

THE EXPERT WITNESS: COURTROOM COMMUNICATIONS

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Everyday in Courtroom situations all over the world a variety of messages are communicated. During the course of this paper I will focus on the Expert Witness and his communication (both real and perceived) with the jury. I shall do this by introducing the reader to the concepts of 1. Vocal Language, 2. Nonverbal Communications and 3. Preconceived Jury preceptions of the Expert Witness.

In a 1984 survey it was shown that the average person spends approximately 72% of his time in some form of Communications. This time was recorded as being spent in the following ways: 1. 36% of time - Listening, 2. 30% of time - Speaking, 3. 18% of time - Reading and 4. 16% of time - Writing (1). But what is communication? The most commonly used definition of communication is: The act of creating and transmitting messages having meaning for the listener, listener interpretations based on attitudes, beliefs, values and past experiences (2). Basically there are two forms of communications; VERBAL and NONVERBAL. Verbal Communication is the basis for language which is "a set of shared symbols from which people derive meaning" (3). It is important to remember that people and society's give meaning to words and phrases and these meanings can change as the society sees fit (i.e. gay, bad, crack, pot, ect.). Nonverbal is the second form that communications may take. An important concept to remember at this point is that most nonverbal communications are transmitted unconsciously. In 1976 Erickson concluded that "65% of social meaning in a face to face encounter is communicated nonverbally" (4). The four major components of nonverbal communication are: OBJECTIVE LANGUAGE (clothing, jewelry, hair, etc.); SIGN LANGUAGE (gestures); PARALANGUAGE (vocalization: pitch, volume, rate and quality of tone) and TOUCH COMMUNICATIONS (5). The most important thing to remember about communications is that there are barriers that impose a lack of understanding. These barriers are what form opinions and should be noted so that we can recognize them. The barriers of communication are:

Barrier 1 - How we see individuals and events based on our own experience is known as Perception.

Barrier 2 - A tendency to avoid stimuli which conflicts with our identity and worth and changing it by focusing on stimuli which reconfirms ourselves is known as Selective Exposure.

- Barrier 3 - When we perceive only what is desired it is known as Autistic Thinking. The two types of autistic thinking are: Open-minded and Closed-minded.
- Barrier 4 - Attitudes and responses that are related to maintaining our self-esteem is termed Ego Involvement.
- Barrier 5 - Perceiving the world through ethnic background and ethnic experiences is referred to as Ethnocentrism (6).

The Expert Witness during his short period of time in court must make sure that he wins over the judge. Through his manner, dress and paralanguage he must assert himself to the judge as being a competent expert. He must show confidence without being overbearing and he must be humble without looking weak. It is important for the Expert to be able to do this because often the jury will collect nonverbal cues from the judge. Although the concept has not been fully documented or officially studied at this time; many researchers have implied that the jury picks up many nonverbal messages being sent (consciously or unconsciously) out by the judge concerning witnesses, lawyers and even the defendant. Little things like voice tone, looking bored, closing out of what someone is saying, ect. are all things that the jury picks up and stores in the back of their minds.

The Expert Witness established communications with the jury as soon as he enters the room. First impressions are important! It is on this first appearance your credibility will first be based. In a 1979 article T. L. Tanton wrote: "The jury uses the first impression to evaluate a person they have never seen before. Appropriate clothing can compensate for possible negative bias, (sex, race and age) but, poor or inappropriate attire could cause a major devalueing of both stature and abilities" (7).

It has been found the majority of jurors already have a preconceived notion of what an expert witness will look like. For men, the jury pictured them as being: neat, intelligent, responses controlled and confident, well-dressed (dark, three-piece suit), calm, professional, serious, hair short and neat. For women, the jury pictured them as being: neat, intelligent, calm, confident, well-dressed (business suit consisting of jacket and skirt), serious, professional, pleasant, controlled, honest, conservative appearance with hair either short or neatly put up (8). Generally, jurors feel that Expert Witnesses should be trained professionals. (See charts I & II) It is therefore important that before the expert begins his testimony, his credentials should be given. (See chart III) List any colleges, special training

schools, certifications, professional organizations and works published. (See chart IV) Remember, the more expertise the jury perceives you as having, the better the chances are that they will be persuaded by your testimony and opinions.

When the expert starts his testimony he must remember that the average person has little knowledge about the subject he is testifying to. Be sure to use easy to understand language, technical language only serves to confuse the juror, if the listener does not understand what is being said he will not hear what you are saying. (See chart V for complete list of Do's and Don'ts) Quality and tone of voice are as important as what you are saying, use pauses rather than voice inflection, (It tends to draw the listeners attention) be sure to speak in a strong clear voice, if the listener cannot hear you, you will lose his interest. Always address yourself to the jury. When being questioned make your answers as concise as you can. When possible, answer yes or no. After you give a yes or no answer, give a short statement of what your conclusion is and then give your rationale and how you arrived at your conclusion. This format serves as a reinforcer because by answering in this manner the jury has heard your answer three times. Remember your key goal is to communicate with the jury. Whenever possible chart your findings for courtroom presentation. This helps the jury to follow what you are saying. Plus we most often remember more of what we see than what we hear. (See charts VI & VII for juror attitude to Courtroom) The important points to remember are: big words only baffle and turn people off, eliminate unnecessary technical terms. Do not let yourself come across as being uncooperative during your testimony, especially to the opposing attorney, if the jury picks up on this it could lessen your credibility in their minds.

It is also important to view the paralanguage aspects of Courtroom Communications. Always be sure to make eye contact with the jury, "eye to eye contact denotes trustworthiness and competence" (9). Always look to the jury for signs of interest or boredom. (See Pictures VIII) Watch such things as 1. Gaze Direction - people are more inclined to gaze at someone they like, 2. Head Shift - head at same level as speaker, mouth relaxed - speakers words accepted, 3. Hand to Cheek - evaluative gesture, 4. Leaning forward in Chair - interest, ect. (10). Some nonverbal cues to avoid as you are testifying are: 1. Arms Across Chest - defensiveness, 2. Crossed leg with a slight kicking motion - boredom, 3. Touching Hand to Nose - as strong as saying "No," 4. Locked ankles and clenched hands - holding back on something (11). (See Pictures IX) Strong nonverbal cues to use while you are testifying are: 1. Unbuttoned Coat - shows openness 2. Sitting straight with hands folded in lap - "Go ahead and throw whatever you will at me" and 3. Steepling - (hands together, fingertips touching) - Confidence (12). (See Pictures X)

The expert witness must always stay aware of the constant communications around him. He must accept the fact that nonverbal communications are just as important as what is said. What you do will be remembered and weighed just as much as what is said and how you said it.

In concluding this paper I would like to leave the reader with the following key concept:

"Do not try to impress individuals with flowery language. Avoid the use of impressive or scholarly terminology. The very best words and expressions are those best understood by the listener. Keep it simple, accurate and to the point. Avoid ambiguities and qualify words or phrases that have multiple meanings: Adapt your message to the listeners vocabulary" (13).

REFERENCES

- 1 through 6 & 13 - Cheatham, T.R. & Erickson, K.V., The Police Officers Guide to Better Communications, Glenview, Illinois: Scott, Foresman & Co., 1984, pages 8, 19, 20, 21 & 22
- 7 & 8 - Tanton, R. L., "Jury Preconceptions and Their Effect on Expert Scientific Testimony," Journal of Forensic Sciences, JFSCA Vol. 24, No.3, 1979, pages 681 & 687
- 9 Hazen, R. J. & Phillips, C., "Expert Fingerprint Witness," Forensic Science Training Unit, Washington, D.C., 1981, page 21
- 10 through 12 - Danzinger, K., Interpersonal Communications, New York: Pergamon Press, Inc., 1976, pages 50 & 51
- Nierenbury, G. I. & Calero, H. H. - How to Read a Person Like a Book, New York: Hawthorn Books, Inc., 1971, (Illustrations of Nonverbal Communications)
- Miller, T. H. - "Nonverbal Communications in Expert Testimony", Journal of Forensic Sciences, JFSCA, Vol. 28, No. 2, April, 1983
- Illsley, Charles, Jurors, Fingerprints & The Expert Witness, Washington, D. C.: Department of Justice, Federal Bureau of Investigation, 1987 (Graph Illustrations of Perceptions of the Juror)

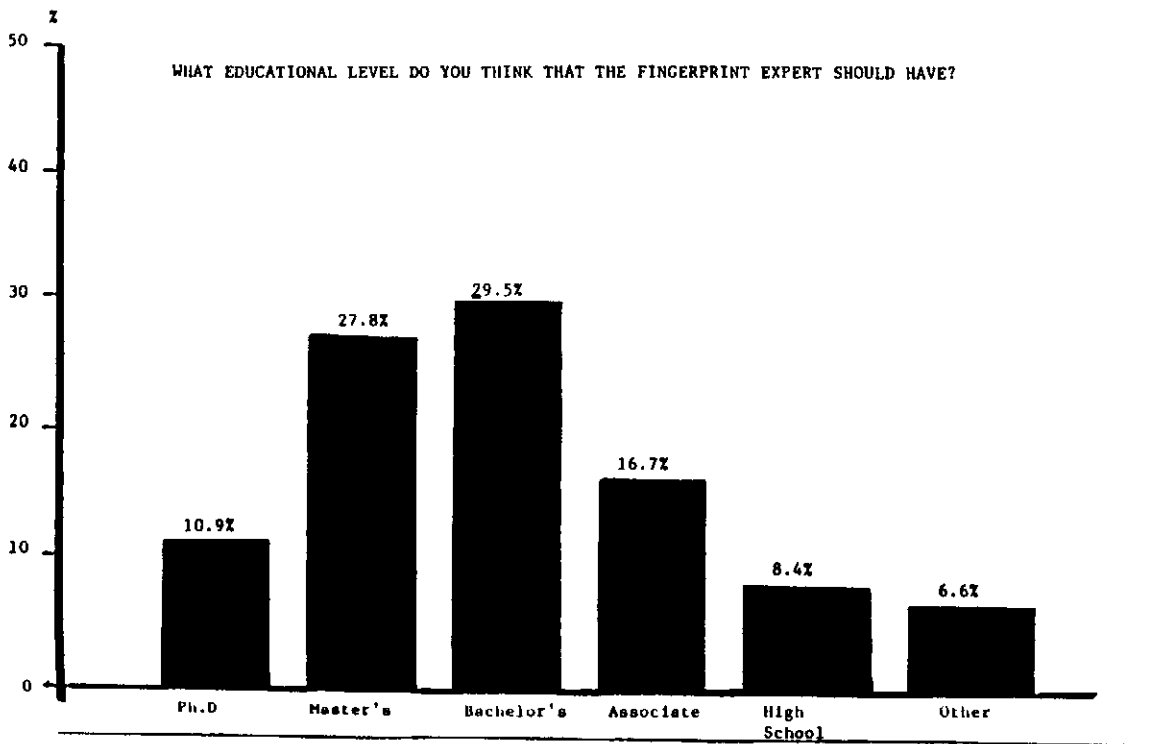


CHART I

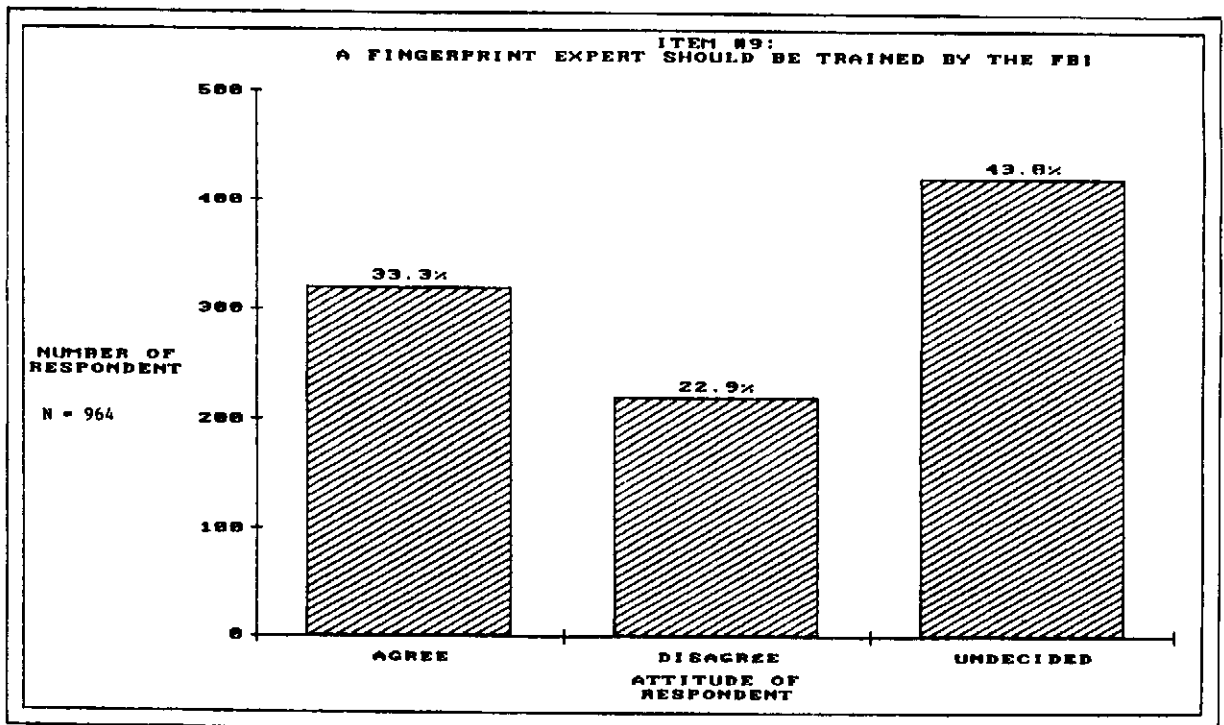


CHART II

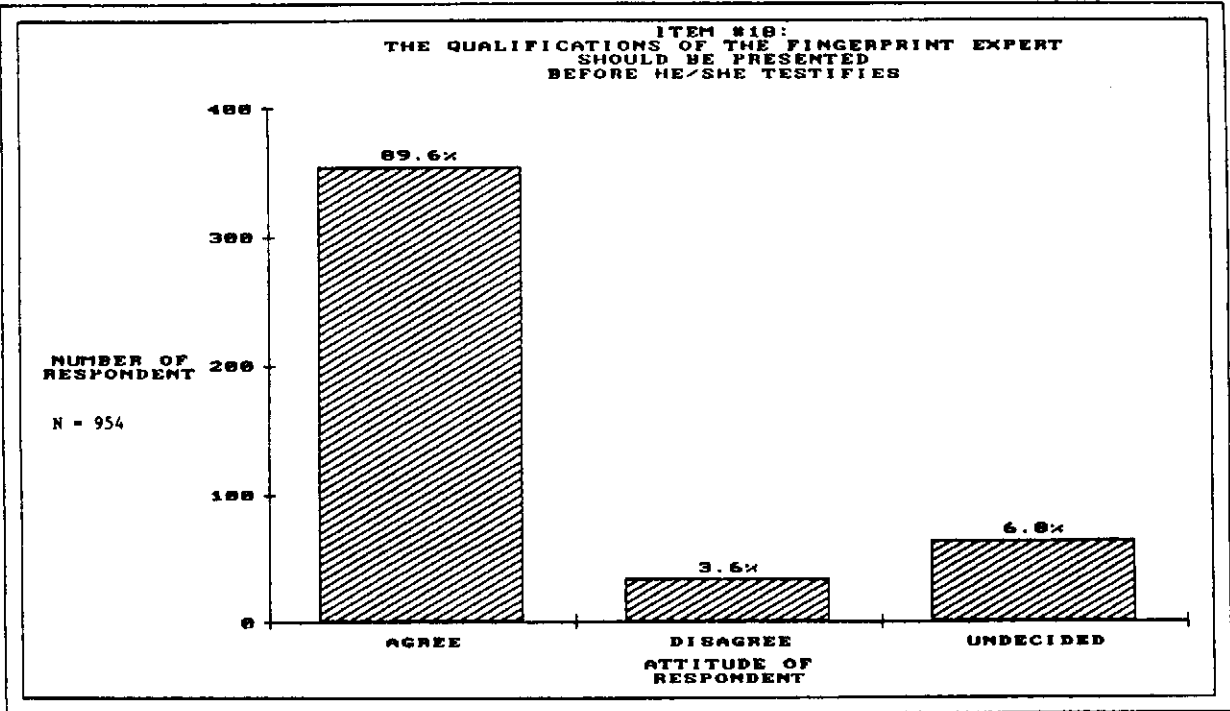


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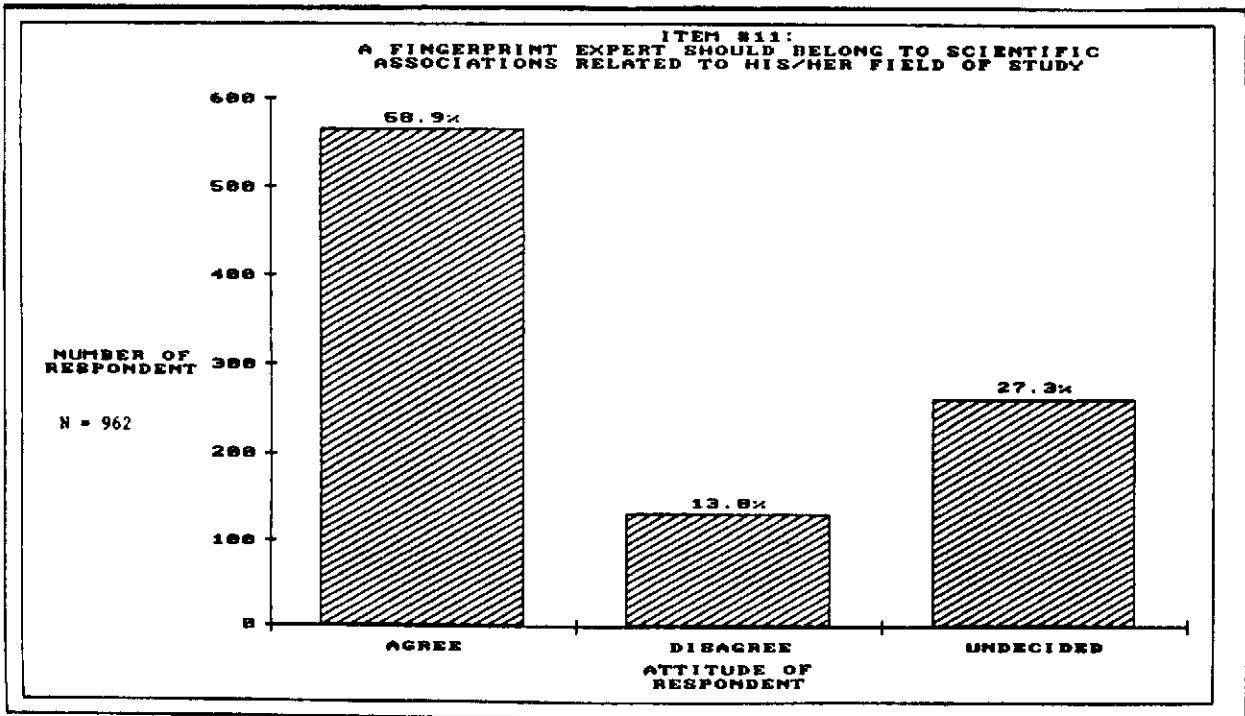


CHART IV

COURTROOM TESTIMONY

Dos	Don'ts
1. Be on time.	1. Get angry at the defense attorney.
2. Be responsive to both attorneys.	2. Volunteer information.
3. Pause after each question before attempting to answer.	3. Look at the prosecutor during cross-examination.
4. Speak loudly enough to be heard by the juror farthest from you.	4. Show contempt for the defense attorney or his questions.
5. Be careful when approximating sizes, distances, or times.	5. Refer to your notes frequently.
6. Look directly at the jurors during most of your testimony.	6. Stare blankly into space or look up at the ceiling while you are thinking about your answers.
7. Be courteous to everyone you meet in and around the courthouse.	7. Remain in the courtroom when you have completed your testimony.
8. Discuss the case with the prosecutor prior to the trial.	8. Smoke in the courtroom.
9. Address both attorneys as "Sir" or "Madam" and the judge as "Your Honor"	9. Develop a "prosecution complex"
10. Review your notes carefully prior to the trial.	10. Look bored with the rituals of the courtroom.

CHART V

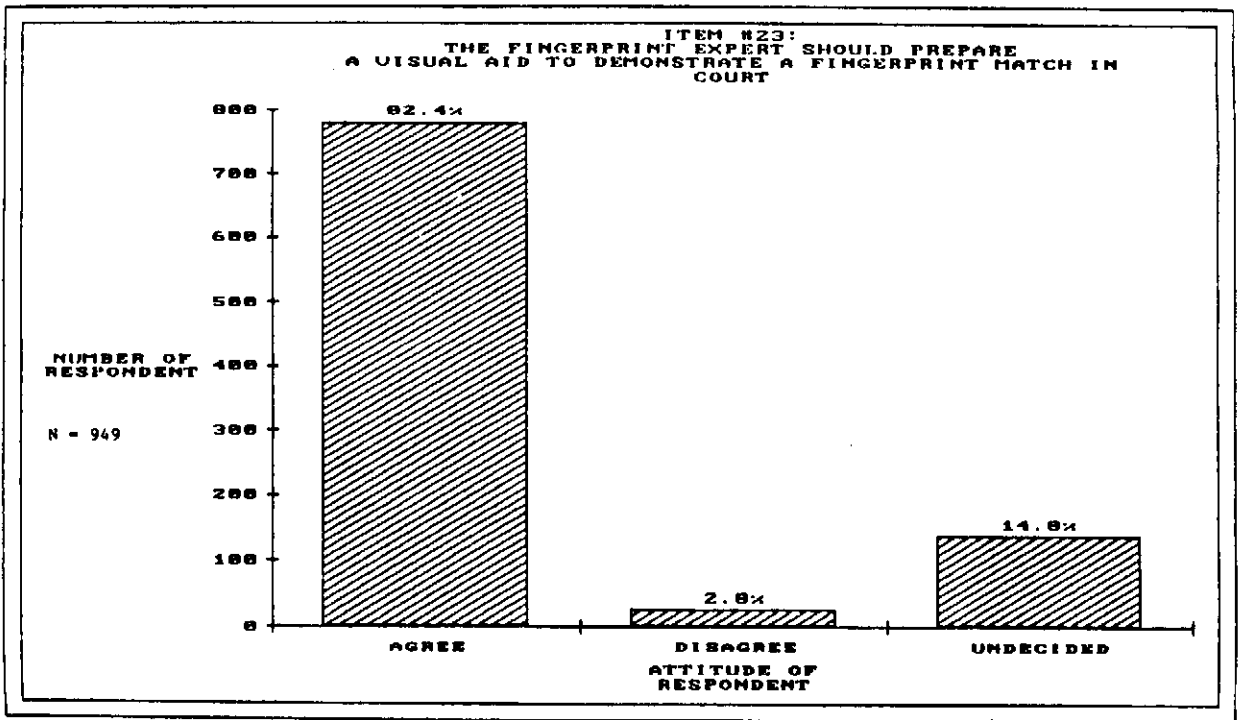


CHART VI

ITEM #25:
 THE EXPERT SHOULD PROVIDE THE JURY
 WITH A SET OF ENLARGED PHOTOGRAPHS OF THE
 FINGERPRINTS
 IN QUESTION TO TAKE INTO THE JURY ROOM
 DURING DELIBERATION

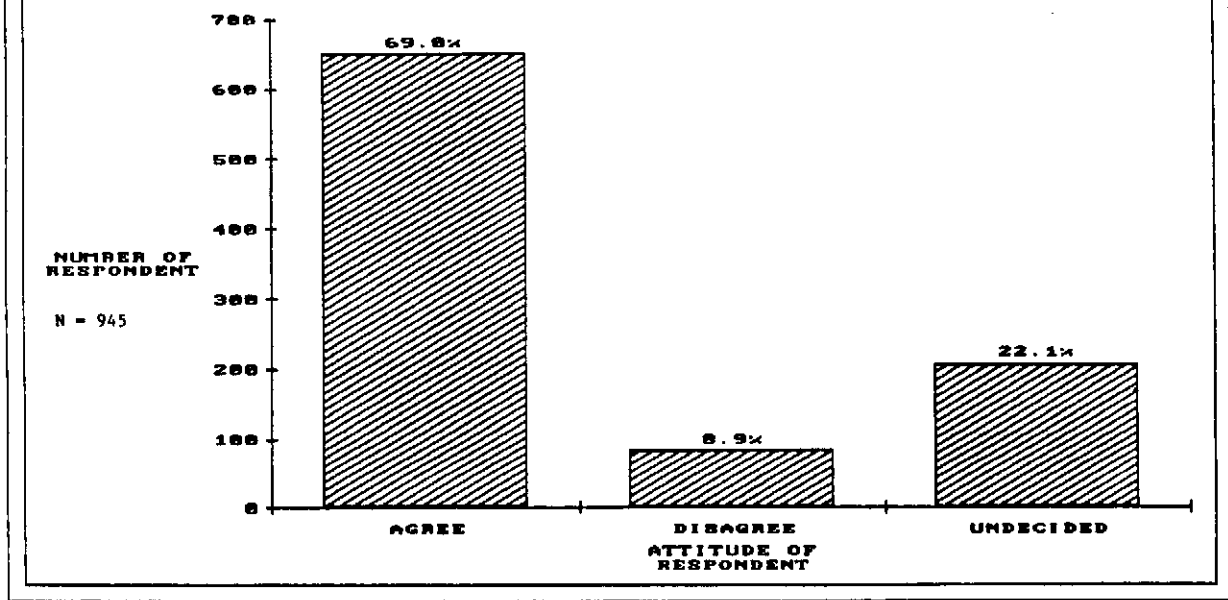
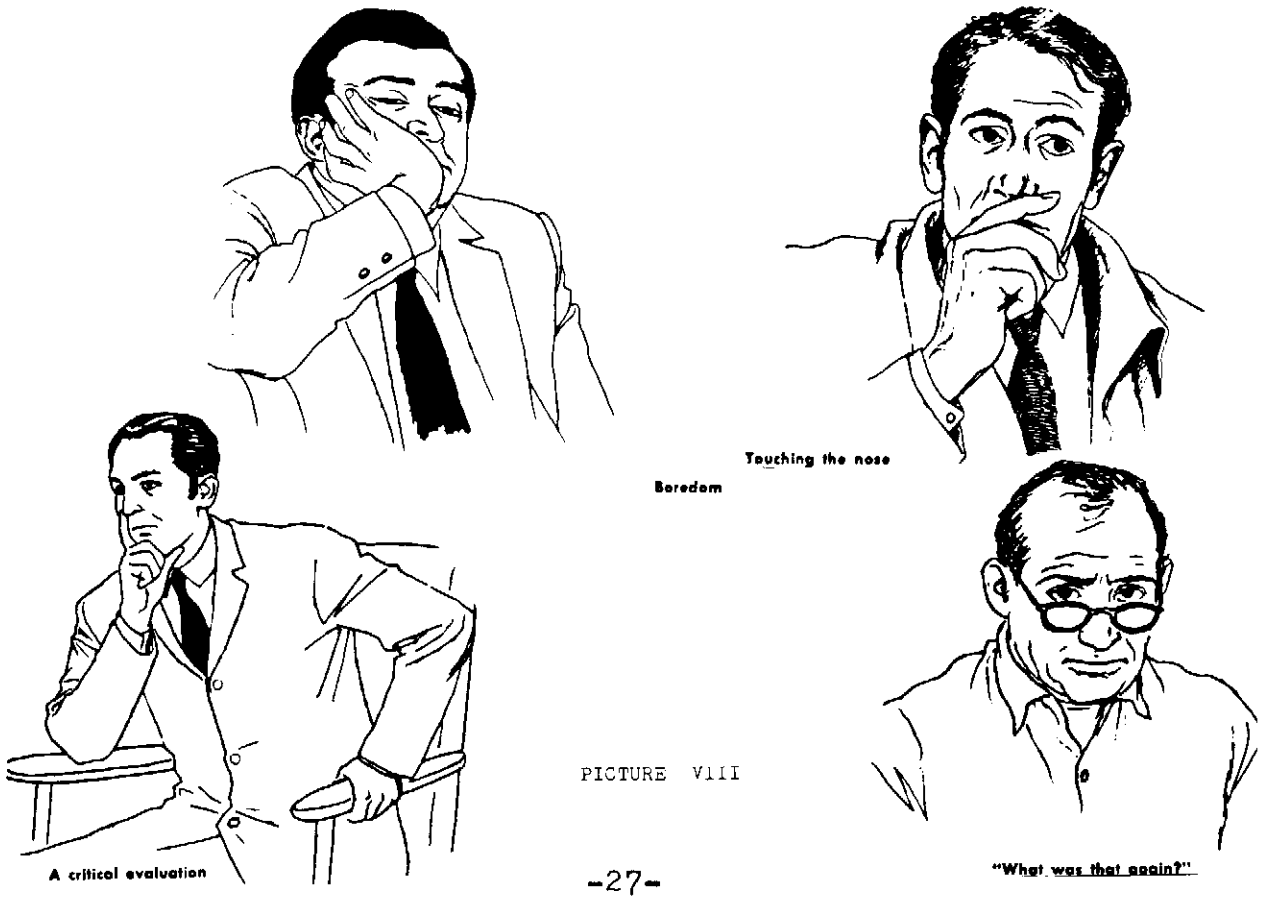
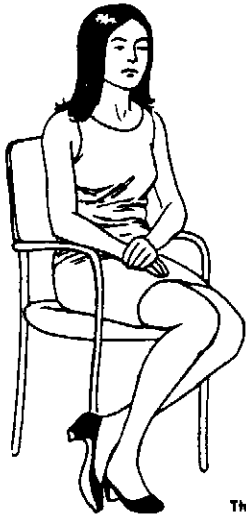


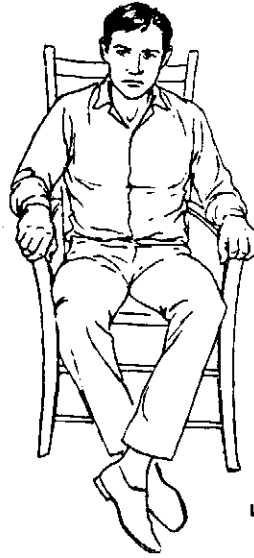
CHART VII



PICTURE VIII

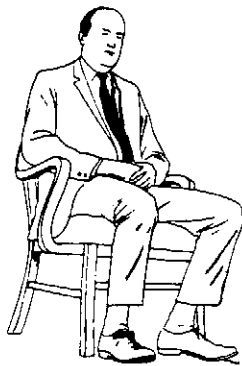


The female version of locked ankles

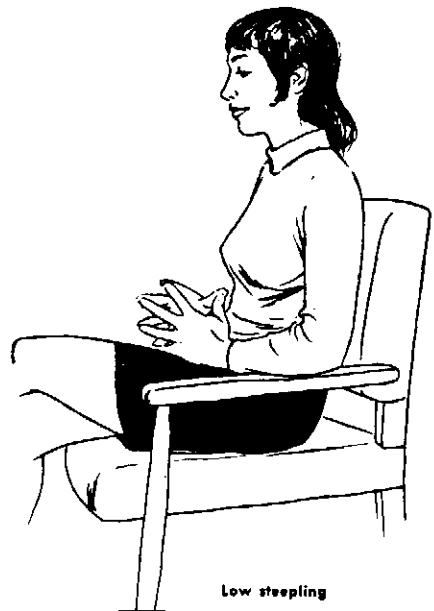


Locked ankles and clenched hands

PICTURE IX



The Rock of Gibraltar



Low steeping

PICTURE X