

How Attorneys Can Master The Art Of Eye Contact At Trial

By **Noelle Nelson** (December 12, 2024)

In November, music icon Bob Dylan dispelled the decades-long rumor that he prefers that no one look directly at him while backstage at his concerts.[1]

Good thing this was only a rumor. Not only would it have been in bad form to ban people from looking at you straight in the eyes, but Dylan would have missed the opportunity to use one of the strongest types of nonverbal communication: eye contact.

Whether it is a rock star talking with staff before a concert, or an attorney presenting their side in court, making eye contact is one of the most universal ways to connect with others.[2]

Research shows that eye contact elicits basic human emotions. In a 2014 Cornell University study, for instance, researchers manipulated the gaze of the cartoon rabbit on Trix cereal boxes and found that adult subjects were more likely to choose Trix over competing brands if the rabbit was looking at them rather than away.[3] One of the researchers noted that "[m]aking eye contact even with a character on a cereal box inspires powerful feelings of connection." [4]

What's more, a growing body of research shows that when doctors make more eye contact with their patients, this is associated with better health outcomes for patients, improved compliance with medical advice and a greater likelihood that patients will return for follow-up appointments.[5]

In other words, these patients may be more likely to listen to and follow the advice of their doctors if the doctors simply make eye contact with them.

These findings are relevant to trial attorneys because this is precisely the type of response you need from jurors. Eye contact engages us. It facilitates communication, influences others and is persuasive.[6]

One of the reasons eye contact is so important during trial is that verbal communication is greatly restricted. Most judges run a tight ship on when and how parties can express themselves. And of course, lawyers generally cannot directly address the jury outside of opening and closing statements.

By following the pointers below, you can tap into the art of eye contact at various stages of trial, which can ultimately help lead to positive litigation outcomes.

Voir Dire

Jurors are watching you the entire time you are in court, trying to figure out from your expressions and body language what you are thinking at any given moment. Use this unrelenting scrutiny to your advantage.

During voir dire, keep your eye focus clearly and directly on the potential jurors as they speak. Resist taking notes. Instead, leave that task to co-counsel or a paralegal while you



Noelle Nelson

interview potential jurors. If you need to glance at notes, do so only after a response and before your next question.

Those in the jury pool are in a new setting and understandably nervous. Your eye focus is critical to help them feel valued and listened to, and it is your first opportunity to connect with the jurors who will be deciding your case.

Preparing Witnesses

Before trial, it is standard for legal counsel to tell witnesses to look at jurors while testifying, but they often fail to teach the witnesses how. This can be fatal to the case.

A scared, anxious witness might only dare a quick, terrified glance at the jurors while midsentence, which confirms in the jurors' minds that this witness is surely hiding something. Your witness immediately loses credibility.

Or a witness may attempt to duke it out during cross-examination, and then glare at the jurors during their response to convey anger, rather than focusing on opposing counsel. This does not benefit the case.

Instead, teach your witnesses ways to look at the jury in a way that enhances their credibility and satisfies the jurors' need to determine witness authenticity.

During direct examination, when witnesses need to respond in a couple of sentences or more, have them answer by first looking at you, then turning to the jurors and making eye contact with them during the bulk of their response. Witnesses should conclude their response by turning back to you during their last few remarks.

If the witness can angle their body very slightly toward the jury box, then turning out toward the jurors is a smoother transition.

All this sounds easy, and it certainly becomes easy, but only with practice. Video-recorded role-play is an effective way to help witnesses practice and become comfortable with this technique.

During cross-examination, the witness will rarely be allowed to respond with more than a few words, so your witness's primary responsibility during cross is to focus on opposing counsel.

Expert Witnesses

Good expert witnesses know that their role is to educate jurors on their point of view. This is true whether the expert is responding to direct or cross-examination.

Most experts are usually adept at looking at counsel during a question posed in direct examination, then spontaneously looking at the jurors for the greater part of their response. They are fulfilling their role as educators.

However, when it comes to cross-examination, too many experts become locked in an eye-to-eye duel with opposing counsel, mightily defending their opinion. They stop educating.

One of the easiest ways to counter this tendency is to encourage your experts to maintain good eye contact with the jurors even during cross.

It is certainly more challenging, but well-prepared experts can usually find a way to restate their opinion during cross, and during that portion of their response, they should look out to the jurors — just as the expert did during direct.

As an added benefit, if opposing counsel interrupts these teaching moments, jurors may be annoyed with the attorney.

Practice with your expert. Role-play a few cross-examination questions to support your expert's ability to continue educating jurors, even as the expert is in a more defensive posture.

Eye Contact and Opposing Witnesses

During trial, if you want to let the jurors know you think an opposing witness is being less than candid, raise an eyebrow and look quizzically at the witness, as in, "Oh, really?"

Hold that expression for a moment or two while the witness is responding, and then look down briefly, frowning, as in, "I don't believe what I'm hearing." This is precisely the conclusion you want the jurors to draw.

To dismiss a witness's testimony as less than credible, take several steps away from the witness during his or her testimony, thereby removing your eye focus from the witness. It is as if you are saying, "I can't stand here and listen to this nonsense."

Another way to put a witness on the spot is to stand still in front of the witness, resist the urge to make any acknowledging head nods and maintain steady, almost rigid eye contact, thus effectively pinning the witness down with your look.

When you want to give value to a witness, stand close to the witness in a natural, relaxed posture. Maintain good eye contact and nod approvingly. By doing so, you are humanizing the witness and sending a nonverbal signal to jurors that the witness is telling the truth.

Final Thoughts

By being conscious of your body language, facial expressions and where you focus your eyes, you add valuable tools to your litigation toolkit.

Noelle C. Nelson, Ph.D., is a trial consultant and the author of "Connecting With Your Client" (1996, American Bar Association).

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] "Yes, You Can Look Bob Dylan In the Eyes," Rolling Stone, November 21, 2024 <https://www.rollingstone.com/music/music-news/bob-dylan-eye-contact-rumor-1235176072/>.

[2] "Why Eye Contact is Important in Communication," Indeed.com, February 13,

2024, <https://www.indeed.com/career-advice/career-development/eye-contact-communication>.

[3] "Food Psychologists Eyeball Cereal Characters," Cornell Chronicle. April 7, 2014, <https://news.cornell.edu/stories/2014/04/food-psychologists-eyeball-cereal-characters>.

[4] <https://www.nytimes.com/2014/05/17/sunday-review/the-eyes-have-it.html>.

[5] "Eye Contact Builds Bedside Trust," Northwestern Now, October 15, 2013, <https://news.northwestern.edu/stories/2013/10/eye-contact-builds-bedside-trust/>. See also <https://link.springer.com/article/10.1007/s11606-024-08906-4#Sec18>, <https://www.medicaleconomics.com/view/study-shows-eye-level-interactions-improve-patient-trust-and-outcomes>, <https://pmc.ncbi.nlm.nih.gov/articles/PMC4395515/#:~:text=As%20we%20review%20below%2C%20a,e.g.%2C%20as%20more%20trustworthy>.

[6] "Why Eye Contact is Important in Communication," Indeed.com, February 13, 2024, <https://www.indeed.com/career-advice/career-development/eye-contact-communication>.