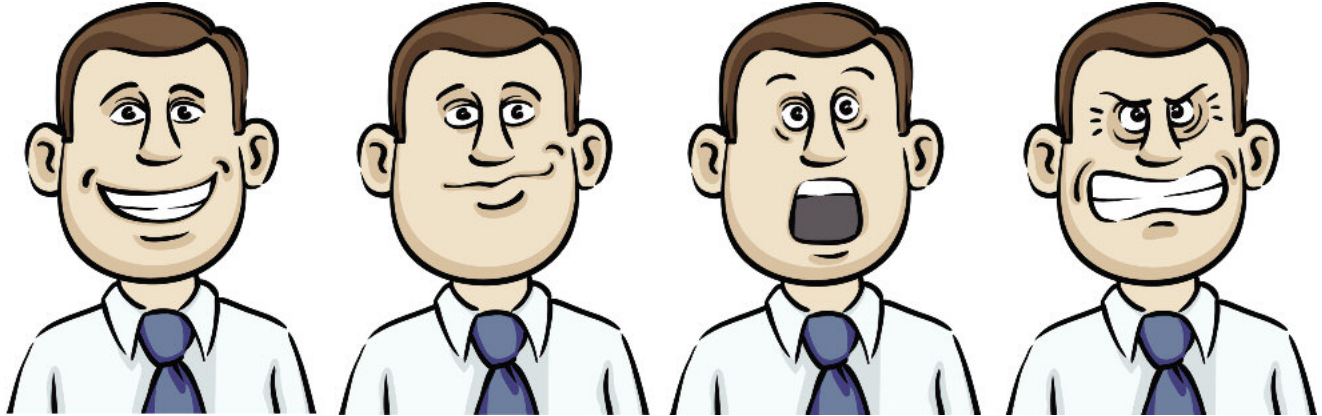




Jeffrey J. Greenman



## Want to win big? Keep your cool

Learn to control your inner pit bull

When I was a little boy, I would often get in fights with my older siblings. I thought being the youngest of seven required me to yell louder than them in order to win. This vocal display accomplished a couple of things: First it drove my parents crazy, and second, it gave me a sense of satisfaction that I won the argument in some way. These arguments were always followed up by a long stint in my bedroom or in the corner being completely quiet except for some sniffles and tears. At the time I didn't know it, but my parents were trying to teach me an important lesson to use in trials.

My father guided his emotions by one rule: "No matter what you are arguing about, the moment you raise your voice, you lose." In my youth I always disagreed with this rule. If I was right and telling the truth, it shouldn't matter how loud I am about it. Right? Wrong. I have been in many arguments and have suffered more than my share of cuts and bruises, both emotionally and physically, because of them.

The road is always harder if we are stubborn. Now I am older, and I see the true wisdom in my father's words. Not to say that I don't raise my voice from time to time, but I have learned never to do it in front of a jury.

You may be thinking to yourself, that everyone knows that and you would never do such a thing. Ask yourself again, would you? Have you? I have been fortunate enough to sit through, co-try and try my own cases. Time and time again, I have witnessed lawyers losing their self control, arguing, yelling and throwing tantrums in front of the judge, opposing counsel and most notably, the jury.

Nothing turns a juror off quicker than a lawyer acting like a whining baby in front of them. Ask yourself when was the last time you felt bad for an athlete who was jumping around, huffing and puffing and yelling at a referee about a bad call.

As humans, we are wired with fight and flight defense mechanisms. These mechanisms are triggered when we are confronted with fear. Listening and understanding are at the bottom of the list when we are in absolute fear. In these circumstances we either fight back or completely shut off. If you do this in front of a jury they will tune you out.

You will have achieved the opposite of what you need to properly communicate with your jury.

### Keeping your cool

"As an officer of the court, counsel should support the authority of the court

and the dignity of the trial courtroom by strict adherence to codes of professionalism and by *manifesting a professional attitude toward the judge, opposing counsel, witnesses, jurors, and others in the courtroom.*" (Standard 4-7.1(a) - Courtroom Professionalism, ABA Standards for Criminal Justice, Prosecution and Defense Function.)

It is important to note that acting civilly and keeping your cool does not require us to throw out our personalities. We don't want to be robots in the courtroom. On the contrary, be creative, use voice inflection, walk around the room and own it. I walk the tight rope of what is allowed in the courtroom, dangling my leg over each side to test the waters of what I can get away with. However, once told not to do something, I make sure to listen. I never talk back or disobey the court. Nor do I make snide remarks to the defense counsel during the trial or verbally abuse any witnesses.

### Courtroom etiquette guidelines

- **Don't quarrel with opposing counsel or the court.** The most obvious sign of an aggressive rookie advocate is the propensity to quarrel with the court and opposing counsel about everything. Don't do it. You will lose stature. Make a pact with yourself

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to avoid making disparaging or acrimonious remarks to or about opposing counsel. Be assertive rather than aggressive in your conversations with the court and the opposition. It does your cause no good to engage in undignified or discourteous conduct that is degrading to the court or opposing counsel. There is a difference between quarreling with the court and counsel and standing up for your position by making valid legal and factual arguments with regard to objections and responses. Effective argument is part of effective advocacy, so if you want to argue a point with the court, ask if you may be heard. The only way to never lose an argument, to paraphrase Dale Carnegie, is to avoid getting into one in the first place.

• **When your opponent blunders, don't rejoice, but don't pick him up either.**

Always be civil to the opposition.

Recognize that the trial is a contest.

When the opposition falters or blunders, do not gloat, thrill or rejoice. On the other hand, do not save the opponent from the jaws of defeat. If opposing counsel is proverbially digging himself into a hole, let him keep digging.

• **Deal with the non-responsive witness without asking the court to help you.**

When you run into a non-responsive witness, get control of the witness and demonstrate that the witness is ducking your questions and answering unasked questions. As a general rule, don't ask the court to do your dirty work. Instead, deal with the witness yourself. If you are skilled, you won't need the judge's help with the witness who doesn't want to answer the question. If the witness simply refuses to be corralled, the judge will usually volunteer to rein him in. Accept the court's help, but don't ask for it.

• **Don't ask the court to sanction your opponent.** You appear weak when you ask the court to punish your opponent. You level the playing field by outlawing them!

### In a discussion, everyone wins

In a discussion, treat other people as partners in a problem-solving session. We throw out ideas, consider alternatives and evaluate the pros and cons. We listen to other people's thoughts and explore ideas we haven't previously considered.

We seek people's support, not their resentful silence. We may passionately disagree with each other, but mutual respect keeps the dialogue civil.

### In an argument, no one wins

In an argument, we treat other people as opponents to be defeated. We draw up sides, defend our own positions and attack the opposition. If we listen at all, we do so only to find the weaknesses in the other person's reasoning.

We become closed to new ideas or to the possibility of changing our opinions. We want to prove our superiority and our opponents' inferiority. Even when we "win" an argument, we lose a potential ally.

### Tips to keep discussions from turning into arguments

• **Don't argue.** Refuse to get drawn into an argument. Be civil. Respect the other person as much as you honor your own values. Be assertive without resorting to aggression. Do not argue with jurors during voir dire. Refrain from this at all costs.

• **Seek areas of agreement.** Often, we agree with people in principle, but disagree with them in practice. We want the same thing – safer highways, for example – but we have different ideas of how to accomplish it. Find those areas of agreement. Make them explicit. Try always to make the other person (juror) a fellow problem-solver.

• **Focus on interests, not positions.** An interest is what we want or need – safer highways for example. A position is a way of achieving it. Avoid getting so attached to your positions that you lose sight of your interests. It's often easier to negotiate and compromise around interests than around positions.

• **Try to see things from the other person's point-of-view.** There's a reason other people act and think the way they do, however illogical, wrong-headed, or misguided as it may seem to you. If you condemn them or show contempt for their reasoning, they will only harden in their resolve. They will resent and resist you. Instead, ferret out their hidden reasons, and you will find the key to their motivation.

Nothing will close off a jury quicker than insulting one of its members during voir dire. No matter if they agree or disagree with you, they will close off if you go on the offensive or try to manipulate them. Remember, jurors are not dumb, they can make up their own minds. Attempting to sway them by force during voir dire is not the place and time to do so.

• **Ask clarifying questions.** Ask open-ended questions. Closed-ended questions like, "Do you agree that there are no frivolous lawsuits?" limit people's ability to express themselves. Open-ended questions like, "What do you think about frivolous lawsuits?" gives a juror greater freedom and gives you more information.

• **Listen.** Spend more time listening than speaking. Listen with your body, your eyes, and your mind as well as with your ears. Try to understand what people mean, without getting caught up in the exact words they say. Make them feel understood, and they'll be much more likely to try to understand you. During voir dire, don't talk over a juror or try to cut someone off if they are "hurting" your positions. Always thank them for their input and try to use it to your advantage. You have heard the saying that "any press is good press" as it applies to celebrities. I think it holds true for a jury as well. As long as they are talking, don't stop them. It doesn't matter if they are supporting or disagreeing with your case. You are building a rapport with them and letting them express themselves. They will reward you for your listening, by listening to you in return.

• **If you're wrong, admit it.** There's nothing wrong with changing your opinion, once you've gained new information or perspective. As a matter of fact, it's the sign of wisdom and maturity. Remember that you've been wrong in the past even when you thought you were right, and admit that you might be wrong this time. Being a younger attorney I have been wrong and stumbled many times in court. I have been yelled at by judges and admonished in front of the jury. What did I do? I didn't fight back and argue. I

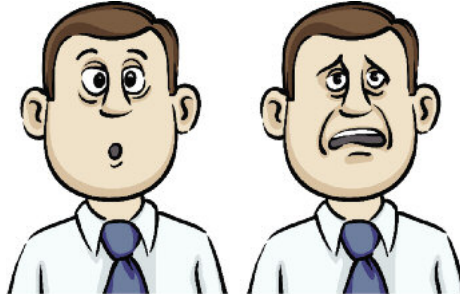
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took it as constructive criticism, kept my cool, adapted and moved on. At the break and out of the presence of the jury, I let the judge know my concerns and apologized. Every judge is different and has his or her own way of running a courtroom; don't test these waters in front of the jury.

• ***If you're right, allow the other person to save face.*** You're trying to win people's cooperation, not to prove them wrong. Your kindness will do more to gain their goodwill than anything else. If you prove the defense counsel wrong in front of the jury, refrain from gloating. Don't look over and smile or raise a pretentious eyebrow. Jurors love gloating just as much as we love hearing about CEO's taking multi-million dollar bonuses. Gloating may feel good, but it makes you look bad.

### **Don't act like a pit bull**

Recently I tried a case in which, despite being pestered by the judge and opposing counsel, I kept my cool and



If you react visibly to bad testimony, the jurors will pick up on it and listen more attentively — precisely when you want them to be zoned out.

pushed on. After a favorable verdict, I spoke with the jury about my performance, asking them what I could have done differently. The discussion turned out to be less about me and more about the lead opposing counsel, who the jury had collectively nicknamed the "pit bull."

From the outset of the trial he was super aggressive. Huffing and puffing around the courtroom, drawing attention

at any point possible. I could see the jury getting annoyed with his antics and becoming progressively closed off to him. He would make snide remarks to me at every turn and pander to the jury afterward with a cheesy grin.

I didn't react. I took some advice from CAALA President Mike Alder. Mike always says to show no emotion during trial; that good and bad things will happen, so don't let the jury see you react. If you cringe or bow your head to bad news, the jurors will pick up on it and listen more attentively — precisely when you want them to be zoned out.

Once you have mastered your own self control, you can use it as a weapon. If you know your opponent's buttons, go ahead and press them — out of the jury's presence.

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