



The Secret to Engage and Persuade Jurors

by Deborah Johnson

When It Goes Wrong

The wrongful termination case should have been a slam dunk. The plaintiff, a top-producing executive in the financial industry was fired for a ridiculous list of petty problems. It was clear that her colleagues were jealous of her success and wanted to scavenge her lucrative accounts. At trial, her industry expert had sterling credentials, decades of experience inside of the industry, and deep knowledge of hiring and firing practices. He provided an air-tight analysis and report. A multi-million-dollar award was a given.

Then the expert imploded during fierce examination by defense counsel. He stumbled over simple answers. He looked confused. His shoulders slumped. His voice got quieter and quieter. Every piece of his report was rock-solid, every word of his testimony was true. But suddenly, the expert's behavior made his once-credible testimony suspect in the minds of the jurors. The cost: millions of dollars.

Pre-empting Catastrophe

I see it happen more than you think. So, how can you ensure this doesn't happen to you as an expert? This article will give you an insider's look at how to be the kind of expert attorneys clamor for.

Hard Skills vs. Soft Skills

You may have stunning credentials, specialized knowledge and experience, be able to prepare pristine analyses, and speak astutely about that analysis. However, like the case just illustrated, that alone will not get you the results you need.

Your hard skills – what you know – are only the first step. To be successful with jurors, you must have finely tuned soft skills.

Soft skills are the ability to engage with jurors, to relate to them, to communicate complex ideas in an easy-to-absorb manner, to handle the most challenging questions with aplomb, to defend a position without being defensive. Mastery of these soft skills determine whether you are only an expert on paper, or an expert who can help win cases.

What Jurors Want

Time and again, in juror debriefs, I hear them talk about who they liked, who they trusted and who they believed. If they talk about data or facts at all, it's most likely through the filter of how they felt about the expert who presented it. I've heard jurors express their feelings toward experts like, "I didn't believe a thing (that expert) said, he was too pompous," or "I didn't trust that accountant, so I don't believe her numbers."

These jurors are naively admitting what science can prove: emotions or feelings about people are powerful determinants in decision-making. In the consumer world, experts know that we buy on emotion and then justify with facts. In the courtroom, the same is true. Jurors are going to buy – or not buy – your testimony based on emotion and then justify with facts. It's never the other way around. Never.

Developing Your Soft Skills

So, how is the jury assessing you?

#1 Body Language. Research shows that more than 90 percent of communication is non-verbal. That means everything from the top of your head to the tip of your toes is “communicating.” Is your posture open and welcoming? Do you make eye contact easily? Do you have nervous gestures like blinking, twiddling your fingers, wiggling, or clearing your throat? Under stress does your body language give away your discomfort?

#2 Language. Do you actively engage the jury or are you lecturing? Is your tone conversational or austere? Do your words invite the jury into the conversation or push them back at arms-length? Do you use comfortable, colloquial terms or insider language? Are your sentences short and clear or do you drone on? Is your tone warm and friendly or dry and flat?

#3 Attitude. This may seem a little obtuse. But remember, people pick up all your unconscious signals. Are you open and honest? Are you comfortable? Do you feel superior to others? Are you there to help the jury understand a complex issue or parade your expertise? Jurors notice it all.

A Polished Preparation

It's clear from research and real life that it's not only *what* you say, but *how* you say it. It takes time and dedication to be able to deliver calm, comfortable, clear, concise answers with unflappable confidence.

When I work with experts, we focus on two keys areas that help experts telegraph trust to jurors:

#1 Practice. You might not know exactly what opposing counsel will ask, but by working on potential questions, you can work through any potential ambushes.

What will be the biggest challenges to your expertise? An insurance expert I worked with knew opposing counsel would hammer him on his use of the term “industry standard” in his report. Where was it written down? What authority set it up? His initial wishy-



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washy answer of, “that’s how it’s always been,” would only invite a further assault. To give him ammunition and confidence, we counted how many files he had handled in his years in the industry. There were over 15,700. Now he confidently faced the challenges with, “I’ve handled more than 15,700 files and this IS the industry standard.” The jurors had no doubt that he was an expert on the matter.

What will be the most treacherous questions from opposing counsel? For example, hypotheticals can be quicksand. If you pause too long, break eye contact, or duck your head, the jurors might think you are being evasive. But a firm, clear “I don’t speculate” or “That’s outside of the scope of the work I was hired for” tells the jury there’s nothing to hide.

#2 Video feedback. Record yourself and take an unblinking look at how the jury will judge you. Researchers are clear that at least 50 percent of people have no idea how they come across.

I’ve had many witnesses look at their video with shock, saying they had no idea they leaned away when they were nervous or did a funny thing with their mouth or said “um” or “ah” so many times. One minute of video is more instructive than one hour of coaching.

Conclusion

Much as you might want to think that the facts speak for themselves, it’s really *how* you speak about those facts that influences jurors. Take the time to assess your soft skills and then diligently hone the skills that help you engage and persuade jurors. ■

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