

How Our Students Stopped Worrying and Learned to Love Public Speaking

Suggested Uses of The Articulate Advocate for Trial Skills Teachers & Legal Trainers

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Vignette 1 – Finding the Voice of Zool

Amy, a shy, soft-spoken student, stands in front of the class to deliver her opening statement for plaintiff in *Rowe v. Pacific Quad, Inc.*, a sexual harassment case in an employment-law setting:

“Stanley Schmit harassed Alice Rowe with crude jokes and leering invitations – he made every day at Pacific Quad a living Hell for her—and he didn’t care.”

The content and language are great! Robust nouns and verbs—punchy and to-the-point—memorable—and a fine trilogy, enhanced by the contrast between the other-directed first two points (how he treated her) and the inner-focused third point (his lack of humanity). It captures Amy’s legal theory (Schmit broke the law), her factual theory (how it affected Rowe), and her emotional theory (the jury will want to find for Rowe, because Schmit is a “bad guy”).

The trouble is the way it *sounds*, as opposed to the way it *reads*. Amy’s voice, though pleasant in tone, is high-pitched, said/sung all on the same note, and thus it does not seem or sound capable of conveying the gravity of her message. She might as well be saying, “Cloudy with a chance of showers in the afternoon.” And, there is no contrast made in delivery to emphasize the difference between the first two points and the third.

In my commentary I encourage Amy to find another voice in her range – deeper, more serious, almost “foreboding” when she gets to her third point. She starts again, but manages only a slight change. My musician’s ear hears that she is moving her voice downward, but only a half tone, from A to A flat. I illustrate what I am looking for; she tries again. This time she manages to get lower, down another step to G – but it’s still high-pitched, still insufficient for contrast. I illustrate again in my own baritone voice, asking her for a “chest tone” in a lower singing register. (Other students helpfully suggested current singers as models.) Amy resumes; this time, when she gets to “and he didn’t care,” there emerges from deep within her torso what can best be described as the Voice of Zool – the monster that blasts out of the refrigerator in the 1980’s movie *Ghostbusters*. She did it! Amy collapses with laughter, and the class cheers and claps. I’ve helped her “walk down the steps” in her voice. She found the voice she needs to match her medium with her message.

We learned to teach courtroom communication style from Brian Johnson and Marsha Hunter. *The Articulate Advocate: New Techniques of Persuasion for Trial Lawyers* can help you do the same. Here we offer illustrations of how we have used the book's content and methods, with suggestions for adaptation to your teaching situations.

The Need

If you stick your head in trial courtrooms throughout the United States, you will undoubtedly be struck by the fact that lawyers don't know how to communicate with juries. They repeatedly fail to make their clients' case theories sing, to present winning points in a compelling way, or to make openings and closing arguments truly persuasive. All too often the lawyer's eyes are cast towards the floor or ceiling rather than taking in the jury; his legs flail and pace in constant nervous motion while his hands stay locked at his side (or worse, in his pockets); his words fly by with no contrast, no subtlety, no emphasis. Instead of being shown the way to a verdict through persuasive advocacy, juries are left, all too often, to fend for themselves.

This failure of communication stems from the fact that most North Americans arrive at, and emerge from, law school with no training in public speaking. As a result, when confronted with the Hydra that Johnson-Hunter describe, they become self-conscious and unable to bring their clients' cases to life. Instead, falling into default/discomfort mode, they:

- * lock their hands in the dreaded "fig-leaf" position;
- * roam the well of the court like caged animals;
- * speak in voices too soft to carry the weight of the case;
- * read their questions, their opening statements, and their closing arguments;
- * stare at the floor instead of gazing into 12 sets of inquisitive eyes.

The results are devastatingly counterproductive to the lawyer's goal of convincing her audience. The jury (or judge in a bench trial; as susceptible, we believe, to persuasive advocacy as any other fact-finder):

- * misses any emphases the lawyer is trying to convey, because of the disconnect between the lawyer's words and his tone and gestures;
- * tires quickly of watching the lawyer pace, and takes refuge in thinking of last summer's wonderful vacation or today's delightful lunch;
- * misses the point of the lawyer's words due to inaudibility; and
- * won't—can't—listen to a methodically boring reading of a written text.

Johnson and Hunter's "Cure" – and its Accessibility to Any Trainer

Enter Johnson and Hunter's drills and practice techniques outlined in this book (hereafter, "the Technique"). Through the Technique, self-conscious and insecure advocates have transformed themselves into compelling communicators before juries. Stilted lawyering metamorphoses into trial advocacy.

This transformation from automaton to persuasive advocate can happen relatively quickly. Any and all of the techniques described in this book can be applied usefully by the independent trainer who reads the book thoughtfully and then looks for opportunities to pass on a particular tip to her students. Our purpose here is to describe some of the “tried and true” ways we have found most commonly applicable.

Isolate one delivery problem

Devotees of the NITA method of advocacy training know how helpful it is to attack only one or two delivery issues in one particular practice segment for a student. The nervous speaker cannot fix all at once a myriad of problems: roaming feet, dead-fish hands, lifeless eyes, inaudible voice, monotonal presentation, AND rapid-fire, headlong “rush to say all the words in one breath without stopping.” So, pick the most severe problem, isolate it, and prescribe a fix. Illustrate the fix. Then:

Leave time for, and insist on, a “re-do”

“Learning by doing” is actually “learning by doing and then doing again.” The student recognizes the problem he is having when it is isolated and played back to him. He may “understand” the fix that is prescribed, but he experiences the success of the fix only by an immediate re-experience of the delivery moment. Thus, for example, his hands, attached to his body for dear life in the first run-through, now are released to gesture in a way that punctuates his client’s story.

When one and only one problem is diagnosed and fixed, the immediate application of the fix can be easily fit into the student’s practice time. An added benefit is that the other practice-session participants (assuming this is happening in a class setting) also see the immediate improvement, and thus their “buy-in” to the Technique is enhanced.

Use a vivid metaphor for the technique being taught – “The Cement”

We agree with Johnson and Hunter that the “cement” metaphor should not be taken to mean “never move.” The student should be instructed that this device is a means to help him get control over his pacing, so that then movement can be accomplished—with purpose.

Vignette 2 – Leaving the High Seas for Dry Land

John, a third-year law student, is overflowing with nervous energy. It’s emerging from every pore in his body as he summons the courage to volunteer to stand and deliver a closing argument for his client, a man who he must convince the jury has been wrongly accused of murder. He catapults to the front of the room, looks briefly in the direction of the jury, then he’s off and running. Literally—running.

As John starts to talk about how his client was in another place when the real perp was doing the crime, he starts to pace back and forth, back and forth, in a manner that’s sure to wear out the rug in the room,

and is giving all jurors a sense of being on the high seas. So much movement, so much energy, but none of it connected to the words coming out of his mouth.

Johnson and Hunter, one on each of my shoulders, whisper: “Stop this young man, and have him PLANT THOSE FEET!” So I do exactly that. “John, put your feet in a comfortable stance, separated by a few inches and imagine that they are fixed in cement. Try as you might, you can’t move those feet. Then give us the first two minutes of that closing argument again and let’s see what happens.”

John plants his feet in cement, talks to us (his “jury”), and the most amazing thing happens. All that wasted energy that was going into his mad pacing now moves up into his arms and hands. As his body stands still, and he urges the jury to see their way to his client’s innocence, his hands start to gesture naturally, in a way that make his words come to life, that make visual what he is saying.

Now, when he talks about his client being on one side of town while the real murderer was at the crime scene across town, he extends his left hand away from his body to show the jury where his client was, then extends his right hand to show where the murder took place. He creates distance through gestures as he tells the story of that distance through his words.

When it is time to move on to another point in his closing, ONLY THEN is he allowed to walk to a different part of the room and to replant those feet in some newly-laid cement.

By the end of his closing, the jury is completely with him and his client. The Technique took a nervous young man and turned him into a passionate communicator who grabbed his audience. And all because of the “cement.”

A key to the success of this teaching moment was finding a metaphor that John could understand: the cement that kept his feet in place. It worked where no amount of urging—from the teacher or from himself—to “stand still” had made a bit of difference.

Similarly, Johnson and Hunter’s Pledge-of-Allegiance metaphor cure for the rapid-fire speaker enables him to slow his pace by taking the natural breaks WITHIN sentences. It works where no amount of “talk slow” resolution can.

The ultimate: the two-minute exercise

When we first worked with Johnson and Hunter at our law school, where we had to find a way to offer their tutoring to 100+ students over the course of two days, necessity led to the invention of the two-minute exercise. In a class of 24 students for a two-hour period, each student prepared the first two minutes of an opening: statement of theme, followed by a brief capsule version of the facts. Notes were strictly banned. Johnson and Hunter found a “fix” to give each student, with time for a quick re-do. All had a positive experience.

Equally important to the help the students got with their delivery was the realization that a confident, forthright launch of an opening was as vital as—dare we say, more vital than—the words chosen. For law students (indeed, for most practicing lawyers we have taught over the years) who delude themselves

into thinking that their words alone can carry the burden of persuasion, this was a key learning moment. It taught, better than any amount of preaching from us instructors could, that direct, person-to-person communication scores higher on the persuasion meter than beautifully crafted, but soullessly delivered, oratory.

Modeling and mimicry teach louder than words

No matter how effective the descriptions and advice presented in this book, sometimes a student can “get it” only through imitation – a truly mechanical repetition of the recommended technique for improvement. For example, Johnson and Hunter’s exercises on Emphasis, and on Speaking in Phrases with pauses after each natural phrase, open the students’ minds and intellects to these aspects of oral delivery. Still, some will have difficulty putting them into practice with their voices and bodies, and will struggle to find enough volume change, pitch change, vowel length, or duration of the pause. They think they are doing so, and honestly do not believe how big a contrast they have to make in order to get the point across. In such cases, “repeat after me” can work wonders.

Vignette 3: Red Light, GREEEN Light

It is a generally accepted principle of impeachment by prior inconsistent statement that once you have confronted the witness with the inconsistency and he has confirmed that you read (or, if oral, quoted) it correctly, you are done – STOP! Do not ask another, “cherry-topper” question (Irving Younger’s “gilding the lily”) such as, “So, were you lying then or are you lying today?” or “So you would agree that you have said two different things about this?” The implied invitation (“explain yourself”) too often leads to (a) the judge permitting an explanation and (b) a pretty good explanation.

My student Aram nods his head in complete understanding of the principle, but then, like most of his fellow students, he asks the “one question too many.” I surmise that the likely reason he did so is that he failed to dramatize the confrontation sufficiently, and so felt that the “pop” the confrontation should have yielded fell flat and sounded more like a “peep.” Dissatisfied, he tried to snatch a pop from a peep with his disastrous further question.

What is missing is the student’s ability to use emphasis and pauses boldly enough. So, to Aram, who is struggling to find his “inner actor,” I illustrate:

After the witness has testified on direct that my client’s Chevrolet had a red light at the intersection accident, I put under the witness’s nose and read aloud his day-after statement to an investigator:

“At the time of the accident, the light was GREEEN ...
for the CHE-EH-EH-VROLEH-EH-EH.”

My voice goes way up on “green” and “Chevrolet”—I take a pointed, drama-filled pause before, and a shorter one after, each of the two words—I say them louder—I sneak a “watch this” look at the jury during the pauses—and I stretch out the vowels.

Aram tries again, but it sounds like this:

“At the time of the accident the light was .. *green* for the .. *Chevrolet*.”

I demonstrate again, and Aram improves to:

“the light was ... GREEN for the ... CHEVROLET.”

But the neon lights around “green” and “Chevrolet” still are not vibrant enough; the pause is miniscule, the words imperceptibly stretched out.

I ask Aram to collaborate with me and risk embarrassment for the gold ring of getting it truly right. I stand behind him and feed him his lines AND his delivery, with him repeating them after me until his volume, his pitch, his pauses, and his vowel lengths match mine. Sometimes it takes many repetitions, while he and the class double up with laughter at the seeming idiocy of the mechanical game. But when I have gotten him way up the dramatic scale, I step away and let him do it solo:

Aram: “At the time of the accident, the light was
GREEEEN ... for the CHE-EH-EH-VROLEH-EH-EH.”
Mr. Witness, I read that right, didn't I.”

The class applauds, confirming that now, at long last, the confrontation has landed with full effect.

Interviewing for Self-Diagnosis, plus “Conducting” the Re-do

Johnson and Hunter stress that silence in and of itself can be a very persuasive technique. After a lawyer describes a particularly dramatic or moving event, his pause for a few seconds to let the jury absorb the full impact of the event can make an opening, closing, or examination compelling. Many students have difficulty applying this technique during their speech-making. First, it can be helpful to ask them why they think that is so—what is their experience of the moment when they try, but fail, to pause long enough. They report that any pauses they take feel like an eternity and must make the jury think they have lost their train of thought. Second, to overcome their physical resistance to the pause, it helps to conduct the “rest” in their recital.

Vignette 4: Wait – Wait – Wait – OK, Go!

Jen, a third year law student, was an enthusiastic and vivid storyteller. Assigned the role of representing a victim who had been robbed at gunpoint, she stood up to give her opening statement. Jen began by describing the event using active description and emotion so effectively that she transported the jury to the house where the victim was held at gunpoint. As Jen described the crime, the jury experienced it. All was great - until she failed to pause. As happens with so many of our budding advocates, Jen ended the dramatic “primacy” paragraph of her opening by immediately launching into, “Hello, my name is Jen _____ and I represent the State of _____,” with barely a breath between the description of a huge gun trained on the victim and “Hi, jurors.”

I stopped her just after her introduction to ask why she hadn't paused, taken a deep breath, and then moved to her self-introduction. Jen responded that pausing scared her, because it took up so much time and space, leaving the jury with the belief that she had lost her place and confidence.

Asking her to set aside her skepticism, I told Jen to start her opening again -- telling the same story, but this time, pausing before introducing herself, and counting out three FULL seconds while taking a deep breath. She launched in, managed to pause briefly at the right spot, then continued with opening statement. When she was done I asked Jen how that felt and she answered that she was sure she had paused a very long time and feared, again, that she had lost credibility with the jury. I asked the jury (her classmates) for their reaction to Jen's second presentation. Their first unanimous comment was that the pause was momentary and felt completely natural. Their second was that they welcomed the break—the chance to let the story sink in before they were hit with the rest of the prosecutor's story (Johnson and Hunter's "echoic memory").

Sensing that Jen was still dubious, I had her deliver her opening again; at the end of her introductory description of the gunpoint moment, I would hold my hand up, during which time she had to remain silent. When my hand went back down, she could continue with her opening. She followed my lead, ignoring the loud, accelerated beating of her heart and her sense that she was pausing for hours. When she later watched the videotape of this speech, including the "conducted" pause, she saw firsthand how much the break enhanced her persuasiveness with the jury.

Push the Student Over the Cliff

If we tap into our students' fears—if we gain their confidence by using the mini-drills and exercises that Johnson and Hunter prescribe—if we share with them that we have had to conquer the same fears and hesitations—then we can give them mini-moments of success they can build into their larger presentations. Sometimes we need to push them to do what they fear most.

Vignette 5: Nobody Ever Died from Using a Bigger Gesture

Sara stood in front of the class, a beautiful, statuesque woman almost six feet tall, long-armed and long-legged. She was comfortable talking to a jury, having developed a clear case theory, the ability to speak colloquially, and an ease with using exhibits that made her client's story come to life. The one technique she had difficulty using effectively was "releasing her gestures." Because Sara feared that spreading out her long arms would look odd, she self-consciously half-released her gestures, using jerky motions, her arms finally coming to a stop at forty-five degrees from her body. The effect was to make her look like an awkward baby colt testing its legs for the first time. While her voice suggested her commitment to the point she was conveying, her arms and gestures minimized its importance and made her appear tentative.

When it was time for Sara to perform a "redo," I suggested that this time, when she began her closing argument with her first, emphatic point, she open her arms wide, ignoring her irrational fear that with outstretched arms her fingers would appear to touch the outer walls of the courtroom. "Let 'em loose,

opening your arms like you're a ballerina. Make your motions fluid, letting each arm float out from your body as far as it will go. And Sara, I promise you, no one ever died from using too big a gesture." She looked at me dubiously, but being a good sport, gave it a try. I had her practice the full wingspan gesture a few times, getting more fluid with each effort. Finally it was time to combine words with her newfound gesture.

Sara once again described the huge pothole in the road her client's car fell into. This time, as her words described the city's negligence, she slowly and smoothly extended her arms away from her body, without any jerky motions, until fully outstretched arms and hands created the HUGENESS of the pothole. As Sara lost her self-consciousness and let her body act naturally, she became a much more persuasive advocate. Her classmates commented on how much more natural she looked when she opened her arms wide in one fluid motion; her gestures now breathed real life into her story and suggested confidence rather than self-consciousness to the jury.

Vignette 6: Internationalizing the Technique

In December 2007 Jay taught American trial skills techniques to a class of undergraduates in Beijing, China. He took time one day to take them through the Ready Position, the basic repertoire of gestures (One-Hand Chop, Two-Hand Chop, Shelf, Give, Hands-Down-It-Didn't-Happen, One-Hand Relax, Two-Hand Relax, On-the-One-Hand-on-the-Other), and the Stance. They all laughed when they admitted that none had noticed him using all of these delivery techniques in his lectures.

After they completed their closing trials, when they all delivered lovely openings, examinations, and closings with full gestures, without random movement, eyes on their audience, and with strong voices, one student asked: "Do all American law students get the training you gave us in voice and gesture, and the Ready Position?" Jay replied, "Only those lucky enough to have Johnson and Hunter visit their schools."

But now we can add: "Any whose teachers read and applyTHIS TERRIFIC BOOK."

Prior to teaching, Jay Leach and Cary Bricker were trial lawyers for 20 years: Jay at Drinker Biddle & Reath in Philadelphia, Cary at State and Federal Public Defenders in Manhattan. During those careers they began teaching as "in-house" trainers for their junior office colleagues, at National Institute for Trial Advocacy programs, and as adjunct professors at, respectively, Temple and Fordham Law Schools. Cary was also Director of Trial Advocacy at Temple from 2002 to 2005.