

Jurors' Hidden Biases Toward Witnesses

By Louis Genevie, Ph.D.

The trial is just a few days away. You have worked hard for many months, learning the facts, applying the law, preparing your presentation. You think you have a good case. The facts are on your side and the judge who will hear the case has a reputation for applying the law fairly. Everything is in place and ready to go. Except for one or two of your own witnesses who could blow the entire case! Such is a litigator's recurrent nightmare. "Worst case" thoughts about witnesses can produce a sinking feeling when you imagine your case going down the drain as your witness plays right into your opponent's hands despite your best efforts.

The situation occurs so often because most fact witnesses are amateurs. They have little experience in the courtroom and most approach the situation with a great deal of apprehension. It is very rare to find a witness who has the right mix of intelligence, flexibility and self-confidence that forms the foundation of credible testimony at trial. Even if a witness has the personality traits that help define credibili-

ty in jurors' minds, he or she may still not be easy to prepare or be effective on the stand. Much depends on the individual's position in the case and jurors' pre-existing biases toward the individual's occupation or profession.

Our research has shown that witnesses do not start on an even footing. Jurors have very definite attitudes about various occupations and professions as shown on the Witness Credibility Map™ below. Mock jurors around the country were asked to rate various professions on the two core components of credibility: knowledge and trustworthiness. To be credible, a witness must know what they are talking about and be trusted to tell the truth about what they know.

The upper right hand quadrant of the map shows those professions with the greatest inherent credibility: doctors, accountants, priests, ministers and rabbis. Jurors are predisposed to believe these individuals but are likely to react very

negatively if their high expectations are not met.

The lower left hand corner of the map reveals that elected officials and convicted criminals are among those who begin their testimony with a credibility deficit. Jurors are less likely to trust either one and not likely to attribute a high degree of knowledge to them. These are, of course, only predispositions. Elected officials and even convicted criminals can deliver credible

testimony if properly prepared. But ultimately, if jurors do not trust a witness, or if they believe the witness does not know what he or she is talking about, that witness is very unlikely to produce credible testimony.

Jurors perceive lawyers and psychiatrists with considerable ambivalence. Lawyers are viewed as having considerable

knowledge, but are not viewed as very trustworthy. Psychiatrists are perceived in a similarly ambivalent, yet opposite manner: low knowledge and relatively high trustworthiness. Both professions start off with a credibility deficit that can either be increased or decreased, depending on the witness' personality, positioning in the case, and the kind of preparation he or she receives.

Professions connected with business transactions--bank directors, stock brokers, investors and real estate developers tend to cluster around the middle of the credibility map. Neither helped nor harmed by hidden biases, their credibility will be largely determined by their personality, their position in the case, the content of their testimony and, of course, the quality of their preparation.

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