Courtroom Credibility

10 Habits to Make You an Effective Leader

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"You are what people think you are" represents a common sense appreciation of an important fact of life. This not only applies to your persona; it refers to just about every aspect of ones relationship with others. We intuitively know that being persuasive, for example, is not about how right you are; being right often has little to do with influencing others. In fact, we see leaders in our own century, such as Hitler and Stalin, who were able to convince millions of adherents to believe in something that was inherently untrue, cruel and self-destructive. Having power over someone else's life is, without a doubt, part of the reason for this level of impact. But there is much more to this – it is about people believing in you and therefore your message. It is about credibility and faith in your honor and truthfulness. It is about placing the "mission" before your needs – so people will do the same. Yes, it is about **leadership**.

As a trial attorney, leadership is the most important quality one needs to possess to attain peak performance in the courtroom. I came to this understanding a few years ago while studying leadership at a course for business managers. The lecturer spoke of the qualities of great leaders: how they instill confidence and personal desire to commit, how their credibility and integrity bring people to be self-motivated to do the right thing. How leaders find people who want to be led and that your audience will always value the leader above everyone else in any group situation. **Most important, the leader is the individual who has the greatest impact in reducing group anxiety regarding unfamiliar situations, change or disruption.**

The essential quality of leadership, according to extensive research over the last century, clearly points to "anxiety reduction" as essential to the power conveyed to a leader. What this means, in essence, is that a group chooses a leader based upon a collective perception that this leader will solve the group's anxiety in relation to its primary survival instinct. Of course, anxiety reduction does not just involve survival issues; however, as a collection of individuals brought together by chance or design, the survival and continued existence of the group is paramount.

An extreme example of a temporary group and its choice of a leader would be individuals in a theater when there is a perception of the risk of fire (whether or not it is true). If someone is able to announce, above the panic and screaming, that they know the location of an exit, you would be guaranteed that this individual would be collectively and instantaneously chosen as the leader and would, in all practicality, be blindly followed. The group's anxiety, in this case from a life-threatening situation where survival is the very condition of the disturbance, would choose the leader that would reduce anxiety by pointing the way to wellbeing. What is amazing about this phenomenon is the choice of a leader despite the fact that all individuals were gathered purely by chance and they have no definite information that this leader actually knows the solution.

In a group gathered by choice, where life and limb is not at stake, the selection of a leader based upon reduction or lessening of anxiety is more subtle but just as crucial. Let's take the simple

example of a classroom of students where one student has the answers to the exam. This student with the keys to success has the ability to command the group with extraordinary power since this reduction of the class' anxiety (assuming they do not get caught) would be unparalleled. Less obvious but just as effective would be leadership by a student who knew information regarding an instructor for the class who has not yet been introduced. You may readily see that someone in the jury who knows about the case, law or any other "pertinent information" would have a strongest likelihood of leadership during deliberations.

Leadership with juries has been studied but only as it influences behavior within the "box", such as picking a foreperson. There is little you can do to effect leadership issues in the deliberation room since you do not control that environment. Of course, if you know who is the jury leader you may direct your energy to that individual so they feel you are speaking directly to them and their personal concerns. There is, however, a more important area where leadership plays a difference and will have a significant impact. This is YOU as the leader in the courtroom. My literature search has not uncovered any research on the relationship between leadership and success by skilled advocates in the courtroom. I believe this revolutionary insight will give you the critical edge over any adversary.

It is a misconception to believe that the judge totally controls the leadership quotient in the courtroom. For example, if the judge lets the jury understand that one attorney is better liked than the adversary, then common sense dictates that better-liked attorney will have an advantage. Why? Clearly the judge, by his very position of leadership has blessed a deputy leader and is analogous to a military officer authorizing a field commission of an enlisted man during the heat of battle. The judge, in fact, occupies one of four potential leadership positions. The other three are the attorney-leader, the witness-leader and the client-leader. Leadership by a witness or your client may be considered a subset of what one may expect from an attorney. Therefore the rest of this article will articulate ten attributes for successful lawyer leadership in the courtroom.

The ultimate goal of leadership is to control, as much as possible, courtroom dynamics by increasing your credibility and believability with the jury. An important side benefit, however, is the fact that it makes court a more enjoyable experience as you can almost "feel" the energy difference in the room. You will also notice that things will move with a certain "flow" and challenges will more easily overcome.

Let's look at some of the qualities of leadership that we can borrow from developments in the area of corporate leaders. Rather then consider them "principles", I would like to consider them as "habits" – behavioral objectives to hone and refine. Most have been developed over the years to facilitate group decision making within a business setting; and they have been observed, as well, as important attributes of persuasive trial attorneys. Habits, behaviors, and attitudes – you can surmise that leadership is as much a state of mind as well as a state of being. There are some people who demonstrate a more natural proclivity to leadership more than others; whether this is due to genetic predisposition or early development experience will be debated forever. For the everyday person, you may be assured that practicing these habits will bring you closer to your success goals and certainly help you achieve a competitive advantage over your less practiced adversaries.

Let's explore our ten leadership habits that will lead you to heighten personal performance within the courtroom dynamic you will face as a trial attorney. We think they are so important that we have made a wallet card to keep these principles close to you at all times.[1]

Habit #1: ***Be soft yet firm.***

The trial is not about you, yet it IS you. Clearly, your credibility and presence is essential to the case's success. Consider: how do you balance this without upstaging your client? Or the judge or even the jury itself? The balance here is very delicate. How do you take a stand without standing out, so to speak? How are you in control without looking like a controlling person? Or command attention without being an attention seeker. If there was ever a connection between this first principle and the artistry of Tai Chi, this would be it. In Tai Chi (ancient Chinese system of movement and martial arts) one practices being forceful without using force, to take control without being aggressive and projecting power without being overbearing. It is a balance that takes both practice and patience. More than anything, it requires you to be introspective and honest – with yourself.

Let's take a simple example: what type of clothes should one wear. I have clients that insist it is "them" to wear outrageous stripes, a standout tie or bowtie or a short skirt. The question is: is this a message about you that interferes with the case or not? There are very unique individuals who can pull this off and, if they can, wonderful. But for all us lesser angels, question whether it is a risk worth taking.

Habit #2: ***Energy is infectious and credible.***

Have you ever noticed that a strong confident voice and mannerism denotes knowledge and commitment? I am not saying the voice needs to be loud or the body motion exaggerated. Leaders are chosen, as we have discussed, in large part due to how that person reduces anxiety and promotes, with confidence, a path to understanding and comfort. People pick a leader, in large part, based upon the non-verbal queues of energy, enthusiasm and commitment to a cause. A weak hearted "follow-me", all things being equal, will dissuade a group seeking a strong gaze of desire and a voice communicating commitment.

There is a simple way to test and improve your abilities in this area and that is through performance testing. Have yourself video taped in front of a group (since the energy level is different when one presents in front of a group as opposed to just a camera) and

[1] *10 Habits to Enhance Courtroom Credibility* may be ordered at www.doar.com and proceed to the "resource room" in the litigation section. Copies of this article as well as others on jury and trial persuasion are available on this site in the resource room.

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painfully review the body motion, voice, stance, eye contact – your “presence” – with either a professional performance coach or someone with extensive speaking experience. Some changes are simple yet subtle and will yield enormous dividends. Others are more difficult and take extensive practice. The simplest item to observe and change is the use of your hands. With one client, just removing the hands from the pockets (with a simple “reminding” device) made a enormous difference in the perception of his energy and commitment.

Habit #3: ***Treat everyone with respect, everyone.***

There is a time and place to be contemptuous of your adversary or witness (never the judge or anyone associated with your case). Your indignation should be considered like anesthesia: apply too little, it is worthless and too much you will kill the patient. Constant application dilutes its effectiveness. Finally, an older patient may die under any misapplication of a drug and is treated with extreme care.

The same applies to the rare occurrence that one would use frustration, anger, contempt or disgust. The jury will expect you to be incredulous when a witness clearly changes story lines or exasperated when opposing counsel objects needlessly. Any reaction needs to be carefully calibrated to the witness or opposing counsel.

Quite frankly, leaders are seen as people who can stand above the fray and exude a confidence of knowing how to handle a threat without appearing ruffled or frustrated. Yes, in the name of Justice, you may need to *actively* demonstrate the important distinction between right from wrong. However, it is easy to misapply and have people think you are insensitive, defensive and overreacting.

This advice is not as simple as it appears. Many attorneys (yes, even yourself – ask your associates, if they feel safe, to admit their true perception of your personality *under stress*) have a less than gentle touch within the confines of the trial team and war room. It is not uncommon for a lead partner on a case to command action as opposed to request with an understanding touch. This attitude then pervades the trial team – it becomes a culture thing. At trial, this behavior continues and jurors respond negatively to how a leader treats their people, especially the “worker bees”. In an extreme example, one partner who was difficult, to say the least, during trial preparation, spoke to a technician operating the presentation equipment at trial with clenched teeth and poorly masked rage. The technician, due to the embarrassment, actually broke down in court with the case resulting in a hung trial. I am certain that the strong liability case was defused by this insensitive behavior. I have heard advice from criminal attorneys, for example, to touch their client. The defendant is not a person to be treated with disgust.

Finally, the respect one shows the bench should extend, without exception, to all court personnel. They are all viewed by the jury with inherent value and respect. In most cases, how you communicate is about tone not substance.

Habit #4: ***Tell people where you are going.***

Trials, in contradiction to conventional wisdom, rarely unfold as a mystery novel. Television, for dramatic effect, will tend to unveil the case with surprising twists and turns right in the witness box. True, criminal trials with limited discovery, have more of a potential for this sort of behavior. It is rare even then since the investigative process by the prosecution is typcially in depth. With civil cases it is nearly impossible for this to occur.

I am amazed that attorneys, probably subconsciously, do not understand that dramatic impact is overrated and will often tell a story with the punch line at the end. Or will not directly tell the jury through a witness, where one is going with the testimony. It makes testimony confusing and difficult to follow. People want their leaders to explicitly tell them where they are going and what is expected of them. If anything reduces anxiety of a group, this is it.

One simple example, based upon your local rules (and try it regardless), is to ask an expert their conclusion first and then ask them how they arrived at their opinion and their background which makes them an expert in rendering this opinion. Now the jury knows why the expert is here and the importance of their testimony. I believe in the importance of this technique because of the leadership quality it exudes. In addition, it puts the conclusion in best location of the juror's memory – in the *primacy* of the testimony. You will have an opportunity to have it repeated differently at the end – thereby increasing retention with *recency*.[2]

Habit #5: ***Where am I standing?***

Aside from the body language concepts of Habit #2 which, by themselves, demonstrate energy and commitment, there is another aspect of leadership that has to do with the concept of "associative position". This discipline was developed during the past 20 years as part of Neuro-Linguistic Programming (NLP) which speaks to the way memory of observers may be "programmed" to memorize and associate key concepts based upon a linguistic or physical "trigger". This trigger needs to have been "programmed beforehand to be associated to this recall item. An obvious societal trigger of a leader, for example, is the General on a horse or the President by the seal of our country. Triggers may be programmed for many other types of messages.

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2 For more information on this and other persuasion concepts see: H. Nations, "Powerful Persuasion", www.howardnations.com/publications.html.

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Let's look at some additional examples. Where an attorney stands when performing something specific in the courtroom, such as delivering the most discrediting part of a cross, becomes a trigger position for powerful cross examination questions further in the trial. One would not stand in this spot during a direct examination. In fact, just standing in the spot, over time, will communicate the "here it comes" part of the anticipation by the jury. Triggers may be a pen, removing ones glasses or watch, even the tilt of the head. These programmed triggers (research shows that it becomes most effective after it is repeated at least three times) develop an unconscious yet powerful leadership quality. I am always impressed when watching a master trial lawyer command the courtroom with one of these simple techniques.

Habit #6: ***Be yourself and be real.***

Many may consider this obvious bordering on trite. Yet it is maybe one of the most difficult balancing acts made by you as an advocate. Here's why. With all the prescriptions for appropriate behavior, all the persuasion principles for remember, plus your modified behavior in front of judge and peers, where is the real you? How do you remain true to your personal principles of integrity and beliefs? How does the jury assess your personal desires and passion for justice without you sounding rehearsed? Introspective and humble, a leader always knows how far they can push themselves or their flock. Maybe the best way to put this is: *know your limits*.

A simple example should be sufficient to demonstrate how important and subtle this can be. I am always asked about the use of humor by an attorney. In general, it is suggested to be careful with humor. People have a way to misinterpret what is being said or it is taken out of context. On the other hand, some people feel that humor is a way to be "real" with people by breaking the ice. So the issue works both ways. If one is naturally humorous, then it is a shame not to tap into this powerful communications vehicle. The key is to test the humor with people, preferably from groups different from yourself (i.e., if you are a white male, then you should test the humor with women, blacks, Latinos, Asians or other types of potential jurors) to make sure your humor does not offend. Then be humorous. On the other hand, if you do not use humor as a matter or course, then do not adopt it to break the ice with the jury. They will see right through the wrapper.

Habit #7: ***Know your facts but don't be too smart.***

My true trial lawyer "hero" was always the private eye Colombo. On every episode, he had the amazing ability to uncover some complicated scheme by almost tripping into it. Was he really a klutz or was this an intentional way to mislead his quarry into giving up the goods? When one acts as a "knows it all", people are naturally on the defensive, their guard is up and inherently skeptical. Colombo was able to slip by all these

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impediments by not acting that smart. He asked a lot of questions without being afraid of appearing stupid. Think about it: what if the jury has the same basic "stupid" questions because they have only been in the case for a few days or weeks. And there you go asking the same questions. Who would they relate to – who is the "approachable" leader. True, you know the facts and issues cold – but what about the poor people in the box that just got there and need to figure it all out and answer a quiz (verdict form) in a matter of days?

There is a big difference between being too smart or just plain stupid. We all know the difference and someone who is really stupid cannot make that call. People want their leaders knowledgeable not arrogant, confident but not over-confident. Most of all, jurors want their leaders to ask the same questions they would ask if they were able to quiz the witness themselves. They want to know the basics: what, when, where but most of all: *why*. A reason, a motive and a structure to understand and organize all the information the witness is feeding them.

There is a limit to what you can expect people to believe or accept. Change of attitude or ideas takes time and you should be patient with your jury if you want them to accept a different view of the world. And what about the witness on cross as you allow them to underestimate you and where you are going? The jury will be following every word when you turn and say "now that I think about it, I have just one more question." Here goes Colombo again!

Habit #8: ***You should always tell the bad news first.***

Being a leader is not just about all the things right with your case. A *credible* leader knows how to talk about the warts as well. Being direct and honest is not enough. Your jury wants to also understand how the bad stuff is understandable or why it should be considered less critical than your good points. However, they need to hear this from you and hear about it early on. If possible, this should be dealt with in voir dire, if allowed by the court, or in your opening statement. After that, you are too late.

There is nothing more damning to ones credibility than for a bad fact to emerge from your opposing counsel's lips or their witness. When and how to discuss your problem areas or what witness to use to explain its implications is an art form for sure. Furthermore, you will learn more about the magnitude and significance of the problem during a mock trial exercise, which is strongly recommended. Just make sure you keep a list of your problem areas of the case without the embellishment of your enthusiasm so you can deal with them as appropriate in preparation for trial.

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Habit #9: ***Use props and be visual.***

If there is one thing leaders know is how to use props, whether it is their natural surroundings, a person in the audience, an object or chart. Tied to a story, a concept, an idea, the prop becomes a memory device to drive home the message. It may be a way to organize ideas into a coherent model of understanding. Or, it may be there for inspiration.

I have been told, for example, that Martin Luther King did not use visuals since he was a powerful orator. Nonsense! Just that King, like all great visionary leaders chose his props carefully with the big inspirational concept it would communicate. In his most inspirational message to America, a message of Freedom for all people, a message contained in a dream – he chose the Lincoln Memorial as his backdrop. What an evocative and powerful prop for his presentation. Every great speech, for it to be memorable, has the visual impact.

The principle is to understand how to balance your oratory and physical presence (and that of your witness) with the impact of the visual. A demonstrative aid acts as another witness in the courtroom – that is both its power and caution. The power of a silent witness communicating at a sub-conscious level supporting your presentation is inestimable. The concern is to be mindful that it is so powerful that the jury may be focused on the prop when you want them listening to you or the witness. There are many ways to control this so it is never a problem.

With so many people, especially in today's society, receiving the majority of information by visual imagery, props become a key method of reducing the jury's anxiety and making them receptive to your leadership skills. Actually, there are attorney clients of mine who think that the lack or poor use of visuals borders on malpractice for the modern jury. It's just plain persuasive.

Habit #10: ***Rehearse***

This last habit leads to all the above. It assures a smooth and professional delivery and the use of these principles to their maximum advantage. I have never met a leader who does not practice or rehearse in front of a critical audience, taking the constructive feedback and intelligently integrating it back into their performance.

One method of rehearsal that is most useful for the trial lawyer is to practice a summary opening/closing and a simulated direct/cross in front a mock jury chosen for this express purpose. Listen carefully to their feedback and watch your video presentation. For even more impact, have another attorney provide a contrast with the opposing presentations. The jury will be able to contrast styles and provide additional feedback. The main reason to use a facilitator for this type of exercise is the fact that they will ask more probing and painful questions. As you enhance your career as a trial attorney this

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should be worth the same investment acquiring appropriate attire or staying current with the rules of evidence.

When facts are in the balance and the trial can go "either way", the distinction of a leadership "feel" is clearly noticeable in tipping the scales. Otherwise, a leader's advantage against ones adversary is not as easily measured but is clearly as important. The "human stuff" that people are made of: our social need for direction, reduction of anxiety and our intuitive *sense* of credibility behooves attorneys to take a sharp look at their leadership style and how these habits will refine ones skills. As any field officer who has seen real combat will testify, the officer who proclaims "follow me" as opposed to "go there" commands the true respect and taps the enormous power of ultimate human potential in every person on the team. Tapping this human potential to be led to achieve greatness is no difference in the battle for justice. The battleground is hallowed and unambiguous: two sides representing two opposing views of what is just; in a struggle for the hearts and minds of triers of fact – who will they follow? What will be their course of Justice and who will lead them to this awareness? Who will these strangers believe and follow? Answer these questions and you will unveil a crucial factor in an advocate's success.

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About the Author

Samuel H. Solomon, with over 20 years experience in the legal, financial and information technology industries is a CEO, legal strategist, and prominent speaker. His command of the intricacies of trial strategy, visual persuasion and courtroom presentation technology have led to the formation of DOAR. Founded in 1989, DOAR offers litigation and trial support services to law firms and systems integration technology to courts and corporations representing more than 3,000 clients nationwide. Sam's unique perspective, eclectic education and varied background make him a much sought-after speaker and consultant. His most recent presentations have covered Trial Presentation Strategy, Courtroom Communication, Jury Psychology, Electronic Evidence and Discovery and The Impact of Information Technology on the American Justice System. He recently co-authored "*What Juries Want to Hear II: Reverse Engineering the Verdict*" in The Temple Law Review. In March of 2000, Sam co-authored *PowerPoint for Litigators,* the seminal work on the presentation of evidence using technology, published by NITA Press. In 2002, he contributed to two critically acclaimed works: *Handbook on Courtroom Technology – A Lawyers Guide* and *A Judges Guide* by NITA Press. Finally, he co-authored the NITA case study: Homestead vs. Manhattan Insurance based upon his extensive trial experience. He is an instructor in the LLM Advocacy program at Temple University Law School and the Hanley Advanced Advocacy Program for NITA. He may be reached at sam@doar.com.

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