

4 Witness Presentation Lessons From The Depp-Heard Trial

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For weeks this summer, the defamation trial between Johnny Depp and Amber Heard stole the world's attention. No matter what channel you tuned in to, streaming website you visited or social media platform you scrolled through, it was virtually impossible to avoid videos and memes of the two celebrities fighting it out in court.

When, on June 1, 2022, the jury returned a unanimous verdict in favor of Depp—awarding him \$15 million^[1] in damages—the internet appeared to surge with glee. In the opinion of most people, it seemed, that the hero had come out on top.

What was it that made people want to root for Depp over Heard?

In part, it might have been that he and his team were more successful at presenting an air of authenticity and credibility during the trial. That is the impression suggested by social media, at least. To date, the hashtag #justiceforjohnnydepp has more than 21 billion views on TikTok, while #justiceforamberheard has just over 110 million.

In most trials, attorneys are only able to assess their courtroom tactics and strategies through limited means. The Depp-Heard trial, however, provides an opportunity to see how nonlawyers viewed and responded to the celebrities' attorneys and witnesses in real-time.

This article focuses in on some of the traditional tactics that were used (or not used), examines how these strategies were perceived by jurors and the public, and discusses how they may have affected the parties' perceived authenticity and the final outcome of the case.

Traditional Lessons Reexamined

The attorneys in the Depp-Heard case used many traditional lessons^[2] when presenting their case, but with some nontraditional outcomes. Four examples are examined and analyzed below.

1. Emotions

In court, a person's gestures, facial expressions, appearance, and interactions with attorneys and judges are all on display. Traditionally, witnesses and lawyers are counseled to be polite and calm while testifying and talking, as the jury is always watching.^[3] Although this may be good practice in most cases, it should be recommended only if it is consistent with all of an individual's actions and goals in the courtroom.

One notable point in the Depp-Heard trial occurred when a deposition video showed Heard rolling her eyes before gathering her composure.^[4] That brief moment was widely shared on TikTok and other social media platforms. And it made an impression on the jury.

One juror—who was interviewed after the case—described what he viewed to be inconsistencies in Heard's demeanor. The juror reportedly told Good Morning America, "She would answer one question and she would be crying and then two seconds later she would turn ice cold. Some of us used the expression 'crocodile tears.'"^[5]

On TikTok and Twitter, numerous posts and videos have referred to Heard's testimony as a performance—one that, people say, came off as exaggerated, incoherent and manufactured.^[6]

Depp was not a standard witness either. But jurors and the public appeared to react more favorably to what they viewed as a consistent demeanor.

The same juror who provided comments about Heard said in the interview that many of the jurors felt that Depp "was more believable" and "a little more real in terms of how he was responding to questions," and implied that this might have been because his "emotional state was very stable throughout."^[7]

Undoubtedly, this was an emotional trial, and viewers will expect witnesses to react accordingly. But too much of an attempt to control or show emotions, in either direction, can lead a witness to appear disingenuous and strategic.

Attorneys should keep in mind that fact-finders are moved by emotional displays that are consistent and authentic, and try to take cues from their witnesses accordingly.

2. Eye Contact

Witnesses are often taught to address the jury when speaking in court, with the assumption that eye contact can convey truthfulness and foster a connection between the speaker and their audience. However, addressing an audience rather than the questioner is not always a natural form of interaction, and attorneys should be cautious when considering this tactic.

Heard spent much of her testimony looking directly at the jury, a tactic that observers ultimately felt was robotic and coached.^[8] The interviewed juror echoed that Heard appeared to be "staring at the jury," which made them feel "uncomfortable" during some of her testimony.^[9]

Experts agree that an unwavering gaze can make people feel intimidated.^[10] The goal of eye contact is to humanize the witness and help them create a positive bond. But again, this is most effective when it is a witness-led exercise, and too much emphasis can lead to negative results.

3. Pace and Tone of Testimony

As with emotional displays and eye contact, attorneys frequently counsel their clients to maintain control over the pace of questioning.^[11] During depositions, for example, witnesses need to take time to listen to each question and to answer slowly, even if the result is uncomfortable for those listening.^[12]

Trial witnesses, however, should remain cognizant of how the pace of questioning can appear to the jury—in either direction. Some observers of the Depp-Heard trial felt that Heard was a little too quick and combative when answering questions on cross-examination, and counted that as a hit against her credibility.^[13]

Instead, observers tend to prefer a stable pace and tone, which is more likely to connote an air of confidence and unflappability, and allow the jury to focus on the substance of answers as opposed to their delivery.^[14]

Both rapid-fire answers and exaggerated pauses can suggest to observers that a witness is uncomfortable and uneasy. Although witnesses may be uncomfortable on the stand, counseling them to answer at their natural pace may be more likely to encourage relaxation, and fit juror expectations of a truthful witness.

4. Additional Information

Above all else, witnesses are encouraged to refrain from providing additional information in response to questions. This helps ensure that the sponsoring lawyer maintains control over the witness and the proceedings, and that no harmful facts arise unsolicited.

But the problem, again, is that jurors may view this as unnatural and stifling. Small deviations, if authentic, can be a welcome relief from the otherwise disconnecting reality of a courtroom.

For example, in one particularly memorable moment during the Depp-Heard trial, Depp paused his testimony to predict an upcoming hearsay objection from Heard's lawyers.^[15] Many of the people in attendance broke into laughter and social media treated it as a darling moment.^[16]

This approach certainly comes with risk. But jurors remember how they feel about someone long after their testimony. Attorneys should consider whether some awkward moments can be excused in the service of giving a witness more runway toward authenticity.

From Memes to Verdict

Many of the lessons of this trial may appear divorced from standard legal practice. It is unlikely that the average live-streamed trial will give rise to memes, for example. But this dramatic episode is a reminder that all people—jurors or otherwise—seek authentic connection. And that is a lesson that trial attorneys should not take lightly.

Summer Associate Amber Freeney also contributed to this article.

[1] This award was comprised of \$5 million in punitive damages (which the judge capped to \$350,000, the legal limit in Virginia). At the same time, the jury awarded Ms. Heard \$2 million in damages on her counterclaim.

[2] Thomas R. Jackson, *Depositions Answer Book* (March 2021).

[3] Ann T. Greeley & Lindsay Eriksson, *Attorney Credibility in the Courtroom*, 43 Litig. 28 (2016).

[4] Michelle Hambiliki, Johnny Depp's lawyer calls out Amber Heard for rolling her eyes in deposition video, VT.Co, May 18, 2022, available at <https://vt.co/entertainment/celebrity/johnny-depps-lawyer-calls-out-amber-heard-for-rolling-her-eyes-in-deposition-video>.

[5] Kenzie Bryant, Anonymous Member of Johnny Depp vs. Amber Heard Jury: Depp was "More Believable," Heard Cried "Crocodile Tears", Vanity Fair, June 16, 2022, available at <https://www.vanityfair.com/style/2022/06/johnny-depp-vs-amber-heard-more-believable-crocodile-tears>.

[6] Andrew Court, Johnny Depp die-hards mock Amer Heard for 'fake crying' during testimony, NY Post, May 6, 2022, available at <https://nypost.com/2022/05/06/johnny-depp-diehards-mock-amber-heard-for-fake-crying-during-testimony/> (collecting tweets and other posts).

[7] ABC News, Juror in Johnny Depp-Amber Herd trial speaks out for 1st time about verdict (2022), available at <https://abcnews.go.com/GMA/News/video/juror-johnny-depp-amber-heard-trial-speaks-1st-85432746>.

[8] Id.

[9] Juror in Amber Heard defamation trial says actress left them feeling 'uncomfortable', National Post, June 17, 2022, available at <https://nationalpost.com/entertainment/jury-in-amber-heard-and-johnny-depps-defamation-trial-felt-uncomfortable>.

[10] Id.; Kalhan Rosenblatt, Amber Heard was 'not credible' as a witness to the jury, some legal experts say, [NBC News](https://www.nbcnews.com/pop-culture/pop-culture-news/amber-heard-was-not-credible-witness-jury-legal-experts-say-rcna31564), June 2, 2022, available at <https://www.nbcnews.com/pop-culture/pop-culture-news/amber-heard-was-not-credible-witness-jury-legal-experts-say-rcna31564>.

[11] Jackson, *supra* note 2.

[12] Id.

[13] Taryn Ryder, Was Amber Heard 'rehearsed' or 'consistent' on the stand? Experts weigh in on Johnny Depp trial., [Yahoo Entertainment](https://nz.news.yahoo.com/amber-heard-testimony-johnny-depp-trial-203436325.html), May 20, 2022, available at <https://nz.news.yahoo.com/amber-heard-testimony-johnny-depp-trial-203436325.html>; Kalhan Rosenblatt, Amber Heard was 'not credible' as a witness to the jury, some legal experts say, NBC News, June 2, 2022, available at <https://www.nbcnews.com/pop-culture/pop-culture-news/amber-heard-was-not-credible-witness-jury-legal-experts-say-rcna31564>.

[14] Greeley & Eriksson, *supra* note 3.

[15] Graeme Massie, Johnny Depp draws a laugh in court by predicting 'hearsay' objection from Amber Heard's lawyers, *Independent*, April 21, 2022, available at <https://www.independent.co.uk/news/world/americas/johnny-depp-laugh-court-objection-b2062044.html>.

[16] Id.

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