

Make yourself a hero to the jury

Establishing your own high ethical standards with jurors creates a more creditable view of your client

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Jurors frequently form opinions about an attorney based on their opinion of the attorney's client. Unfortunately, the image many individuals have of plaintiffs' attorneys stems from the public's tendency to associate these lawyers with money-grubbing, windfall-aspiring clients. Of course, this view only holds true until an individual has what he or she deems to be a righteous cause. Suddenly the plaintiff's attorney becomes a crusading ally: a heroic savior.

This close link between client and lawyer can be used in reverse and to the advantage of legal counsel. The more actively you demonstrate your high ethical standards, the more the jurors will be inclined to perceive your client – or your client's cause – as worthy.

In matters involving HMOs, insurance companies and large corporations, jurors frequently have a built-in prejudice against these organizations, seeing them as impersonal and heartless. This is especially true when a plaintiff corporation (Goliath) is suing a solo professional, small business or individual (David). When representing "Goliath" in court, however, you can change these perceptions. By demonstrating your morality and ethics before the jury, you create an association in the jurors' minds that your client or its cause is on the side of right. Similarly, not all medical malpractice or personal injury clients are fine, upstanding citizens. We all have skeletons in our closet and opposing counsel is only too happy to share your clients' questionable deeds with jurors. To help combat negative character perceptions, you can use your morality to uphold the morality of your client.

How do you demonstrate your ethical and moral standards? Behave in a way jurors readily recognize as an expression of your underlying moral character. Jurors can only assess you according to what they observe in the courtroom. Your character is evaluated based on your body language and how you interact with the primary courtroom players.

Body language

Body language stereotypically read as indicative of good moral character includes the following:

- **Good posture**. Stand straight and tall, symbolically "standing up" for what you believe. When sitting, continue to maintain a relatively upright position, even if you're resting on the side of your armchair. Avoid leaning forward with rounded back onto the table or slumping down into your chair.
- **Keep your head straight and level,** symbolically showing that you have "a good head on your shoulders." Avoid dropping your head down to your chest, or tilted on either side. By keeping your head straight and your neck erect, you can maintain better eye contact.
- **Maintain clear and direct eye contact.** The eyes are called the "windows to the soul." It's no accident that mothers everywhere demand, "Look me in the eye when you talk to me!" The ability to look clearly and directly at people is considered the mark of an honest person, whether you're 5 or 105.

Use these three body expressions as the mainstay of how you present yourself physically in the courtroom to establish a presence of solid moral character. Whether walking, sitting or standing; keep good posture, a level head, and your eyes clearly and directly on whomever you are addressing.

How important is body language? A none-too-savory defendant prevailed in a sexual harassment matter. Jurors felt the evidence presented was ambiguous, and thus relied heavily on their impressions of counsel in coming to their decision.

Jurors commented during debriefings how their sympathy was originally on the side of plaintiff. However, jurors stated that because the plaintiff's attorney tended to slump, look away from the jurors, and rarely engage eye focus with the client, jurors came to believe that the plaintiff's attorney didn't believe in the client wholeheartedly. From this, jurors began to think that maybe the client was exaggerating or misrepresenting events. Jurors then proceeded to find for the defense.

Interacting with the primary players in the courtroom

Behaviors that are characteristically interpreted as evidence of sound moral character include the following:

- **Always be polite to jurors**. During voir dire, use prospective jurors' names. Lis-

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ten with both eyes and ears when jurors are answering your questions. Make the extra effort to phrase sensitive questions with respect to the prospective juror's privacy. Thank jurors for their responses. Treat each prospective juror like the unique human being they are. Resist the urge to treat jurors like cattle to be variously herded into the "for me" or "against me" columns.

• **Be professional toward opposing counsel.** Don't stoop to snide references about the way the opposing side is presenting its case and avoid making other editorial-type comments. Treat opposing counsel the way you would want to be treated, with good gamesmanship and fairness. You can demolish opposing counsel's points and maintain a moral stance; just don't demolish opposing counsel.

• **Treat witnesses with respect**. Witnesses should be questioned directly and without malice during direct and cross-examination. You can attack a witness's behavior, credibility or misdeeds without attacking the witness. Take extra time when designing your questions so your interaction with a witness is righteous and not demeaning.

• **Be respectful of the judge at all times**. Whether you agree or disagree with the judge's rulings and decisions, continue to show respect. Keep in mind that jurors consider the judge as the final arbiter of what is moral and just in the courtroom. Don't whine or indulge in petty behavior or arguing for the sake of arguing. Even when you are engaged in a sidebar, the jurors are watching. Keep your tone and body language toward the judge respectful throughout the proceedings.

• **Be courteous to the bailiff, court reporter, co-counsel, secretaries and other courtroom personnel**. No matter how tired, annoyed or frustrated during trial, be polite to those around you. Moral and upstanding individuals are expected to behave "better" than the rest of us in trying situations.

For example, in a breach of contract matter, the plaintiff was a large corporation, with the defense being an individual. Plaintiff won. During debriefing, a surprising number of jurors commented how their favorable assessment of the corporation was in large part supported by the plaintiff 's counsel's unfailing courtesy and politeness. These jurors made statements such as "you know a man by the company he keeps" and "Someone who's a real gentleman like that wouldn't be on the side of wrong."

Jurors have much time on their hands to sit, watch and observe your behavior. It's plenty of time for them to form an indelible impression. By maintaining a courteous, professional manner in court, jurors will react approvingly to you, and in turn, will assess your client in a more favorable light.

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