

A Scientific Weapon for the Courtroom?



by [Maggie Tamburro](#)

Think the eyes are windows to the soul? If so, you may want to reconsider that notion, as a recently released scientific study challenges commonly held beliefs and intuition regarding the importance of facial expression in conveying emotion. Cues from the body, as it turns out, are more powerful than facial expressions when it comes to perceiving intense emotions, according to the study results.

The findings could have an array of interesting psychological and social communication applications. Although the study did not specifically address litigation or study courtroom emotions, it caused us to ponder: Could these findings prove useful to the way attorneys think about nonverbal communication and the preparation of expert witnesses during the often emotionally-charged moments of trial?

We think the answer may be yes.

The Power of Nonverbal Communication

When it comes to expert witness testimony, it's widely known that [nonverbal communication](#) can be more powerful than verbal language. Nonverbal communication, which relies on visual and other cues, such as body language, gestures, facial expression, eye contact, and [paralanguage](#), conveys the unspoken language of emotions and feelings.

Nonverbal cues convey a world of nuance-filled information and a myriad of attributes about an expert, for example self-confidence, composure, credibility, poise, preparedness, control, and leadership, which can greatly impact the expert's delivery and a jury's perception. Although an expert witness should always maintain [ethical standards](#) that demonstrate objectivity, impartiality, and professionalism, expert witnesses have become critical courtroom players whose ability to communicate effectively can make or break your case.

The Study

Keeping the foregoing in mind, what if we had access to scientific research that tells us *which* nonverbal communication is the most influential under certain circumstances? A fascinating [study published in the journal Science](#) may have done just that, unintentionally providing a window into how one thinks about expert preparation and testimony.

Published November 30, 2012, the study was conducted in connection with researchers from Princeton University, New York University, Radboud University, and Hebrew University of Jerusalem. The findings revealed that when emotions run high, participants unconsciously found body language more important than facial expression in perceiving emotions.

If that sounds contrary to intuition you'd be right on track. According to [NPR](#), which recently featured the study on Morning Edition, "people usually assume that if they are getting an

emotional message, it must come from the facial expression.” However, those assumptions turned out to be false. Instead, the study data pointed to the critical importance of contextual and body information.

One of the intense emotions that the study looked at was that of victory verses defeat. By isolating faces from bodies, through a method that, among other things, included manipulating photos of those experiencing moments of victory (after winning a tennis point) and those experiencing defeat (after losing a tennis point), researchers were able to determine that participants unconsciously found body language more important than facial expression in perceiving emotions.

Bringing Science into the Courtroom

Under the hypothesis that the study’s findings are accurate, how could we apply the results to the courtroom, specifically expert witness preparation and testimony? A few conceivable scenarios come to mind. A caveat, these are merely hypotheticals, but we think they are well worth considering.

The scene: Let’s enter the courtroom. Now imagine for a moment that your expert has testified and is under attack during cross examination. Let’s take it a step further: The case involves patent infringement and validity issues, and millions (if not billions) of dollars are riding on the expert witnesses’ testimony. Emotions are running at full-tilt, monetary stakes are enormous, and your expert is taking a serious beating from opposing counsel. In fact, your expert seems to be faltering. Meanwhile, your adversary is gaining steam, chiseling away at your expert’s testimony and scoring points with the jury.

Knowing that the jury members may be, much to their surprise, actually relying on body language over facial expression might help you to prepare in advance to use body language to change the momentum during such a scenario. How? During trial preparation, throw out an emotionally negative courtroom scenario where the expert is experiencing defeat on the witness stand, and practice responses that emphasize body language. You might try, for example, practicing a vicious attack on the expert’s credentials, or engaging in a harsh mock cross examination, and then practicing responses and rehabilitation techniques that incorporate body language which evokes messages of control, composure, and steadfast calm.

Next scene: Cross examination is over, and it’s time for redirect and a chance to rehabilitate your expert. Again, as a litigator, be aware of techniques and practice beforehand body cues that could be used to break your adversary’s newly gained momentum. For example, will the judge allow your expert to come down from the witness stand to address a visual graphic that was involved in the attack? If so, have your expert do just that, and capitalize on the opportunity to have your expert utilize posturing and body language that evokes steadfastness, strength, and confidence to reestablish control.

In short, make sure your expert has practiced and can engage in positive body cues – employing postures that don’t back down even when under intense attack or seeming defeat – evoking instead emotions of power, control and victory. Examples might include refraining from shoulder slumping, crossing of the arms, or engaging in hand gestures which seem to show weakness, like bringing hands up to the neck (widely viewed as a protective gesture). Have your expert keep an open, as opposed to shrinking, body position that doesn’t give up power or show deference to opposing counsel.

Finally, the study results may be useful before you ever get to trial preparation – in helping you to choose your experts carefully. Become a keen observer of body language when you interview experts. During the vetting process, ask the expert directly about an adverse outcome or an

instance of professional or other defeat. How does that expert react to the questioning during the interview process? Paying attention specifically to body language, is he or she comfortable addressing a negative emotional situation, and able to maintain composure and control through the use of authoritative body language?

Effective Expert Witness Communication Has Never Been Worth More in Dollars and 'Sense'

Emotions tend to run high at jury trials, even in business litigation. A recent case in point is *Apple v. Samsung*. According to a report in *The Wall Street Journal's* [Law Blog](#), Apple's record setting damage award largely resulted from its legal team's keen ability to use expert testimony and clear graphics to hone in on its legal points, relying on "storytelling and emotion," rather than focusing on the more technical aspects of the case.

Meanwhile, the monetary stakes have never been higher, as evidenced by two record-setting 2012 jury awards topping \$1 billion: That of the closely-watched *Apple v. Samsung* case, and more recently *Carnegie Mellon v. Marvell*, which [reportedly](#) involved a more than \$1.1 billion verdict award in December.

As the saying goes, knowledge is power. In the courtroom, where case outcomes often hinge on the ability of experts and litigators to communicate effectively, the latest science on nonverbal communication might just be what you need to tip the scales in your favor.

The citation to the [Science](#) article is as follows: H Aviezer et al., Science 338:1225 (30 November 2012).

Do you think the *Science* study has other useful courtroom implications? If so, we'd love to hear about them.

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