

what makes juries listen

Sonya Hamilton

**a communications
expert looks
at the trial**

Law & Business, Inc./Harcourt Brace Jovanovich, Publishers

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**what
makes
juries
listen**

for Mama, Papa and Esther;

for Bruce;

for Ross, Mark and David

who taught me the frailty and strength
of being human. I'm still learning . . .

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1

HOW WE COMMUNICATE: A NEW VIEW OF THE TRIAL AND THE JURY

Let me put you in a movie. It begins with the following scene.

You're walking down the street and see a friend coming toward you:

You: (*touching his arm, smiling*) "Hi, Jack—haven't seen you for a while. How are you?"

Jack: (*hastily, avoiding eye contact*) "Fine, fine."

You: "What's up? Are you O.K.?"

Jack: (*dropping his paper, scrambling for it, getting up very quickly and looking past you as he shifts from one foot to the other*) "Yeah, sure, I'm fine. Everything's just fine."

You: "Gee, you seem a little distracted."

Jack: (*stepping back, finally looking at you*) "No, no—believe me, I'm O.K. (*heaving a sigh*) Everything's—just—uh—dandy . . . (*looking off*) Yeah, dandy . . ."

Now, finish this scene. Do you believe Jack? Would you accept what he says about everything being fine? What do you think is really going on? How do you know? What clues give you the answers?

Go back and read the scene again without the directions in parenthesis. The words alone don't tell you what you need to

know, do they? Actually, the information about how Jack is really feeling becomes much clearer and more poignant because of the contrast between what he's saying and what he's doing. And if you turned the sound off in this scene and just watched it, you'd get a much clearer message more directly, wouldn't you?

Well, let's say goodbye to Hollywood and get back to reality. *But this scene is reality.* It shows what we all do, every day, from our beginnings on to the end of our days. We have a primary human need to evaluate what is communicated to us, and not just to accept it. We filter incoming messages through such questions as, "What does this really mean? Can I trust him? Why is she saying or doing this?" This need to fully understand requires us to look for as much information as we can.

To see how we do this, go back to the scene with Jack. Look at all the information you would automatically gather as you watched or lived it:

- *Body language:* Jack shifts his feet; he twitches, gestures, nervously drops papers, scrambles hastily.
- *Eye contact:* Jack can't look at you; he looks off, thinking.
- *Space relationship:* You get closer, even touch him; he backs away.
- *Speech rhythm:* Jack speaks hastily. There are long pauses between his words and he sighs as he speaks. His last words are delivered slowly and thoughtfully.
- *Words:* He says "Fine," "Dandy," "No, no, believe me."

See how each image calls forth your judgment; how you know what each gesture means, how hollow the words seem. He is neither fine nor dandy, is he? And you know it from all the instinctive judgments you have made.

Now, this is all very interesting but what is it doing in a book about trial advocacy skills? Simply this.

Our innate ability to evaluate behavior and to judge instinctively is why the jury system works.

Consider. The jury system is actually bizarre. Where else in our society would you invite disparate laymen, novices with absolutely no experience or previous information in a given field, to be the ultimate judges about issues in that field, with almost no re-

strictions on their qualifications except direct, personal bias, willingly admitted? Bizarre, yes? They've never been to court, know nothing about trial procedure or the law. They hear the case just once—orally. They may have little schooling and little information about most aspects of our society, let alone expertise in the subject in question. They may be innately bright or slow, interested or disinterested, privately prejudiced or not. They're recruited and pressed into service, not even willing volunteers. And then, this motley crew, this questionable "board," is given ultimate authority to judge crime and punishment, life and death, right or wrong. Why? What did our tribal elders, our societal sages have in mind when they designed this system?

Just this. We can all judge human behavior because we have all shared the human experience. In order for us to judge anything, we depend on our backlog of experiences. We ask ourselves is that true, is it possible, is it practical, what would someone normally do and what would the consequences be? When jurors sit in court and listen to you or to witnesses' testimony they're thinking, "C'mon, people don't act like that," or "Look at him, he's lying," or "That was cruel," or "Ha! That's just greed." They know about living and being human. Their process of evaluating and judging is in the gut; it's automatic and unthinking but very reliable. That's why it doesn't matter that jurors don't know about the law or the case. That's your job. You'll tell them that. What they know about, what you rely on, is that they've lived within our society's format of acceptable behavior. That's how they'll judge who's overstepped the bounds and who should be blamed and punished. Jurors know what's fair; they know what would happen if we let some breach of the code continue. They know what's expected of each of us if we are to have a workable system of living together. That's what laws are all about. We all know instinctively what's permitted or not based on what the consequences would be to other people we share our space with, what will preserve the system, and what will shatter it. And *that's* what most of us care about—the old self-preservation syndrome. And *that's* where you finally win your case.

So jurors decide by evaluating against their standards. They evaluate the facts. They evaluate the witnesses. They evaluate you, the teacher, the interpreter of the facts. They think through and