

# Courtroom Communication Strategies

## Contents

About the Authors .....	iii
Acknowledgments .....	vii
Preface.....	ix
Table of Contents .....	xiii
Chapter	
1    Impression Formation in the Courtroom .....	1
2    Persuasive Strategies in the Courtroom .....	169
3    Source Credibility in the Courtroom.....	271
4    Decision-Making Process of Jurors .....	343
5    Preparing for Effective Courtroom Communication .....	449
6    Selecting the Jury: A Two-Way Communication Process .....	543
7    Opening Statement: Getting the Jury Committed.....	597
8    Direct Examination: Presenting the Evidence With Impact .....	657
9    Cross-Examination: Controlling the Case.....	691
10   Summation: A Time for Motivating Jurors ....	749
Index .....	799

(Pub. 73079)

# TABLE OF CONTENTS

About the Authors .....	iii
Acknowledgments .....	vii
Preface .....	ix

## **Chapter 1** **Impression Formation in the Courtroom**

### I. Communication Principles

§ 1.01 In general .....	4
§ 1.02 Introduction to Communication Principles .....	6
§ 1.03 —Principle 1: Communication is based on perception.....	7
§ 1.04 —Principle 2: People actively try to make sense out of their environment .....	10
§ 1.05 —Principle 3: Perceptions are organized and structured within a brief period of time.....	12
§ 1.06 —Principle 4: People use stereotypes to organize their perceptions .....	13
§ 1.07 —Principle 5: People tend to see others as similar to themselves .....	14
§ 1.08 —Principle 6: People attempt to maintain their original perceptions regardless of contradictory information .....	15

### II. Communication Techniques

§ 1.09 Developing a courtroom image .....	16
§ 1.10 Establishing a strong image .....	17
§ 1.11 Positioning a case .....	19
§ 1.12 —Positioning clients and witnesses in the courtroom .....	20
§ 1.13 —Positioning attorneys in the courtroom.....	25
§ 1.14 —Positioning your case against opposing counsel .....	27
§ 1.15 Projecting a desired image .....	28
§ 1.16 Personal appearance factors .....	29
§ 1.17 —Clothing considerations for male attorneys .....	30
§ 1.18 —Clothing considerations for female attorneys .....	32
§ 1.19 —Clothing considerations for clients and witnesses.....	36
§ 1.20 —Jewelry and artifacts for male attorneys.....	37
§ 1.21 —Jewelry and artifacts for female attorneys .....	40
§ 1.22 —Jewelry and artifacts for clients and witnesses .....	43
§ 1.23 —Hair considerations for male attorneys .....	44
§ 1.24 —Hair considerations for female attorneys .....	48
§ 1.25 —Hair considerations for clients and witnesses .....	50
§ 1.26 —Makeup considerations for female attorneys .....	51

## Courtroom Communication Strategies

§ 1.27	—Makeup considerations for female clients and witnesses .....	54
§ 1.28	—Selecting colors for high impact .....	54
§ 1.29	—Checklist: Male personal appearance factors which increase the perception of credibility .....	57
§ 1.30	—Checklist: Male personal appearance factors which increase the perception of approachability and likability .....	58
§ 1.31	—Checklist: Female personal appearance factors which increase the perception of credibility .....	60
§ 1.32	—Checklist: Female personal appearance factors which increase the perception of approachability and likability .....	62
§ 1.33	Projecting confidence and power in the courtroom .....	65
§ 1.34	—Projecting confidence and power by controlling space .....	65
§ 1.35	—Projecting confidence and power through nonverbal cues ....	68
§ 1.36	—Projecting confidence and power through vocal cues .....	70
§ 1.37	Using rewarding nonverbal behavior in the courtroom .....	71
§ 1.38	Projecting likability and approachability in the courtroom .....	76
§ 1.39	Handling objects in the courtroom for maximum effect .....	78
§ 1.40	Touching people in the courtroom .....	79
§ 1.41	Avoiding negative image factors .....	80
§ 1.42	—Avoiding projection of arrogance .....	81
§ 1.43	—Avoiding projection of anger and hostility.....	82
§ 1.44	—Avoiding projection of submissiveness and lack of confidence .....	83
§ 1.45	—Avoiding projection of insensitivity and aloofness .....	83
§ 1.46	Coaching witnesses for trial .....	84

### III. General Overview of Impression Formation Process

§ 1.47	Introduction to Communication Principles in impression formation .....	85
§ 1.48	Impression formation in the courtroom .....	85
§ 1.49	—The process of perception .....	87
§ 1.50	—What motivates jurors to form impressions .....	90
§ 1.51	—The time period in which impressions are formed .....	92
§ 1.52	—The primacy effect .....	93
§ 1.53	—Shortcut approaches to decision-making used by jurors .....	95
§ 1.54	—The use of stereotypes and personal generalizations .....	97
§ 1.55	—How jurors look for similarities .....	100
§ 1.56	—Maintenance of original perceptions .....	101
§ 1.57	Impression formation theories .....	105
§ 1.58	—Trait Association Theory .....	106
§ 1.59	—Private Theory of Personality .....	107
§ 1.60	—Attribution Theory .....	108
§ 1.61	—Uncertainty Reduction Theory .....	109
§ 1.62	Accuracy in forming impressions .....	110

## Table of Contents

§ 1.63	—Accuracy in perceiving people.....	112
§ 1.64	—How individuals differ in accuracy of perception.....	114
§ 1.65	—How jurors make decisions with contradictory information .....	118
§ 1.66	Perceptions of multiple parties .....	120
§ 1.67	—How jurors perceive multiple parties.....	121
§ 1.68	—The primacy effect with multiple parties .....	123
§ 1.69	—Perception of responsibility of multiple parties.....	123
§ 1.70	—Separating your case in a multiple party dispute .....	124
§ 1.71	Special factors affecting impression formation.....	125
§ 1.72	Perceptions of attractive/unattractive people.....	125
§ 1.73	Perceptions of territory, personal space, and crowding.....	125
§ 1.74	—Perceptions of territory .....	126
§ 1.75	—Perceptions of personal space .....	127
§ 1.76	—Perceptions of crowding .....	128
§ 1.77	Perceptions of environment and seating arrangements .....	129
§ 1.78	—Perceptions of spatial arrangements and seating behavior .....	131
§ 1.79	Perceptions of voice characteristics and qualities .....	132
§ 1.80	—Speed of speech .....	134
§ 1.81	—Voice pitch .....	136
§ 1.82	—Loudness .....	137
§ 1.83	—Pauses .....	137
§ 1.84	—Dialect .....	138
§ 1.85	—Powerful and powerless speech .....	139
§ 1.86	Touch behavior .....	140

## IV. Appendix

§ 1.87	Luchins' experiment on the primacy-recency effect in impression formation.....	142
§ 1.88	Trait Association Theory test .....	143
§ 1.89	Mock jury research studies .....	146
§ 1.90	Additional studies regarding perceptions of attractive/unattractive people .....	148
§ 1.91	Additional studies on perceptions of territory .....	154
§ 1.92	Additional studies on perceptions of personal space .....	156
§ 1.93	Additional studies regarding perceptions of environment .....	157
§ 1.94	Vocal cue studies .....	161
§ 1.95	Additional studies on powerful and powerless speech.....	164
§ 1.96	Additional studies on touch behavior .....	166

## Courtroom Communication Strategies

### Chapter 2 Persuasive Strategies in the Courtroom

#### I. Communication Principles

§ 2.01	Introduction to persuasion .....	171
§ 2.02	Summary of Communication Principles .....	172
§ 2.03	—Principle 7: People feel obligated to repay others regardless of whether they like the gift or the giver .....	172
§ 2.04	—Principle 8: People have a need to be consistent .....	174
§ 2.05	—Principle 9: People are more easily influenced by others they perceive as similar to themselves .....	177
§ 2.06	—Principle 10: People are more easily influenced by people they like.....	178
§ 2.07	—Principle 11: The perception of credibility increases with the perception of authority .....	179
§ 2.08	—Principle 12: People are more easily influenced when they believe the source to be scarce and valuable .....	180

#### II. Communication Techniques

§ 2.09	Maximizing the perception of similarity .....	181
§ 2.10	—Basic rules of a relationship.....	184
§ 2.11	—Absorbing behaviors.....	186
§ 2.12	—Pacing techniques .....	188
§ 2.13	Understanding how rhythmic patterns influence behavior .....	190
§ 2.14	—The effects of musical rhythms .....	190
§ 2.15	—The effects of breathing rhythms .....	191
§ 2.16	—The effects of interaction rhythms .....	192
§ 2.17	—The effects of group rhythms.....	194
§ 2.18	—The effects of individual rhythms .....	194
§ 2.19	Using pacing and leading techniques in the courtroom .....	196
§ 2.20	Determining how a person processes information .....	197
§ 2.21	—Use of predicates.....	197
§ 2.22	—Eye movement patterns and gaze direction .....	200
§ 2.23	Pacing verbal communication .....	202
§ 2.24	—Pacing key words and phrases.....	203
§ 2.25	—Pacing the visually dominant individual.....	204
§ 2.26	—Pacing the auditorily dominant individual.....	206
§ 2.27	—Pacing the kinesthetically dominant individual.....	206
§ 2.28	Pacing vocal communication .....	206
§ 2.29	—Pacing vocal rate.....	207
§ 2.30	—Pacing vocal characteristics .....	207
§ 2.31	Pacing nonverbal communication .....	209
§ 2.32	—Pacing gestures and movement .....	210

## Table of Contents

§ 2.33	—Pacing touch behavior .....	211
§ 2.34	—Pacing postural orientation and distance .....	211
§ 2.35	—Pacing eye movement and facial behavior .....	212
§ 2.36	—Pacing personal appearance .....	213
§ 2.37	Direct versus complimentary pacing .....	213
§ 2.38	Pacing on multiple levels .....	216
§ 2.39	When to pace .....	217
§ 2.40	When to lead .....	219
§ 2.41	When to mismatch .....	220
§ 2.42	How to regain rapport when it is lost .....	221
§ 2.43	Pacing in one-to-one and group interaction settings .....	221
§ 2.44	—Pacing an individual.....	222
§ 2.45	—Pacing jurors .....	222
§ 2.46	—Pacing clients .....	224
§ 2.47	—Pacing a witness .....	228
§ 2.48	—Pacing the judge .....	229
§ 2.49	Pacing and leading to create a mood transference .....	231
§ 2.50	—Transferring a feeling.....	232
§ 2.51	—Transferring factual information.....	235
§ 2.52	—Transferring visual information.....	235

### III. General Overview of Persuasion and Influence

§ 2.53	Introduction to Communication Principles which apply to persuasion .....	237
§ 2.54	What is an attitude? .....	237
§ 2.55	What is persuasion? .....	240
§ 2.56	Persuasion as influence .....	241
§ 2.57	—Reciprocity .....	242
§ 2.58	—Commitment and consistency .....	245
§ 2.59	—Social proof.....	247
§ 2.60	—Liking.....	248
§ 2.61	—Authority .....	250
§ 2.62	—Scarcity .....	253
§ 2.63	Theory of power of groups in persuasion .....	255
§ 2.64	Characteristics of an effective persuader .....	255
§ 2.65	—Source credibility .....	256
§ 2.66	—Self-monitoring .....	258
§ 2.67	—Influence of nonverbal cues on opinion change .....	263

## **Courtroom Communication Strategies**

### **Chapter 3 Source Credibility in the Courtroom**

#### **I. Communication Principles**

§ 3.01	Introduction to Communication Principles of credibility .....	273
§ 3.02	—Principle 13: People are more easily influenced by those they perceive as credible.....	273
§ 3.03	—Principle 14: The perception of credibility is based on three factors: (1) competence/expertness, (2) trustworthiness, and (3) dynamism .....	274
§ 3.04	—Principle 15: People are influenced by the way the message is structured and delivered .....	277
§ 3.05	—Principle 16: The perception of credibility is influenced by personal attributes.....	278
§ 3.06	Introduction to source credibility .....	279
§ 3.07	—Roots of source credibility .....	280
§ 3.08	—Components of credibility.....	281
§ 3.09	Jury's view of attorney's credibility .....	282
§ 3.10	—Expertness.....	284
§ 3.11	—Homophyly.....	286
§ 3.12	—Prestige .....	287
§ 3.13	—Trustworthiness .....	288
§ 3.14	—Objectivity and fairness .....	290
§ 3.15	—Dynamism.....	292
§ 3.16	Checklist: Credibility considerations .....	293
§ 3.17	Demonstrated credibility .....	296
§ 3.18	“Instant” credibility .....	298
§ 3.19	Nonverbal aspects of credibility .....	299
§ 3.20	Establishing credibility through speaking style .....	302

#### **II. Developing a Courtroom Image**

§ 3.21	Attorney credibility in the courtroom .....	304
§ 3.22	Checklist: Jury evaluation of lawyers as credible communicators.....	306
§ 3.23	Client credibility and its effect on verdict.....	307
§ 3.24	Witness credibility in the courtroom .....	310

#### **III. Communication Techniques**

§ 3.25	Increasing the perception of credibility through the proper structuring and delivery of messages .....	313
§ 3.26	Developing a high impact message.....	314
§ 3.27	—Simplifying the message .....	314
§ 3.28	—Simplifying the case theme.....	316

## Table of Contents

§ 3.29	—The rule of three .....	318
§ 3.30	—Selecting words .....	319
§ 3.31	—Creating mental images with storytelling .....	321
§ 3.32	—Repeating the message .....	323
§ 3.33	—Presenting a consistent message .....	325
§ 3.34	—Juror-proofing your message .....	326
§ 3.35	—Focusing your message .....	327
§ 3.36	Using special language techniques to create high impact .....	327
§ 3.37	—Repetition .....	328
§ 3.38	—Metaphor .....	329
§ 3.39	—Simile .....	330
§ 3.40	—Analogy .....	330
§ 3.41	—Rhetorical question .....	331
§ 3.42	Structuring a message for high impact .....	331
§ 3.43	Using the 8-part formula for opening and closing arguments .....	332
§ 3.44	—Open (the case to the jury) .....	333
§ 3.45	—Focus .....	334
§ 3.46	—Connect .....	335
§ 3.47	—Three major points .....	336
§ 3.48	—Summarize .....	336
§ 3.49	—Close .....	336
§ 3.50	Delivering a message with high impact .....	337
§ 3.51	—Fear of public speaking .....	337
§ 3.52	—Increasing the perception of dynamism .....	340
§ 3.53	—Increasing the perception of competence and expertness .....	341
§ 3.54	—Increasing the perception of trustworthiness .....	341

## Chapter 4 Decision-Making Process of Jurors

### I. Communication Principles

§ 4.01	Introduction to chapter .....	345
§ 4.02	Introduction to Communication Principles and decision making .....	346
§ 4.03	—Summary of Communication Principles .....	347
§ 4.04	—Principle 17: Jurors choose leaders rapidly and on limited information .....	347
§ 4.05	—Principle 18: Jurors use information other than evidence in making decisions .....	348
§ 4.06	—Principle 19: People make decisions by emotion (unconscious mind) and validate them with logic (conscious mind) .....	349

## Courtroom Communication Strategies

§ 4.07	—Principle 20: People more easily retain information which is anchored .....	350
§ 4.08	—Principle 21: Jurors seek to render a verdict which they perceive as equitable.....	351

### II. Communication Techniques

§ 4.09	Communicating with the conscious and unconscious mind.....	353
§ 4.10	—How the conscious mind operates .....	355
§ 4.11	—How the unconscious mind operates .....	356
§ 4.12	Focusing jurors' perceptions.....	359
§ 4.13	—Asking jurors for what you want .....	360
§ 4.14	—Identifying how you want jurors to think .....	364
§ 4.15	Using embedded commands .....	366
§ 4.16	—Getting a request through to the unconscious mind .....	368
§ 4.17	—Engaging the conscious mind .....	369
§ 4.18	—Marking the command .....	370
§ 4.19	—Using embedded commands during voir dire .....	371
§ 4.20	Creating a high impact emotional message .....	373
§ 4.21	—Real versus imagined events .....	374
§ 4.22	—Increasing jurors' association with emotional messages .....	375
§ 4.23	—Moving jurors across time and space lines.....	376
§ 4.24	—Disassociating with an emotional event .....	377
§ 4.25	—Avoiding or creating emotional distance with language.....	378
§ 4.26	—Nominalizations to create distance.....	378
§ 4.27	—Verb forms to eliminate distance .....	378
§ 4.28	Using verbal techniques.....	379
§ 4.29	—Sequencing phrases and words .....	380
§ 4.30	—Increasing the power of questions and statements by linking .....	381
§ 4.31	—Creating a movie in the mind .....	382
§ 4.32	—Creating photographic stills in the mind .....	383
§ 4.33	—Using verbal techniques in opening statement .....	384
§ 4.34	Using anchoring techniques .....	404
§ 4.35	—How to anchor .....	405
§ 4.36	—When to anchor .....	405
§ 4.37	—Collapsing anchors .....	406

### III. Overview of Decision-Making Process of Jurors

§ 4.38	Introduction to small group persuasion .....	406
§ 4.39	—Individual versus group persuasion .....	409
§ 4.40	—The group mind .....	411
§ 4.41	—Models of small group persuasion .....	413
§ 4.42	—Model of small group decision making.....	413
§ 4.43	—“Reach-Test” model of group decision making .....	417

## **Table of Contents**

§ 4.44	—The “forming, storming, norming, and performing” schema .....	418
§ 4.45	Leadership in small groups generally.....	419
§ 4.46	—Ascribed and achieved status.....	420
§ 4.47	—Predicting the emergence of the jury foreperson .....	421
§ 4.48	—Leadership characteristics.....	424
§ 4.49	—Influence of leaders.....	425
§ 4.50	Juror roles in deliberation.....	426
§ 4.51	The decision-making process generally .....	428
§ 4.52	—Stages in a jury’s decision-making process .....	428
§ 4.53	—Information integration process of jurors .....	430
§ 4.54	Equity theory and its influence on decision making .....	435
§ 4.55	—Equity theory definitions and propositions.....	436
§ 4.56	—Application of equity theory to the courtroom.....	441
§ 4.57	Implications of the size of the jury.....	446

## **Chapter 5** **Preparing for Effective Courtroom Communication**

### **I. Initial Client Interview**

§ 5.01	Establishing rapport .....	452
§ 5.02	Building trust .....	453
§ 5.03	Gaining control of the client .....	453
§ 5.04	Interpreting nonverbal cues .....	455
§ 5.05	Obtaining the facts .....	457
§ 5.06	Phrasing the questions .....	458
§ 5.07	Analysis of answers .....	459
§ 5.08	Follow-up questions .....	460
§ 5.09	Necessity for taking the complete medical history .....	460
§ 5.10	—Past medical history .....	461
§ 5.11	—Present illness in detail .....	461
§ 5.12	—Eliciting and preserving signs and symptoms .....	462
§ 5.13	Taking the complete liability history .....	463
§ 5.14	—List all potential defendants .....	463
§ 5.15	—List all factors contributing to the injury .....	463
§ 5.16	—Analyzing contributing factors as related to potential defendants .....	464
§ 5.17	Preserving the evidence .....	465
§ 5.18	—Use of personal diaries .....	466
§ 5.19	—Developing photographic evidence .....	467
§ 5.20	—Videotapes as evidence .....	467
§ 5.21	—Statements of witnesses .....	468
§ 5.22	Closing the initial interview .....	470

## Courtroom Communication Strategies

§ 5.23	—Explaining the lawyer's function.....	470
§ 5.24	—Explaining the duties of the client .....	471
§ 5.25	—Explaining the initial medical problems .....	472

### II. Controlling Evidence Development Through Aggressive Discovery Techniques

§ 5.26	Psychological considerations and discovery .....	473
§ 5.27	—Pacing the defendant .....	473
§ 5.28	—Gaining control of the case .....	473
§ 5.29	—Anchoring techniques as applied to opposing counsel .....	474
§ 5.30	—Verbal and vocal considerations in discussions with opposing counsel .....	474
§ 5.31	—The operation of primacy in discovery .....	475
§ 5.32	The importance of developing a case theory .....	476
§ 5.33	—Nature of the liability .....	476
§ 5.34	—Consideration of causation problems .....	477
§ 5.35	—Nature of the injury .....	480
§ 5.36	—Effects of the injury .....	480
§ 5.37	—The permanence of disability .....	481
§ 5.38	—Medical malpractice considerations .....	483
§ 5.39	Interrogatories as a discovery tool—phrasing of interrogatories .....	485
§ 5.40	—Other psychological considerations .....	487
§ 5.41	—Types of information sought in interrogatories .....	487
§ 5.42	—Defendant's background; corporate structures .....	488
§ 5.43	—Insurance coverage .....	489
§ 5.44	—Witnesses and statements .....	489
§ 5.45	—Sample interrogatories .....	490
§ 5.46	Requests for admissions .....	493
§ 5.47	—Proper phrasing .....	494
§ 5.48	—Requests regarding liability .....	495
§ 5.49	—Used to prove wage loss information .....	495
§ 5.50	—Used to prove employment relationship .....	496
§ 5.51	—Sample requests for admissions .....	496
§ 5.52	Independent medical examinations .....	497
§ 5.53	—Psychological considerations .....	497
§ 5.54	—Preparing the client .....	498
§ 5.55	—Scope of examination .....	499
§ 5.56	—Nature of examination .....	500
§ 5.57	—Providing written history to defendant's physician .....	500
§ 5.58	—Controlling the defendant's physician's attitude .....	501
§ 5.59	Depositions as a discovery tool .....	502
§ 5.60	—Psychology of timing .....	502
§ 5.61	—Psychology of territoriality .....	503

## **Table of Contents**

§ 5.62	—Seating arrangement at depositions .....	504
§ 5.63	—Pacing at depositions .....	505
§ 5.64	—Matching or mismatching at depositions .....	505
§ 5.65	—When to match or mismatch .....	506
§ 5.66	—Interpreting behavioral cues .....	507
§ 5.67	—Questioning techniques .....	509
§ 5.68	—Adversary's acknowledgment of case theory .....	513
§ 5.69	—Adversary's acknowledgment of medical theory .....	514
§ 5.70	—Use of authoritative material at depositions .....	514

### **III. Videotape Depositions**

§ 5.71	Judicial considerations .....	516
§ 5.72	Use of cameras .....	518
§ 5.73	—Mixing shots .....	518
§ 5.74	Use of demonstrative aids during the videotaped deposition .....	519
§ 5.75	Technical research regarding video techniques .....	519
§ 5.76	Studies regarding various modes of communication .....	522

### **IV. Psychological Factors in Structuring the Case for Trial**

§ 5.77	Climax and anticlimax considerations .....	527
§ 5.78	Developing your case theme .....	529
§ 5.79	Use of impact words and phrases .....	530
§ 5.80	Use of powerful language .....	531

### **V. Simplifying the Case**

§ 5.81	The psychological necessity for simplification .....	532
§ 5.82	Issues selection .....	533
§ 5.83	Discovery used to limit issues .....	534
§ 5.84	—Use of stipulations to eliminate proof of issues .....	535
§ 5.85	—Use of summary judgment .....	536

### **VI. The Trial as a Unit**

§ 5.86	Setting goals generally .....	536
§ 5.87	—Voir dire .....	536
§ 5.88	—Opening statement .....	536
§ 5.89	—Direct examination .....	537
§ 5.90	—Cross-examination .....	537
§ 5.91	—Summation .....	537
§ 5.92	The integration of goals; the whole trial concept .....	537

### **VII. Creating a Presence**

§ 5.93	Visual impact .....	538
§ 5.94	—Jury observance of the trial lawyer .....	539

## Courtroom Communication Strategies

§ 5.95	—Jury observance of counsel's relationship with judge .....	540
§ 5.96	—Jury observance of attorney's relationship with client .....	541

### Chapter 6

#### Selecting the Jury: A Two-Way Communication Process

##### I. Goals

§ 6.01	Goals in voir dire; picking an unbiased jury .....	545
§ 6.02	—Establishing rapport .....	545
§ 6.03	—Obtaining information .....	545
§ 6.04	—Using information .....	546
§ 6.05	—Obtaining commitment .....	547
§ 6.06	—Obtaining a pattern of positive answers .....	548
§ 6.07	—Educating the jurors.....	549
§ 6.08	Education as it relates to primacy .....	549

##### II. The Means of Accomplishing the Goals of Voir Dire

§ 6.09	Establishing rapport: pacing prospective jurors .....	550
§ 6.10	—Using their words .....	551
§ 6.11	—Imitating their body movements.....	551
§ 6.12	—Copying voice levels and patterns of jurors .....	551
§ 6.13	Leading the jurors.....	552
§ 6.14	—Confirming rapport with jurors.....	552
§ 6.15	—Interpreting images of jurors .....	553
§ 6.16	—Meaning of overt actions by jurors .....	554
§ 6.17	Evaluating eye and body movement patterns .....	556
§ 6.18	—Confirming jury rapport through use of chosen phrases .....	557
§ 6.19	Questioning techniques: open-ended versus leading questions .....	558
§ 6.20	Questioning techniques used to position the lawyer .....	563
§ 6.21	—Body movements of the lawyer.....	565
§ 6.22	Evaluating verbal and nonverbal cues during questioning .....	566
§ 6.23	—Open-ended questions to whole panel versus obtaining individual answers .....	567
§ 6.24	Use of “red flag” questioning.....	567
§ 6.25	—Importance of public commitments .....	568
§ 6.26	—How to obtain a public commitment.....	569

##### III. Obtaining Information

§ 6.27	Reasons for obtaining information .....	571
§ 6.28	Work history .....	572
§ 6.29	Education and training .....	573

## **Table of Contents**

§ 6.30	Family experience .....	574
§ 6.31	Opinions regarding lawyers .....	574
§ 6.32	Opinions regarding the type of litigation .....	575
§ 6.33	Opinions regarding physicians .....	575
§ 6.34	Exploring preconceived notions or ideas of jurors .....	576
§ 6.35	Exploring racial and other biases .....	577
§ 6.36	Previous jury experience .....	578
§ 6.37	Jurors' hobbies explored .....	578
§ 6.38	Jurors' knowledge of law and medicine .....	579
§ 6.39	Pretrial publicity .....	580
§ 6.40	Contact with witnesses.....	582
§ 6.41	Acceptance of the jury system.....	582
§ 6.42	Feelings toward court and the law .....	583
§ 6.43	Feelings toward damage awards .....	585
§ 6.44	Feelings toward the burden of proof .....	587
§ 6.45	Feelings toward defendants in criminal cases .....	588
§ 6.46	Determining leaders on the jury panel .....	588
§ 6.47	Determining personality types .....	590
§ 6.48	Using obtained information .....	591
§ 6.49	Using a systematic selection process .....	592

## **Chapter 7**

### **Opening Statement: Getting the Jury Committed**

#### **I. Nonverbal Considerations**

§ 7.01	Primacy: the first four minutes.....	598
§ 7.02	Persuasive delivery .....	600
§ 7.03	Structuring the opening statement: climax and anticlimax .....	601
§ 7.04	Anticipating defenses and using issues .....	612
§ 7.05	Handling objections: the "evidence will show" technique.....	614
§ 7.06	Projecting feeling through vocal and nonverbal cues .....	614

#### **II. Verbal Considerations**

§ 7.07	Verbal considerations based on jury makeup.....	616
§ 7.08	Choosing a psychologically acceptable case theme.....	617
§ 7.09	Choosing impact words and phrases .....	624
§ 7.10	Painting word pictures.....	625

#### **III. Structure of the Opening Statement**

§ 7.11	The opening line .....	626
§ 7.12	Using amenities to further rapport .....	626
§ 7.13	Telling the "story" of the case .....	627
§ 7.14	—Civil case.....	627

## **Courtroom Communication Strategies**

§ 7.15	—Criminal case .....	641
§ 7.16	Introducing the medical theory of the case .....	642
§ 7.17	Handling damages: the psychological aspects.....	643
§ 7.18	—The major impairment.....	643
§ 7.19	—Discussing monetary losses .....	644
§ 7.20	—Predicting pain and suffering .....	645
§ 7.21	—When to mention the amount of damages demanded.....	646
§ 7.22	Closing the opening statement.....	647

### **IV. Communication Techniques Used During Opening Statement**

§ 7.23	Developing case theory during opening statement .....	648
§ 7.24	—Determining case issues.....	648
§ 7.25	Conforming to the evidence; avoiding overreaching .....	649
§ 7.26	Use of visual aids during opening statement .....	650
§ 7.27	Style of delivery .....	653
§ 7.28	Humanizing the client .....	653
§ 7.29	Motivating the jury.....	654

## **Chapter 8**

### **Direct Examination: Presenting the Evidence With Impact**

§ 8.01	Reducing lay witness' anxiety and establishing rapport .....	658
§ 8.02	Preparing lay witness for cross-examination .....	660
§ 8.03	Videotaping mock examinations .....	661
§ 8.04	Importance of witness' appearance.....	662
§ 8.05	Changing the witness' image .....	663
§ 8.06	Witness' body position on the stand .....	665
§ 8.07	Verbal and vocal considerations .....	666
§ 8.08	—Choice of words and phraseology.....	667
§ 8.09	Using trial consultants in preparing lay witness .....	668
§ 8.10	—Other functions of trial consultants .....	669
§ 8.11	—Importance of trial consultants .....	671
§ 8.12	Preparing the expert witness .....	671
§ 8.13	Pacing the expert.....	673
§ 8.14	Leading the expert .....	674
§ 8.15	Educating and preparing the expert for cross-examination .....	674
§ 8.16	Developing demonstrative aids .....	676
§ 8.17	—Models .....	677
§ 8.18	—Demonstrations .....	679
§ 8.19	—Overhead projections .....	680
§ 8.20	—Slides .....	681
§ 8.21	—Blowups.....	682
§ 8.22	—Charts .....	682

## **Table of Contents**

§ 8.23	—Blackboards .....	684
§ 8.24	—Color exhibits.....	685
§ 8.25	Outlining witness testimony .....	686
§ 8.26	Psychological importance of the closing answer .....	690

### **Chapter 9** **Cross-Examination: Controlling the Case**

#### **I. The Psychology of Control**

§ 9.01	Cross-examination in general .....	692
§ 9.02	Obtaining admissions .....	694

#### **II. Diminishing Credibility Through Mismatch**

§ 9.03	The attack position: standing between the witness and the jury .....	705
§ 9.04	Mismatching communication channels to create pressure .....	706
§ 9.05	Asking questions where counsel does not care about the answer .....	708
§ 9.06	Using prior statements to impeach .....	709
§ 9.07	—Sample cross-examination—impeaching witness' credibility (unequivocal impeaching evidence) .....	711
§ 9.08	—Impeaching witness who denies prior inconsistent statement .....	715
§ 9.09	—Sample cross-examination—"closing the door" on the witness before impeachment .....	716
§ 9.10	—Sample cross-examination—"closing the door" (altered medical document) .....	722

#### **III. Listening to Witness' Answer; Observing Witness Reaction**

§ 9.11	Interpreting and using facial expressions .....	734
§ 9.12	Interpreting and using body movements and positions.....	734
§ 9.13	Interpreting and using verbal and vocal cues .....	736
§ 9.14	Use of filled and unfilled pauses .....	737
§ 9.15	Use of reframing during cross-examination .....	737
§ 9.16	Proper questioning techniques .....	740
§ 9.17	Developing a rhythm during cross-examination .....	741
§ 9.18	Prestructuring the cross-examination with a strong close .....	742

### **Chapter 10** **Summation: A Time for Motivating Jurors**

#### **I. The Function of Summation**

§ 10.01	Goals of summation .....	750
---------	--------------------------	-----

## Courtroom Communication Strategies

§ 10.02 The lawyer's role.....	751
II. Nonverbal and Vocal Considerations	
§ 10.03 Anchoring .....	752
§ 10.04 Mood transference .....	752
§ 10.05 The use of behavioral cues .....	753
§ 10.06 Pacing the jury .....	755
§ 10.07 The use of unfilled pauses.....	755
§ 10.08 Movements and gestures .....	756
§ 10.09 Touching the client.....	757
§ 10.10 Dressing for summation .....	757
III. Verbal Considerations	
§ 10.11 The use of embedded commands .....	758
§ 10.12 The use of analogy .....	759
§ 10.13 The use of rhetorical questions .....	764
§ 10.14 Understanding understatements .....	768
§ 10.15 Impact words and phrases .....	769
IV. Structuring the Argument	
§ 10.16 Structuring the argument generally .....	774
§ 10.17 Capitalizing on voir dire commitments.....	777
§ 10.18 Opening line: reestablishing rapport and anchoring the case theme .....	778
§ 10.19 Covering the evidence .....	781
§ 10.20 Simplifying the issues .....	783
§ 10.21 Covering the theories of liability.....	784
§ 10.22 Covering the damages issues .....	786
§ 10.23 Using standard arguments .....	789
§ 10.24 The closing line .....	790
§ 10.25 Structuring the emotional appeal in summation .....	794
V. Developing a Summation Style	
§ 10.26 Technique as opposed to style.....	795
§ 10.27 —The logical delivery style .....	796
§ 10.28 —The emotional delivery style .....	796
§ 10.29 —A combination style of delivery .....	797
§ 10.30 —Adopting as opposed to adapting styles of delivery .....	797
Index .....	799