

The Likable Witness: Key Traits And Psychological Concepts

By **Gillian Drake** (September 29, 2023, 1:28 PM EDT)

You've made the difficult decision to have your client testify in court — you've built a strong case, and you know your client's narrative is credible. But does that matter if the jury doesn't like your client?

This question could be crucial in any of the four criminal trials against former President Donald Trump if he decides to take the stand. Would he meet the jury's threshold tests: Are you credible? Are you likable?

He will have to contend with jurors' preconceived notions about his credibility, and he is likely to face potential jurors that love him and those that loathe him.

Obviously, this is one of the highest-profile examples of a case that may implicate issues of testifying witness likability. But what if your client or witness is not a former president — someone unknown to the jury, whose fate, all the same, still rests in their hands?

Credibility is the essential attribute that gives the jury a reason to decide in your client's favor. However, when the stakes are high or your client is less than charismatic, likability is the pathway for connection — emotional and psychological — between the jury and your witness. If the jury likes your client, their testimony becomes not just believable, but also compelling, memorable and influential.

Generally, people like other people who are similar to them, or who they perceive are similar to them.^[1] Sometimes, as in the short-term, artificial environment of a trial, it is more important for the jury to think they have a lot in common with someone than it is to actually have a lot in common.

Likability is not being nice or having a pleasant personality; it is a psychological trait that produces a kinetic attraction between people. Modifying specific gestural, behavioral and psychological aspects of your witness's testimony will improve the perception of likability for a jury.

This is the first part of a two-part article. Part one explains people's psychological tendencies to identify with and connect to others who they may not actually know. It covers the different aspects of perceived likability — behavioral characteristics, as well as physical and gestural attributes — that create conditions for juror appeal.

Part two offers six archetypal personalities of likable people as a guide to identifying your client's innate



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likability, and then offers techniques to amplify what makes your witness attractive and compelling to a jury.

Defining Likability

Being beautiful and well-spoken naturally charms audiences, but beauty is only skin-deep when it comes to testifying at trial. Likable witnesses come in all sorts of packaging.

A likable person is someone you can look up to or learn from; they are easy to root for. They give you hope for the future and teach you new things. They are the aspirational icons in our social circles — the friend you seek to emulate. They can be the decent, reliable neighbor or the compassionate parental caregiver.

In most cases, your witness doesn't have to have all the attributes of likability, but rather just a few important ones to be compelling to the jury.

Most of the studies about what makes a good witness — i.e., a witness the jury understands, believes and finds influential — focus on credibility as the key factor to witness success with a jury.

A seminal 2010 study by psychology professor Stanley L. Brodsky[2] looked at expert witnesses and defined credibility as a combination of the most important traits an expert must possess: knowledgeable, trustworthy, confident and likable. Brodsky's study suggests that all four traits together create an impression of credibility — his key to jury evaluation of witnesses and the trial.

Credibility and likability are foundational features of effective witness testimony. Credibility is tied to the witness's narrative of the case, whereas likability develops through the emotional and psychological aspects of the witness.

Credibility can be thought of as consistency among the following factors: who the witness purports to be, e.g., their profession, personality and backstory; what the witness says about their actions in the case; and how the witness appears, i.e., their dress and demeanor.

In the context of the facts and theme of the case, these three components establish or diminish credibility. And credibility is the foundation upon which likability stands.

Credibility will not necessarily secure a positive outcome. Instead, it is likability that will make the emotional or psychological connection that allows jurors to remember your witness's testimony and turns them into advocates.

Nature Versus Nurture

There are physical and psychological aspects of likability. Some are innate, and some can be learned. Some characteristics emerge as part of the evolving factual narrative of the witness's testimony, while others are developed through behavior modification, by word choice and phrasing. And still others are brought out by probing the witness's life experiences and personality.

Ideally, the likable witness will exhibit all five of the following behaviors, which will build a bridge between the listener and the witness:

- Positive physical and gestural attributes — how they move their body and use their voice;
- Positive demeanor in how they speak about themselves and others — their nomenclature and attitude;
- Positive energy they exude when talking about the case — making eye contact that crosses a room, smiling where appropriate and using breath appropriately;
- Consistent personality demeanor while testifying on direct and cross; and
- Positive image of the listeners, identifying roles for each of the receivers of testimony — judge, jury and lawyers.

Physical Components of Likability

There are several verbal and nonverbal components of likability that are common and learnable:

- A pleasant smile and expressive facial gestures;
- The use of inclusive language like "we" and "us" when referring to groups;
- The use of "I" instead of "we" when there is an opportunity to take responsibility for one's actions;
- A pliant attitude, as opposed to a controlling or rigid one;
- Deferential speech and attitude, especially when facing challenges and disagreements;
- A degree of humility or vulnerability, such as acknowledging limited certainty of findings or a potential for error;
- The use of informal language, without jargon, to explain difficult concepts;
- Direct eye contact;
- Truthfulness, i.e., they are a reliable historian with few errors that need to be corrected; and
- Speaking at an appropriate volume to be heard, with clear enunciation to be understood.

Your witness's ability to sustain positive physical components throughout their testimony is linked to how your witness views the audience — be that the jury, their own attorney or the lawyer from the other side.

The witness must create a positive image of whom they are speaking to for these practiced physical traits of likability to become reliable while testifying.

For example, if the witness is a doctor, they might see the jury as patients who are coming to them with a concern that only your witness can help them with. If the witness is a parent whose baby was injured during birth, they can view the jury as potential parents.

The witness could view the opposing lawyer as someone who is asking questions that the jury would want

to ask if they were allowed to.

This creates a psychological connection for the witness to want to reach and help the listeners, and not see them as critics or enemies. And it allows the body to relax and animate in the way you have practiced in the prep session.

Psychological Components of Jury Perception

Psychologically, people tend to like people who have traits or values they themselves have or would like to possess. This similarity leads the listener to experience an emotional connection to the speaker without really having to get to know them, also known as pathos — a rhetorical device in the Aristotelian sense, not as it tends to be used in a modern colloquial sense.

The listeners tend to project their own life experiences, expectations and values onto the witness, and then test this impression of the witness as the testimony goes on. These tendencies are what we are trying to capitalize on in witness development sessions.

The psychological terms for these tendencies are:

- Consensual validation, i.e., meeting people who share your values makes you feel validated for having those same values;[3]
- Cognitive evaluation, in which you feel positive about a person who has qualities you seek to emulate;[4] and
- Spontaneous trait transference, i.e., the tendency for communicators to be perceived as having the same traits they describe in others.[5]

To apply these concepts, look for aspects of your witness's character, behavior or circumstance that make your witness seem special or stand out in some way to most people. Look for admirable, genuine, endearing or deeply compassionate qualities. Then, develop them thematically and behaviorally throughout the testimony.

But first, you have to identify these characteristics in your witness. The following strategies can help:

- Plumb the witness's backstory for actual experiences that could connect to the jury in terms of family, career, volunteer activities, awards, accomplishments, etc. When someone talks about something they love, there is usually a relaxed and energetic physical and vocal change.
- Search for topics the witness likes to talk about personally or professionally, or topics within the case itself. Even if the topic of conversation is not in and of itself useable in the testimony, note the change in behavior, and use that as a baseline behavior to be replicated in other parts of the testimony.
- Show the witness a videotape of the moments when they spoke freely in a relaxed way, and work together to bring that part of the witness's personality to other parts of the testimony.

Building their testimony then becomes a journey of strategically tying the parts of their narrative together with behavior and language to bring out optimal likability.

The Unlikable Witness

Not all witnesses are going to be naturally likable. Some are downright unlikable — negative, unhappy misanthropes, or just somber, quiet introverts, or embittered beyond redemption.

How is it possible to turn them into reliable witnesses without personality replacement surgery?

First, you cannot do this if your client doesn't trust you or can't let their guard down in front of you. The witness who cannot confide in anyone about their troubles — i.e., testifying in their case — is often the hardest to prepare and the most unreliable on the stand.

They trust no one, and therefore they signal to the listener that they cannot be trusted. They keep others at arm's length; therefore, they will stay remote on the stand. The closed-book witness separates their personal life from their professional life and refuses to chat about it during prep sessions. This sense of distrust, even of those on your side, is reflected in the witness's performance.

One must bring the entire person to the stand — open, vulnerable and confident — to appear lovable or trusting, or else the jury will feel the witness is hiding something, inevitably concluding that the witness is hiding the truth.

How to Develop the Perception of Likability

So how can you overcome these issues in your witness and create the perception of likability?

- Start by creating a judgment-free zone in the first minutes of the first prep session. Get them to talk about their life — not their professional life — to help you identify their most positive character traits and salient events in their life that could be used to connect the jury to your witness.
- Ask them to tell you the story of the events that brought them here, and observe how their behavior changes and what parts of their personality now dominate.
- Help them become the hero of their own story or see themselves as the agent for positive action in their narrative.
- Lay out the physical attributes of likability — i.e., ask them to sit up straight, make eye contact, smile, be physically and vocally expressiveness, keep an upbeat energy, etc.
- Create a positive image of all the various people who the witness must relate to in the course of their trial — the opposing lawyer, jury, judge, etc.
- Practice on camera. Give notes about behavior, word choice and perspective, not just facts.

Each witness will be receptive, or not, to different aspects of the training: physical factors, vocal aspects, outgoing energy, positive nomenclature, upbeat attitude, reducing the fear of the audience, etc. Capitalize on the aspects that come easy, but don't neglect the ones that are more of a personal challenge, because those aspects hold your witness back from becoming likable.

Conclusion

Fundamentally, people like themselves, and they like observing people that like themselves. Conversely, people don't like to be around other people who don't like themselves.

Someone loves your witness — even if it is just their mother. Finding this part of your witness may be difficult; it may take a lot of background chatting to see where your witness softens or smiles or cheers up. And sometimes it takes direct probing into their relationships or their feelings to find experiences the jury can relate to.

Running preparation sessions that develop the parallel tracks of credibility and likability will produce more reliable, memorable and influential witness testimony.

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[1] Gwendolyn Seidman, Ph.D., "Why Do We Like People Who Are Similar to Us?," Psychology Today, published December 18, 2018, <https://www.psychologytoday.com/us/blog/close-encounters/201812/why-do-we-people-who-are-similar-us#:~:text=Consensual%20validation%3A%20Meeting%20people%20who,own%20attitudes%20about%20the%20world.>

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[5] Wendy L. Patrick, J.D., "The Way You Describe Others Is the Way People See You," Psychology Today, published May 21, 2018, <https://www.psychologytoday.com/us/blog/why-bad-looks-good/201805/the-way-you-describe-others-is-the-way-people-see-you>, citing John J. Skowronski, Donal E. Carlston, Lynda May, and Matthew T. Crawford, "Spontaneous Trait Transference: Communicators Take on the Qualities They Describe in Others," *Journal of Personality and Social Psychology* 74, 1998, 837-848.