

# Connect with Jurors: *Five Practical Ways*

Prepared by:  
Dr. Ken Broda-Bahm  
*Persuasion Strategies - a service of Holland & Hart LLP*

**LORMAN**

## INTRODUCING

Lorman's New Approach to Continuing Education

# ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ☑ Unlimited Live Webinars - 120 live webinars added every month
- ☑ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ☑ Videos - More than 1300 available
- ☑ Slide Decks - More than 2300 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



**Get Your All-Access Pass Today!**

# SAVE 20%

Learn more: [www.lorman.com/pass/?s=special20](http://www.lorman.com/pass/?s=special20)

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

\*Discount cannot be combined with any other discounts.

## Connect with Jurors: Five Practical Ways

Written by Dr. Ken Broda-Bahm:

We know that when presenting to jurors, the goal is not just to *present*, but to engage, to relate, to adapt, and ultimately to persuade. You don't want to simply lay information in front of jurors and hope they will pick it up and use it. Instead, you want to form some kind of connection. Even though you can't have a conversation, you want the feeling of a *dialogue* in the sense that you are anticipating and addressing what jurors are likely to be thinking. Instead of an abstract presentation on "the evidence," you are aiming for a very direct, immediate, and audience-centered discussion on *their perceptions and their decision*. Based on the rules and the formal atmosphere of the courtroom, that can be challenging. But the connection is critical.

Thankfully, that connection is not just a feeling. It also includes some very practical behaviors. Recently, a researcher ([Chaemsaithong, 2018](#)) closely evaluated ten closing arguments in five high-profile U.S. criminal trials (the cases involved prosecutions of Timothy McVeigh, John Allen Muhammad, Lee Boyd Malvo, Michael Jackson, and Dzhokar Tsarnaev). The researcher used both quantitative methods to look at word frequency, as well as qualitative methods to

analyze how common terms are used. Out of this review, the researcher points to a number of behaviors that are used to specifically and explicitly build a relationship between the presenting attorney and the jurors. "Relational practice," he concludes, "does not merely 'oil the wheels' of courtroom communication but also constitutes a key way to the meaning-making process in this phase of trial." In this post, I will take a look at five of those practices.

### **Use "You"**

Effective attorneys refer to the audience directly, and most often that means saying "You." In the analysis of the ten closing arguments, the second person "You" was the most common pronoun found. Not all "You's" are equal, however. Looking through the examples, I see three different forms.

**The Personal "You."** This serves as a direct and individual reference to your target audience.

It "serves to put the jurors into a single entity," or to create the impression that the lawyer is individually addressing jurors: "You have seen the evidence."

**The Oppositional "You."** To draw a distinction, sometimes attorneys placed the "You" on the other side, to "rhetorically situate jurors in the opposing counsel team." For example, "If you really think there was a conspiracy," the defense attorney asks

in closing, “why do you only charge Michael Jackson?”

**The Impersonal “You.”** The final use of “You” is to refer abstractly to a person, but not to any particular person. This is used instead of the word “one.” For example, “You never know what the result might be.”

While the research article doesn’t make this point, I recommend that attorneys should stick mostly to the personal “You.” While it might make sense to occasionally make oppositional use of “You” in order to make a point, for the most part, you want to make it clear that you are speaking directly to your target audience — the jury.

### **Use “We”**

The second most frequently used parts of speech are the collective pronouns. Using “We” or “Us” is a way of joining with your target audience, and constructing a shared identity based on common thoughts or common experiences.

As with “You,” I can see several different ways that the “We” can be used.

**The Inclusive “We.”** This is direct and literal, referring to what we saw, heard, or did here in the courtroom. “We all saw her on the witness stand.”

**The Exclusive “We.”** This draws a distinction between an “Us” as distinct from “Them.” For example, Oklahoma City bomber Timothy McVeigh’s Defense counsel continuously used “We” to distinguish between “We” the citizens, and “They” the government.

**The Social “We.”** Collective pronouns can also be used “generically to position themselves and the jurors as part of a larger group, *e.g.*, all human beings.” For example, “We live with some level of uncertainty.”

Again, for the most part, “We” should be used inclusively to join your own perceptions and experiences with those of the jury. This serves a common function with the use of “You.” The research notes, “use of both personal and impersonal pronouns is a strategy that persuasively constructs jurors as having seen, heard, thought or shared an experience with the lawyer.”

So, should we use “We” or “You”? The two forms have a similar function, and both are good in being direct and audience-centered. Again, the research does not address any preference, but I would say that presenting attorneys should say “We” when referring to common knowledge and experience gained *in the courtroom*, but use “You” when talking about actions and experienced that belong *uniquely to the jury*, like their upcoming experience during

deliberation. For example, "We all heard the evidence. Now you will need to weigh it during deliberations."

### **Refer to Shared Knowledge**

Another among the most common techniques is the direct reference to shared knowledge, or to "what jurors already know about or are expected to know." This is a technique that often travels with the use of "You" or "We," as in "You know..." or "We all heard..." Apart from the collective reference, the reference to what we substantively have in common regarding our knowledge of the case is important as well. The implication from the lawyer is that the jury already accepts a given claim and is simply being reminded of that acceptance. Even without a personal reference, phrases like "*it stands to reason*," "*naturally*," or "*of course*" serve that function as well.

### **Ask Questions**

Posing questions as part of your presentation is a common and effective way to engage. The question helps to anticipate positions and thoughts jurors are likely to have. "Even in situations where response is not possible, questions establish contact with the audience, as the user appears to show interest in them, thereby keeping the channel of communication open and engaging the audience in an inner dialogue." Questions also help to introduce topics, provide structure, and to engage and focus jurors' attention on specific parts of the case. As I've written

before, the [rhetorical question](#) is a uniquely participative strategy because it refers to and engages the jurors' own thinking process.

## **Be Directive**

The final piece of practical advice is to favor expressions that are directive. Longtime readers of this blog will recognize that every blog title is framed in the imperative voice, and that is purposeful. I don't want the titles to suggest, "I am offering some knowledge" but instead to indicate, "I am making some *recommendations*." It conveys that what you are offering is not just information: It is advice. The same focus applies to your communication with jurors.

In the closing arguments analyzed, the attorneys' directive statements were most often aimed at jurors' activity or mental processes:

*Listen to this...*

*Focus on this...*

*Assume this...*

*Consider this...*

*Remember this...*

*Weigh this...*

As the author notes, these all "seek to rhetorically position jurors in cognitive activity." Of course, you still want to be engaging and encouraging jurors to follow their own

process, and not to just do what you say. But you need to offer guidance, like a teacher, regarding *how* they should do that.

For questions regarding this update, please contact: Dr. Ken Broda-Bahm  
Persuasion Strategies 555 17th Street Suite 3200 Denver, CO 80202  
Holland & Hart, 1800 Broadway, Suite 300, Boulder, CO 80302  
Email: [KBrodabahm@persuasionstrategies.com](mailto:KBrodabahm@persuasionstrategies.com)  
Phone: 303.295.8294

This update is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author. This update is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.