



Understanding Jurors’ Nonverbal Communication (Part Two)

By Jeffrey Frederick, Ph.D.

Part one of “Understanding Jurors’ Nonverbal Communication” addressed visual cues and appeared in last month’s issue of *The Jury Expert* (Volume 18, Issue 3).

Auditory Cues: What We Hear

There are eight auditory cues that can indicate the presence of anxiety or deception:

- Speech disturbances
- Vocal hesitancy
- Rising pitch
- Amount of speech
- Speed of speech
- Tone of voice
- Tense laughter
- Word choice

Most of these cues reflect a deviation or breakdown in the potential juror’s normal patterns of behavior, in this case, speech. It is risky to underestimate the importance of the auditory cues! They may be more valuable for detecting deception than visual cues are.¹

¹ There appears to be a hierarchy of accuracy among cues to deception. Speech cues have the greatest accuracy, followed by body cues, with lowest accuracy being associated with facial expressions. Zuckerman, DePaulo, & Rosenthal, *Verbal and Nonverbal Communication of Deception*, in 14 *Advances in Experimental Social Psychology* 1-60 (L. Berkowitz ed., 1982).

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Speech Disturbances

Disruptions in the juror’s normal pattern of speech can reflect anxiety. The frequency of disruptions in the potential juror’s answers increases as the level of anxiety rises. These disruptions take the form of breaks in the potential juror’s answers with “um’s,” “uh’s,” or “er’s.” For example, differing levels of anxiety in response to the question “Do you think that you could return a verdict of no money damages, if the evidence and the law supported such a finding?” are reflected in the following two potential answers given by a juror:

“I think that I could return a verdict of no money to the plaintiff.”

“I think, uh, that I could return, uh, a verdict of no money to the, er, plaintiff.”

A juror who feels anxious or is trying to deceive the lawyer may use irrelevant information as a screen.

The presence of disruptions in the latter answer reflects greater anxiety over what the potential juror is saying than the former. Speech disruptions also can occur with the repetition of words within the juror’s answer, such as “I think that I [slight pause] I could return a verdict of no money damages. . . .”

Finally, disruptions or nonfluencies in the potential juror’s speech can appear in the use of unfinished sentences and the interruption of sentences. Failure to complete sentences can reflect anxiety. For example, when the answer is intended to be “I think I can be fair to the defendant,” the anxious juror may respond with “I think I can be . . .” breaking off before “fair to the defendant.” Disruptions can also appear when jurors begin a sentence, stop, and

start a new sentence, as in the answer “I think I–Fairness is important.” The key to understanding the importance of the incomplete sentence or switching to a new sentence lies in how the juror ends the answer. It is the avoidance of certain words or the trailing off of the incomplete answer that should alert the lawyer to potential problems.

Vocal Hesitancy

Vocal hesitancies are pauses that occur in the juror’s answers. Vocal hesitancies occur more frequently as the anxiety level of the potential juror rises. Pauses can also occur during deception when more cognitive resources are needed to construct and monitor the lie.² These pauses can occur at the beginning of the answer; for example, “[pause] I wouldn’t have any reservations about awarding punitive damages.” As with speech disruptions, pauses or breaks can occur during the course of the answer or sentence such as, “I wouldn’t have any reservations [pause] in awarding punitive damages.” In either case, it is important to hear what vocal hesitancies are communicating about the juror’s real feelings.

Finally, vocal hesitancies can reflect censoring on the part of jurors. Some questions require that jurors give more than a minimal amount of thought to their answers. During these times of contemplation, jurors may reflect not only on their true feelings but also on what answer would make them look good. For example, when questioned about his or her view of a criminal defendant not taking the witness stand, a juror who pauses before saying, “I guess that’s his right” may be reluctant to express the

² Mann, Vrij & Bull, *Suspects, Lies, and Videotape: An Analysis of Authentic High-Stake Liars*, 26 L. & Hum. Behav. 365 (2002).

opinion that such a scenario would indicate guilt.

Rising Pitch

The level of the juror's pitch also can reflect anxiety. Anxiety can cause the muscles in the throat to tighten, resulting in speech that is higher in pitch. Noting when a rise in pitch in the juror's answers occurs in response to different topic areas can reveal those areas that cause greater anxiety. The dramatic example of this cue occurs when the juror utters an answer to an anxiety-producing question with a short, high-pitched squeak of "yes" or "no." Rising tone also may reflect uncertainty in the answer given. In this case, while the statement itself is declaratory in nature, the rising tone toward the end of the statement reveals the juror's lack of confidence in what he or she has said.

Amount of Speech

The presence of positive feelings toward the lawyer or an expectation of social approval from the lawyer can reveal itself in the amount of speech the juror provides. When jurors feel positive toward a lawyer they are more willing to talk with this lawyer. The same applies to those jurors who seek approval from (i.e., want to be liked by) the particular lawyer or party. When jurors do not like a lawyer or party, their willingness to talk or provide full and candid answers in response to the lawyer's questioning decreases. Thus, talkativeness can reveal important information about how the jurors feel about the parties in the case.

It is also useful to pay particular attention to the potential juror's willingness to provide full answers or to reveal information beyond what lawyers request in their questions. Lawyers should be leery of potential jurors who give brief answers to their questions (or certain topic areas) yet give detailed answers in response to questioning by the opposing lawyer. In fact, this differential in responsiveness can reach the point where potential jurors actually interrupt the questioning of other jurors by a favored

lawyer in order to volunteer information or their opinions on the topic.

There is a qualification to the general rule that talkativeness reflects positive feelings. This exception addresses the content of the juror's answers. Answers that provide irrelevant information or are evasive can indicate deception or anxiety. A juror who feels anxious or is trying to deceive the lawyer may use irrelevant information as a screen. The juror's goal is to tell the lawyer something to satisfy the need to provide an answer yet at the same time not reveal the juror's true feelings. For example, when a juror is asked about his or her ability to treat the defendant fairly, a direct answer would be, "I would treat Mr. Jones fairly," while an evasive answer would be, "I think everyone would agree that fairness is important." Note that in the latter answer, the juror specifically avoids revealing how he or she feels toward the defendant. This may be a simple oversight, or it may reflect the juror's desire not to reveal his or her true feelings. Further questioning (or consideration of past answers) is necessary to properly evaluate which is present in the answer, oversight or evasion. Consider the following exchange that occurred during the *North* jury selection.

Prosecutor: . . . Is there any other reason that it would be difficult for you to serve as a juror?

Juror: No.

Prosecutor: Sometimes people have religious beliefs that make it hard for them to be a juror. Do you have any beliefs that come from your religious ideas or philosophical ideas that would make it hard?

Juror: Well, I am a Christian but, you know, I believe in the truth, because the truth is God's friend. (*Notice how the juror fails to answer the question.*)

Prosecutor: Okay. And if the truth, as you understood it, and the law as you heard it from the judge—

Juror: Yes.

Prosecutor:—led to a decision that required

you to vote Colonel North guilty, you could do that, if that's the way you honestly believed it?

Juror: No, I couldn't do that, because, you know, I wasn't there and I don't know if he did it. Say, if I would vote guilty, you know, people's life [sic] is precious and I would be taking his life, in a sense, and I couldn't vote guilty.

Prosecutor: No matter what you heard in the courtroom?

Juror: Right.

Prosecutor: You still couldn't vote guilty?

Juror: No.

Prosecutor: I appreciate your candor very much. Thank you, ma'am.

Juror: Thank you, sir.

Court: Thank you very much. You are excused.

Failure to detect the irrelevant answer can have potentially disastrous consequences.

Speed of Speech

How fast the juror's answer is given, once the answer is initiated, is another cue to anxiety. Jurors may rush their answers when they feel anxious about them. By speaking faster, jurors reduce the duration of their anxiety.

Tone of Voice

The tone of the juror's voice can be an important cue to deception and negative feelings. This cue appears to be more accurate in detecting deception than the visual cues considered earlier.³ A cold and condescending tone of voice generally indicates deception (and aloofness or potentially negative opinions, such as animosity). Thus, it is critical to treat with extreme caution the potential juror who answers in a cold and condescending tone of voice during questioning by the lawyer.

³ See Zuckerman et al., *supra* note 1.

⁴ Adapted with the permission of *Virginia Lawyer*.

Tense Laughter

Laughter has long been recognized as a tension release. Jurors can reveal their tension through the quality of the laugh itself and the appropriateness of laughter for the situation. The tense laugh is often too loud for the situation. While laughter may be appropriate, the volume of tense laughter is higher than that of normal laughter. In addition, jurors may abbreviate or cut short tense laughter. This occurs when the juror does not intend to laugh or realizes that laughter is inappropriate. The juror then abruptly cuts off the laugh.

Finally, it is possible to identify tense laughter by noting the appropriateness of laughter for the voir dire situation. Laughter that occurs during the discussion of sensitive topics is inappropriate and likely a result of anxiety on the part of the juror.

Auditory Cues to Anxiety and Deception⁴

Source	Examples of Behaviors
Speech Disturbances	Nonfluencies, "um's," "er's," and word repetition
Vocal Hesitancy	Pauses before and during answers
Pitch	Rising pitch
Amount of Speech	Lesser amounts of speech; exception: irrelevant or evasive speech
Speed of Speech	Rapid speech
Tone of Voice	Cold, condescending tone
Tense Laughter	Inappropriate laughter or higher than normal volume of laughter
Word Choice	Greater psychological distancing (e.g., "them" v. "African-Americans") and use of negation conjunctions

An example will highlight the nature of tense laughter. In a medical negligence suit against a doctor in a small community, one potential juror was a patient of the defendant doctor. The juror asserted that she could be fair during the questioning by the plaintiff's lawyer. However, tense laughter gave her away. When asked about her ability to be fair, given her status as a patient of the defendant, she responded, "Yes, I could be fair, heh! heh!" She was later asked if she would have any reservations about returning a verdict in excess of \$1 million if the evidence and law supported such a finding. She responded, "No, heh! heh!" This laughter was not sarcastic but was obviously inappropriate for the situation. The distress felt by the potential juror at the possibility of serving on the jury was apparent from her other nonverbal communication. The anxiety became so intense that she unconsciously broke the tension by laughing—a laugh that sounded more like a bark than a laugh.

Word Choice

Unlike the previous cues, the final cue in the auditory area concerns the content of the jurors' responses. The words jurors choose to communicate their answers can be very informative. The choice of words can reflect a psychological distance the jurors impose between themselves and the objects about which they are speaking. The presence of psychological distancing can indicate negative feelings or anxiety on the part of jurors. For example, jurors who refer to the plaintiff as "she" or "the plaintiff" are placing more psychological distance between themselves and the plaintiff than are jurors who use the plaintiff's name. Psychological

distancing can also reflect the presence of prejudice against certain groups. Jurors who refer to African-Americans as "them" or "those kind of people" as compared to "Blacks" or "African-Americans" are revealing their prejudice or feelings of anxiety.

The directness or indirectness of the communication also reflects psychological distancing. A juror who has negative feelings or is not being truthful may say, for example, "Overall, I don't have any really bad feelings toward them [Acme Corporation]" when he or she might be thinking that Acme Corporation has done a lousy job with safety management.

An additional consideration in word choice lies in the style of speech that potential jurors use.⁵ Jurors who use a nonassertive or "powerless" speech style are less persuasive and are viewed in less favorable terms than those who

Jurors who refer to the plaintiff as "she" or "the plaintiff" are placing more psychological distance between themselves and the plaintiff than are jurors who use the plaintiff's name.

use a powerful speech style. Characteristics of powerless speech include hedges (e.g., "I think," "I believe," or "kind of"), intensifiers (e.g., "so," "too," or "very"), hesitations (e.g., "you know," "uh," "well," or pauses), polite or overly formal diction (e.g., "sir," "please," or "thank you"), and an interrogative tone (i.e., the rise in intonation or pitch associated with questioning, even in declarative contexts).

Speech style is relevant to our consideration of potential jurors' communication in two ways. First, several features of powerless speech encompass some of the cues discussed above, indicating that powerless speech also can reflect deception or anxiety. Second, in terms of jury selection, potential jurors who use a powerless speech are likely to be less persuasive in conveying

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⁵ For a summary of research on speech styles, see O'Barr & Lind, *Ethnography and Experimentation: Partners in Legal Research*, in *The Trial Process*, vol. 2 of *Perspectives in Law and Psychology* 181-207 (B. Sales ed., 1981).

their views than those who use a powerful style of speech. Thus, speech style can provide valuable information as to the likely influence (and potential leadership role) jurors will have during the deliberation process.

Two points remain concerning word choice. First, using the negation conjunction “but” to connect two statements can serve to invalidate the first statement. For example, a juror might say in response to a question, “I could be fair, but I did read in the paper that the defendant admitted killing the victim.” This statement carries with it the high probability that the potential juror really does not believe the first part of the answer (“I could be fair”) and is letting the lawyer know this by adding the second statement (“but I did read in the paper that the defendant admitted killing the victim”).

Second, asking questions that require jurors to put their answers in their own words will facilitate the evaluation of the jurors’ choice of words. Open-ended questions are questions that do not restrict the answers available to the juror, such as, “How do you feel about the use of capital punishment for premeditated murder?” Note that this question does not provide an obvious answer for the juror. Questions that restrict jurors’ answers are referred to as closed-ended questions, such as, “Do you believe in the use of capital punishment for premeditated murder?” The value of the open-ended question lies in the information the jurors provide when they express their opinions and feelings in their own words.

How to Evaluate Jurors’ Nonverbal Communication

Up to this point, the various visual and auditory cues have been considered separately. However, the proper evaluation of potential jurors’ behaviors involves incorporating all available information. In practice, capitalizing

on these cues does not require additional time but simply a sensitivity to what information is available.

The key concept for evaluation of the nonverbal cues lies in consistency. It is necessary to attend to patterns or clusters (representing consistency of cues) of nonverbal communication—that is, how do the cues work in concert to present a picture of what the juror is really doing (e.g., concealing the truth) or feeling? The presence of inconsistency among the cues raises a red flag indicating that something is afoot. Particular attention should then be given to discovering what is actually happening.

Establish a Baseline

Considering the overall pattern of the jurors’ behaviors in the process of voir dire is essential in evaluating the verbal and nonverbal communication of jurors. The first step in this process is to establish a comparison point or baseline of anxiety or nervousness that the jurors are experiencing in the jury selection process. Anxiety does not exist in a vacuum. Jurors may show signs of anxiety or nervousness simply because they are being asked questions in court.

How to evaluate jurors’ nonverbal communication:

- Establish a baseline or comparison point
- Evaluate changes or deviations in the jurors’ responses
- Look for patterns and inconsistencies in behavior
- Be aware of who the jurors look to for answers in uncertain situations
- Observe jurors at all times

By establishing a baseline of activity or anxiety, lawyers can interpret subsequent changes in behavior within the context of the jurors’ typical behavior. The best way to establish this baseline is to observe the jurors’ nonverbal communication while they answer questions concerning their backgrounds. These questions

Jurors will often give nonverbal indicators of their own opinions and feelings in response to the voir dire of their fellow jurors.

produce the least anxiety. Thus, the beginning of voir dire should, and usually does, contain simple, nonsensitive questions of this sort. The pattern of the jurors' responses will reveal how anxious they are at being part of the voir dire process and their overall pattern of nonverbal behavior.

Evaluate Change in Jurors' Responses

After establishing the baseline of anxiety and activity patterns for jurors, make evaluations in light of how the jurors' subsequent behaviors change. Pay particular attention to changes occurring as a function of who asks the questions and what topics are being addressed. For example, do potential jurors start to withdraw from the lawyer as the area of questioning shifts from issues of worker safety or pain and suffering to issues relating to punitive damages or contributory negligence? Also, noting any changes in the jurors' nonverbal communication when different lawyers conduct their examination is important. Do the potential jurors respond differently when the prosecutor, plaintiff's lawyer, defense lawyer, or judge asks the questions? Finally, does the juror's nonverbal behavior differ from that of the other jurors? For example, does this juror shift nervously in his or her seat when discussing race relations while other jurors answer without such nervous behavior?

Notice Patterns and Inconsistencies

Since there is no Pinocchio effect, it is necessary to look at the clusters of nonverbal behaviors of jurors. Such clusters of behaviors may be good or bad depending on the context in which the behaviors occur. However, it is also important to notice when patterns of behavior conflict not only with what is being said, but with other clusters of nonverbal behavior. For example, the juror smiles, looks you straight in the eye, and says that he would treat your client fairly, but the juror's

body is leaning away from you and toward your opponent and his arms are folded across his chest.

Watch Jurors' Sources of Support

Beyond changes in the jurors' behavior, it is necessary to evaluate where jurors turn for support in uncertain situations. There is considerable uncertainty in the voir dire situation. It is important to note who jurors look to for support or clarification when they become confused by questions or are unsure of their answers. Do jurors continue to make eye contact with the lawyer asking the questions—in essence, seeking clarification or assistance from this lawyer? Do jurors look to the lawyer for the opposing party? Do they look to the judge or to their fellow jurors? Their responses in the face of uncertainty may indicate where these jurors will turn for answers or support when questions arise during the course of trial. Potential jurors who look to the opposing counsel for answers or support should be removed, where possible.

Observe Jurors at All Times

While much of the previous discussion has focused on the jurors' reactions to the questions posed to them, information is available at other times as well. Alert lawyers can capitalize on these occasions. First, observe the potential jurors' reactions to both the questions posed to other jurors and the subsequent answers. Jurors will often nod in agreement, show skeptical or critical facial expressions, or give other nonverbal indicators of their own opinions and feelings in response to the voir dire of their fellow jurors.

Second, observe the reactions of potential jurors while these jurors are in the spectators' section of the courtroom. Jurors are less likely to feel as though they are in a fishbowl when they are in the spectators' section

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rather than the jury box. As a result, jurors tend not to inhibit their nonverbal reactions when they are in the spectators' section. Judges often provide a brief description of the case while the potential jurors are congregated en masse in the spectators' section. Desirable and undesirable potential jurors can reveal themselves through their positive or negative nonverbal communication in response to these introductory remarks. For example, jurors may adopt a sympathetic, concerned expression or a hostile posture when looking at the plaintiff or defendant during the judge's introductory remarks. In some cases, potential jurors may react more dramatically as when a juror cries in the spectator section upon hearing a description of the case.

Third, particular attention should be paid to jurors when the court or lawyers introduce the parties to the dispute. It is important to note the direction of the jurors' gazes and the reactions of jurors during the introduction of the parties. It is natural for jurors to direct their gaze toward the party being introduced. However, some jurors may refuse to look at the party or fail to meet the returning gaze of the party at this time. Inability to make eye contact or to direct their gaze at the party can reveal the juror's negative reactions to the party. In addition, jurors often can be seen with sympathetic, concerned, or even hostile expressions on their faces. All of these reactions add to the information lawyers collect regarding the desirability of potential jurors.

Finally, it is helpful to observe potential jurors during breaks, while in the hallways, or at lunch counters. As mentioned in the discussion of body orientation cues, potential jurors can reveal the relationships present or being formed through their interactions with one another. To whom do jurors talk? With whom do jurors eat? Is deference being shown to certain jurors by other jurors? Which juror or jurors appear to be leading the interactions or making decisions among the jurors? These observations can provide valuable information on how the jury will act as a group and the leadership potential of various jurors.

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Hitting the Wall: Witnesses with Psychological Barriers

By Carol Jaenicke, J.D., Ph.D. and David Gordon, Ph.D.

“L.A. Law,” “Boston Legal,” and “The Runaway Jury”: For many, the sole source of information about the justice system comes from the media through dramatic television or movie portrayals and scrutiny of high profile cases. Frequently, the courtroom may be perceived as either a traumatizing or seductively exciting arena.

When reality knocks, most prospective witnesses realize they’re not dramatic actors in a scripted show. The prospect of testifying and having one’s credibility challenged by an opposing attorney before a judge and jury often is intimidating and anxiety provoking. An overly anxious witness is more likely to lose a sense of focus, become confused, and convey self-doubt in the hands of a skilled adversary whose goals are to provoke and evoke confusion.

Generally, attorneys are adept at recognizing when their clients are appropriately nervous about testifying. They may help their clients to feel more comfortable by providing reassurance and realistic expectations regarding the courtroom experience. However, when clients demonstrate greater psychological issues (e.g., depression, severe anxiety and/or agitation, panic), attorneys often feel “stuck” about how to help. It is as if a brick wall has been erected, keeping attorneys from working effectively with their clients.

Trial consultants and clinical psychologists may be able to help in these situations because their primary goal is to help a witness overcome emotional obstacles to “telling their story.” Specifically, by helping a witness to identify what his experience has been regarding a case, the associations triggered by these experiences, and what he anticipates occurring in court, a witness may feel greater personal control. Psychologically, when people believe they have more control over their behavior, anxiety decreases, giving rise to more comfort with asserting responses and facilitating effective communication.

Generally, when litigation consultants work with witnesses, their goals include:

- Pointing out strengths and potential problems in witness communication styles. One method we find useful is videotaping and reviewing witness behavioral presentation during mock direct and cross examinations with her attorneys. For example, an agitated witness might view herself interrupting the attorney and misinterpreting or over-responding to questions. A fearful witness might demonstrate inconsistent eye contact or use language that reflects self-doubt.
- Assisting a witness to avoid being pressured into answering complex questions with “yes” or “no” responses, and, where appropriate, to use questions as opportunities to speak to a truthful accounting of a specific situation.
- Helping a witness to be cognizant of his courtroom behavior and demeanor when not on the witness stand (e.g., being attentive to all aspects of the trial; maintaining composure with respect to body language and facial expressions as reactions to the

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testimony of others; directing eye contact towards or away from jury). These behaviors may have a significant impact on jurors.

When working with anxious, depressed, angry or panicky witnesses, clinicians may:

- Assist a witness, in the presence of her attorneys, to recognize and articulate perceptions and feelings about her case.
- Provide a witness with tools to facilitate relaxation and concentration while managing anxiety and/or depression that could interfere with effective testimony. An anxious witness might see herself fidgeting with her hands, demonstrating pressured speech, using word fillers such as “uh”, or responding to questions too quickly without taking appropriate time to think about them. Learning how to recognize anxiety and use breathing techniques to relax and regain composure can help the witness reduce undesirable mannerisms and use time more effectively.

A depressed witness may exhibit slowed speech, a tendency to slump back in his chair, lack of energy or hesitancy in speaking that inadvertently conveys self-doubt or intimidation. The combined use of breathing and cognitive techniques can assist the witness to feel more energized and to respond to questions more assertively and confidently.

- Work with an extremely angry or agitated witness to assist him to connect with jurors in constructive ways rather than to allow himself to be provoked into responding impulsively, or in a way that may unintentionally mislead the judge and jury.

A consultant's work in personality assessment, clinical interviews, and anxiety management allows them to quickly evaluate a witness' personality dynamics and anticipatory perceptions/feelings about the courtroom

experience. Consequently, they can help diffuse undue anxiety associated with anticipated helplessness, humiliation, guilt or anger and assist a witness to feel empowered and attentive. Role-play techniques, relaxation training, crisis management, and cognitive techniques are all tools we utilize to help a witness feel more confident in her ability to cope with the uncertainty of the trial. Finally, they educate attorneys to understand and respond more effectively to clients with marked psychological distress.

Two case examples from our own experience demonstrate how psychological techniques are useful.

Case 1: A middle-aged professional woman is injured in an automobile accident. Her insurance company refuses to pay on her claim, resulting in a bad faith lawsuit against the company. The treatment experienced by the woman at the hands of the insurance company triggers feelings of deep depression and anger associated with a sense of helplessness and loss of control over her life.

A brief interview with the client revealed that her trial preparation exacerbated anticipatory anxiety and further helplessness at the prospect of having her reality challenged by opposing counsel. Signs of anxiety included self-critical comments, poor eye contact, marked hesitation before responding to questions, and anxious mannerisms (e.g., facial tics).

Our primary intervention involved assisting the client in recognizing and more fully accepting her painful feelings and sense of disillusionment regarding the perceived unfair treatment. In addition, we helped her to respond to questions more assertively by communicating her experience rather than passively agreeing with opposing counsel.

Case 2: A middle-aged man, employed as a free-lance writer, sued a firm for breach of contract after the firm refused to pay his share of profits made from his work. The

client had difficulty handling his deposition due to extreme anxiety. The opposing counsel confused him, lead him to contradict himself at times, and generally intimidated him with a brash, aggressive style.

Our brief interview with the client revealed that his generally shy and conflict-avoidant nature masked a fear of becoming extremely angry which he connected with losing control. The exploitative and unfair treatment he experienced from the firm triggered his anger, which was exacerbated by the way his professionalism and integrity were challenged by opposing counsel. The frustration expressed by his own attorney triggered even greater anxiety that contributed to his “shutting down” cognitively in his effort to control his feelings.

We helped the client to recognize that while he experienced anger as threatening, in fact, anger was something he could use constructively on his behalf. We taught him how to rapidly put himself into a state of relaxation through breathing and imagery techniques so he could respond effectively to cross-examination. His attorney also learned how to provide greater support when the client felt overly anxious or began to “shut down.”

Witnesses, even those who are very intelligent, articulate and/or hold prominent positions, frequently present psychological barriers that can confuse and frustrate their attorneys. Attempts to “break through the brick wall” often exacerbate problems, as attorneys are perceived by their clients as intimidating or lacking understanding. Use of trial consultants trained as clinicians can help clients set aside their own barriers, enabling more effective communication.

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Quick Courtroom Tips

By
Bob Gerchen

Avoid “Lawyer Cadence”

I’m not aware of any course in law school that teaches attorneys to speak four to five words, pause, speak four to five more, pause, etc. But I hear it all the time: “lawyer cadence.” And man, is it hard to listen to.

Lawyer cadence probably has its roots in the conduct of depositions, when lawyers find themselves picking their way through questions. But it’s an unnatural verbal pattern than can lull people to sleep.

When I note pauses below, we’re not talking about a quick pause to take a breath. We’re talking big, honking, pregnant Harold Pinter-esque pauses. The kind of pauses into which we could insert the third movement of Bach’s Violin Concerto in G major.

“How many of you here (pause) would say that just because (pause) an employee has a non-compete clause in his contract (pause, pause), he would be wrong in even talking to another company (pause, pause, pause) while he’s under that contract?”

Pauses are helpful in creating drama and in giving the jurors a moment to absorb what they have just heard. But if these pauses show up in every single sentence, the technique becomes meaningless.

Work on being conversational. Monitor your cadence in the courtroom. Spend a two-week trial speaking in “lawyer cadence” and you run the risk of losing your constituency to painful boredom.

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For more information about Bob Gerchen’s book, 101 Quick Courtroom Tips for Busy Trial Lawyers, visit www.CourtroomPresentationTips.com.

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