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Body language: an essential skill to master in witness preparation

By Allan Bonner

One juror in the Conrad Black trial explained the guilty verdict very simply — he was “arrogant, I would say would be the main word I would come up with.... arrogant.” The juror also said that she had no sympathy for the defendant.

The explanation makes perfect sense. Attribution theory documents that we make quick decisions on little information. The classic tale is that the flying public assumes that the airline with the cleanest lunch tray is also the safest. Clean trays have little to do with safety. But then again, what other criteria would a lay passenger use to judge the safety of an airline? We all use the information

available to us.

But this quote is curious on another level. Conrad Black said a grand total of absolutely nothing during his lengthy trial. So how could a juror come to the conclusion that Black is arrogant?

This is explainable by reference to any good non-verbal dictionary. Regrettably these don't exist and one must rely on academic literature or psychology books to piece together the non-verbal clues a witness or defendant might give off to transmit arrogance, or better yet, contrition, expertise or likeability.

Even the legal journals and articles on witness preparation mainly speak of the need to exhibit “positive” body language without

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defining what this means.

In fact, in the legal literature on witness preparation, there's a further dilemma about body language and demeanor. Child witnesses and the victims of sexual assault and rape can lower their credibility

if they appear too comfortable and composed, even if they're testifying years after the incident. Such victims are supposed to be rattled and juries expect them to show the signs of trauma.

But that special case aside, how can someone like Conrad Black help his case just by walking in and out of the court room, sitting in a chair and saying nothing?

The social science literature is pretty clear about what is positive in non-verbal communication. First, in western culture, one of the most commonly understood ges-

tures is arms outstretched, elbows at 90 degrees, forearms rotated so that the inner arm is showing with the palms at an angle of 45 degrees. This is commonly understood to mean such things as: “I'm here. I'm with you. I'm open, have nothing to hide, am communicative and have no weapon.”

Another very commonly understood non-verbal signal is leaning forward a couple of degrees off the perpendicular. Imagine standing around a house party trying to strike up a conversation with someone standing ramrod straight, or worse, leaning back imperi-

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JUDICIAL VACANCY ONTARIO COURT OF JUSTICE OSHAWA

The Judicial Appointments Advisory Committee advises the Attorney General of Ontario on the appointment of Judges to the Ontario Court of Justice, and invites applications for a judicial position in Oshawa.

This appointment, while primarily a criminal law position, may also involve presiding over family law matters and could also involve travel within or beyond the regional boundaries as assigned by the Regional Senior Justice and/or the Chief Justice.

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Applications must be on the current prescribed form and must be TYPEWRITTEN or COMPUTER GENERATED and RECEIVED BY 4:30 p.m. on Friday, January 25, 2008. CANDIDATES ARE REQUIRED TO PROVIDE 14 COPIES OF THEIR APPLICATION FORM OR LETTER. A Fax copy will be accepted only if 14 copies of the application or letter are sent concurrently by overnight courier. Applications received after this date WILL NOT be considered.

The Judiciary of the Ontario Court of Justice should reasonably reflect the diversity of the population it serves. Applications from members of minority groups are encouraged.



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ANNOUNCEMENTS

Non verbal language is equally vital

BODY

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ously. You'd warm much more to the person leaning forward a little, but not so much as to invade your space.

Stay with the house-party analogy and you'll agree that about 50 to 75 per cent of your impact as a person is non-verbal and about 50 to 75 per cent of that is eye contact. If the person you're speaking with is looking over your shoulder for someone more interesting, you will probably not think well of that person.

So how does this translate into court? How to walk in is a strategic decision. The accused should be purposeful and deliberate. This means walking directly to his chair without sweeping the room with his eyes. Arms should be at the side of the body with a gentle swing matching the gate, but they should not cross in front of the body. Brief case or papers should be put on the table purposefully without noise. A neutral or slightly positive facial expression is best.

At the table, the accused can approximate positive body lan-

guage by sitting forward in his chair, feet flat on the floor, back straight and tilted forward. Arms can rest gently on the desk, shoulder width apart with the palms rotated as described above. Note taking shows interest and respect, so long as it doesn't look as if you're making a transcript to check up on those speaking.

Occasional looks at the judge, witness, counsel who are speaking and the jury can show interest and respect for the process. But the looks must not be challenging and the eyes should not dart around. The gaze should linger and be pur-

poseful.

Everyone knows the old expression "It's not what you say, but how you say it that counts." According to the literature, it's also how you go about saying absolutely nothing.

Allan Bonner coaches leaders from his base in Toronto. He is the author of several business books on communication and crisis management. He has advised several of Canada's largest law firms.



Allan Bonner



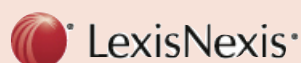
Virginie Gauthier

LexisNexis Canada Welcomes
Virginie Gauthier
New National Editor
Commercial Insolvency Reporter

LexisNexis Canada Inc. is pleased to announce that **Virginie Gauthier**, a partner with Ogilvy Renault LLP in Toronto, is the new National Editor for the *Commercial Insolvency Reporter*, commencing with the February 2008 issue. Ms. Gauthier practises in the area of corporate insolvency and restructuring and as such, has extensive experience with restructurings and proceedings involving Canadian insolvency legislation and corporate arrangements. She has acted for several financial institutions in the structuring and establishment of various domestic and cross-border credit facilities, as well as in connection with security enforcement and debtor-in-possession financings. She has also acted for a number of debtor companies, purchasers and accounting firms in connection with Canadian and foreign insolvency proceedings. Ms. Gauthier has been a frequent contributor to the *Commercial Insolvency Reporter*.

LexisNexis Canada Inc. wishes to thank **Scott Bomhof** of Torys LLP for his editorial leadership and contributions during his past five years as National Editor of the *Commercial Insolvency Reporter*.

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LexisNexis Canada Inc. is pleased to welcome **Rochelle Direnfeld**, **Mara Greene**, **Lori Pearson** and **Jeffery Richardson** to the Editorial Board of the looseleaf publication *Annotated Youth Criminal Justice Act Service*. They join **The Honourable Justice Fern Weinper**, who will continue to contribute to the Service from her unique perspective as a judge of the Ontario Court of Justice.

Rochelle Direnfeld was called to the bar in 1990, joining the Crown Attorney's Office in Newmarket in 1991 and in Etobicoke in 2001. Rochelle has been the lead youth justice crown for Etobicoke/North York since September 2003, is the chair of the Etobicoke/North York Youth Justice Committee and is a director of the OCAA's summer school course on the YCJA. Rochelle has recently been seconded to the Criminal Law Policy Branch as Youth Justice Counsel.

Mara Greene has been a criminal defence lawyer since her call to the bar in 1996. She is a partner in the firm of Schreck and Greene where she conducts both trials and appeals, including appeals to the Supreme Court of Canada. Mara is a director of the Criminal Lawyer's Association and president of the board of the Toronto Elizabeth Fry Society.

Lori Pearson is an Assistant Crown Attorney in Newmarket (currently on maternity leave). She was called to the bar in 2000 and was assigned to the two-person Youth Court Team in October of 2003. Lori is a member of the Youth Justice Committee Steering Committee and founded the York Region Youth Issues Committee.

Jeffery Richardson was called to the bar in 1995. He is an Assistant Crown Attorney in Welland, Ontario. Prior to joining the Crown Attorney's Office, he conducted a general practice, including criminal defence work, and he worked as Counsel with the Department of Justice (now Public Prosecution Service Canada). He founded the Kingston Youth Justice Triage Project in 2005.

For further details of the *Annotated Youth Criminal Justice Act Service*, go to www.lexisnexis.ca/bookstore

