



The importance of eye contact

In a courtroom, eye contact is the big litmus test for credibility, believability and likability.



James

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Welcome to the latest feature of Plaintiff Magazine – In the Trial Consultant's Seat.

This is to be a regular column where Plaintiff Magazine readers will have a chance to submit questions that expert trial consultants will address, offering answers based upon their insights and expertise. A different trial consultant will be featured each month, so you will get access to a wide range of views and opinions.

When I approached the new editor, A.T. Kippes, about this column (an idea that has been near and dear to my heart for quite some time), she was delighted. Immediately she listed a whole slew of topics that she would like to see covered, from the basics of what a trial consultant is to issues that greatly affect plaintiffs' lawyers in Northern California. For example:

- What is a trial consultant and what do they do?
- How much do they cost?
- What else do you do besides pick juries?
- What kind of pro bono cases do trial consultants work on?

- Do you work with the Consumer Attorneys Association of California, the American Association for Justice, or the Public Justice Foundation?
 - How can using the services of a trial consultant help you avoid being sued by clients later?
 - Can you help us deal with trial judges?
 - Can trial consultants help with mediation or arbitration?
 - Does the defense bar use trial consultants?
 - Is it true that the jurors in Fresno – no – San Mateo – no – Santa Clara county are the worst?
- Each month, a different trial consultant will address these and other issues important to plaintiff's attorneys. The trial consultants featured in the column are all members of The American Society of Trial Consultants (ASTC).
- Let's Get Started!

Question of the Month

The following question is from a participant in the San Francisco workshop we conducted with Plaintiff Magazine earlier this year:



I keep being told that I am “supposed” to look at the jurors, but I just don’t feel comfortable. As a former public defender, I tried a lot of cases and don’t ever recall looking at them much at all. Why, now that I am a plaintiff’s lawyer, do I keep hearing from you and other trial consultants that I have to “look at them?” I thought it would be easy to just do what I did before. Why is this so hard? And why do I have to do it at all?

The importance of eye contact

Making eye contact is extremely important. You need to actually look people in the eyes when you talk to them. Looking people in the eyes does *not* mean looking over the head of the last juror in the second row and does *not* mean looking at the space between the jurors’ heads. Looking someone in the eyes means eyeball to eyeball, one person at a time. Is it terrifying? Of course! Is it a vital skill for a trial lawyer to master? You bet.

The attorney’s lack of eye contact is the number one complaint from jurors

When I first became a trial consultant 31 years ago, do you know what the number one complaint jurors had about attorneys and witnesses? “He never looked at me once.” Do you know what has changed about that number one complaint over the past 31 years? The word “she” is starting to replace the word “he” at the beginning of that sentence.

What are jurors looking for in an attorney? “The big three – credibility, believability and likability” – according to Dr. Patricia McEvoy of Zagnoli, McEvoy and Foley, a trial consulting firm in Chicago, Illinois, (<http://www.zmf.com>). In a live communication setting, such as a trial, whether or not you can look someone in the eye is the big litmus test for credibility, believability and likability.

Reasons why attorneys fail to make eye contact

Over the years, of all of the attorneys I have worked with and advised

about improving eye contact, the ones who have had the most difficulty doing this are criminal defense attorneys. The reason for this, I believe, is that most of the time jurors don’t give *them* eye contact. Jurors will avert their eyes, not wanting to make eye contact with someone who would represent “a criminal.”

Another reason for the lack of eye contact may be cultural. I have found that attorneys who are from different backgrounds, such as Native Americans, Chinese, Japanese or other Asian cultures, have a cultural aversion to direct eye contact. However, these attorneys have an easier time of overcoming this issue than current or former criminal defense attorneys. For many attorneys, it is not only a question of you looking at the jurors, but of allowing the jurors to look at you. This is more than a little scary for many people.

How to improve your eye contact

Here is how you can get started on the road to improving your eye contact in court: By practicing making eye contact outside of court.

- Where should you do this? At home.
- Who should you do this with? Start with your spouse, partner, or significant other. This person may be the one you trust to look at you, especially if you have difficulty trusting others. Of course, there is always an exception – there was that one guy in Cleveland who said, “Why should I look at her? She knows I love her.”
- Next, move on to other family members and practice making eye contact with them. Again, this should be easier than making eye contact with complete strangers.
- After you are comfortable with family members, move on to small groups of people in social settings. As you make conversation with the people in the group, whether it is about a case or last week’s soccer game, make eye contact with each one. As you speak, be sure to look into the eyes of one of the people in

your group. If you find yourself looking off into space, at the ground, or at your hands, find a pair of eyes.

- Once you have mastered making eye contact in small groups, move to the workplace. Make contact when speaking with your staff, coworkers and clients.
- Finally, it will seem like the most natural step in the world to you to move your new eye contact expertise into the courtroom. Never again will you be afraid to make eye contact with the jurors making the decision in your client’s case.

All about ASTC consultants

As The American Association for Justice is to the plaintiff’s attorney, so ASTC is to the trial consultant. Our definition according to the homepage of our Web site at <http://www.astcweb.org> reads as follows:

ASTC is formed of professionals who devote themselves to enhancing the effectiveness of legal advocacy. Members work with attorneys in planning all phases of trial – including discovery, trial preparation and jury behavior. The work of members encompasses expertise in many fields, including psychology, communications, graphic design and theater, as well as the law. The American Society of Trial Consultants is the pre-eminent organization for establishing practice standards, ethical guidelines and continuing education for members of this highly specialized field.

The field of trial consulting may be new to you. You may have never used a trial consultant or have heard of them only through educational programs, articles or from colleagues. Many of you may even work with trial consultants on your cases. Regardless of what you are currently doing, the information you will learn by reading “In the Trial Consultant’s Seat” will enable you to represent your clients more effectively, run your practice more efficiently and understand our unique point of view when it comes to prevailing in litigation.



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The topics featured in the Trial Consultant's Seat will cover a variety of topics, including how to prepare your witness for trial, learning how to pick a good jury, what to wear in court and how to best persuade judges, jurors, arbitrators and mediators.

Clearly, we will answer the questions posed by our editor but we want to answer your questions, too. This column relies on you, our readers, to ask questions. We will respond with articles aimed at

answering those questions. If you have a question that cannot wait, I will endeavor to make sure that it is answered by me or by one of my colleagues at ASTC. Please email me at katherine@actofcommunication.com or call me at 310-391-9661.

Katherine James is the founder of ACT of Communication and a board member of The American Society of Trial Consultants. A trial consultant for 31 years, she has taught over 30,000 attorneys in her workshops and helped

take almost 1,000 cases to trial as a part of the trial team. A specialist in live communication skills, she has written several articles for this publication, including "Can This Witness Be Saved From The Magic List?," "Costuming For The Courtroom" and "Trial Practice, Practice, Practice." Her company was also featured in attorney Donna Bader's article "The Courtroom as Theater: Is the Courtroom Just Another Stage?"

