsh, *Effective Use of Pretrial Discovery and the Case Theme*.

There was a time not too long ago when attorneys strongly believed that the use of computer technology at trial polarized juries due to a perception of a “high dollar” legal team. Many still do. Because we are now surrounded by computer generations, however, most juries understand, and frankly, expect, the use of computer technology at trial.

As lawyers, we must understand that jurors have their own world view. Jurors process and retain information in different ways. Some jurors may be more receptive to information transmitted orally, while others might retain information better with the use of visual aids such as graphs, charts, and pictures. Ideally, your verbal presentation contains the same information as your visuals, but it’s important not to overload a jury with information. The more ways that you try to convey a message at the same time, the more you risk losing the effect of your message. In a study testing the redundancy of message delivery on effect, participants who viewed presentations with just visual and audio (images and speech) components retained 28 percent more information and generated 79 percent more creative solutions to questions than did their counterparts who viewed three mediums at once: audio, visual, and text—in other words, speaking, images, and text. Richard E. Mayer, *Multimedia Learning* 147–60 (2001). Do not force a jury to choose how to receive information; make the choice for them by reducing the amount of information that you give a jury at one time. Simplify your message.

## Practice

Know your strengths, but more importantly, know your weaknesses. Listen carefully to feedback from previous audiences and know what verbal and non-verbal “ticks and tells” you use, and particularly, know whether your pace needs adjustment. The only way to remove ticks from your pattern of speech is through routine practice. If you have a tendency to use a filler word or phrase such as “um,” “you know,” or the newest

generation of attorneys’ dreaded “like,” then you have to start practicing removing them from your daily dialect. These words detract from your message and many people find them distracting. Tell friends and coworkers about your mission to remove these words from your everyday speaking patterns and ask them to help you become aware of when you

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use them. Additionally, practice miniature speeches in your car, the shower, or at home. Pick a topic and try to speak for three to five minutes at a time without using a filler word.

If your body language is an issue, such as your posture, stance, movement, or fidgeting, you absolutely have to practice in front of other people. These habits stem from nerves, and it is almost impossible to recreate that same tension alone in your living room. Ask friends to listen to you and provide feedback, while keeping in mind that you are attempting to correct some body language issues. Common issues include standing too still or holding onto a podium, shifting weight back and forth, fussing with your clothing or hair, playing with a pen, tightly clutching paper, a repetitive hand movement that adds no value to your message, and looking down or avoiding eye contact. All of these are correctable behaviors with practice, but you must be aware of a problem to fix it.

Ultimately, your trial depends on preparation. If a jury perceives you as a credible, likable, well-prepared advocate for your client who is ultimately interested in obtaining a fair outcome, you will set a solid foundation upon which you can build your case. Take the time to work through your nervous jitters and to prepare yourself to present the best case possible for your client. 