

The Articulate Advocate

*New Techniques of Persuasion
for Trial Lawyers*

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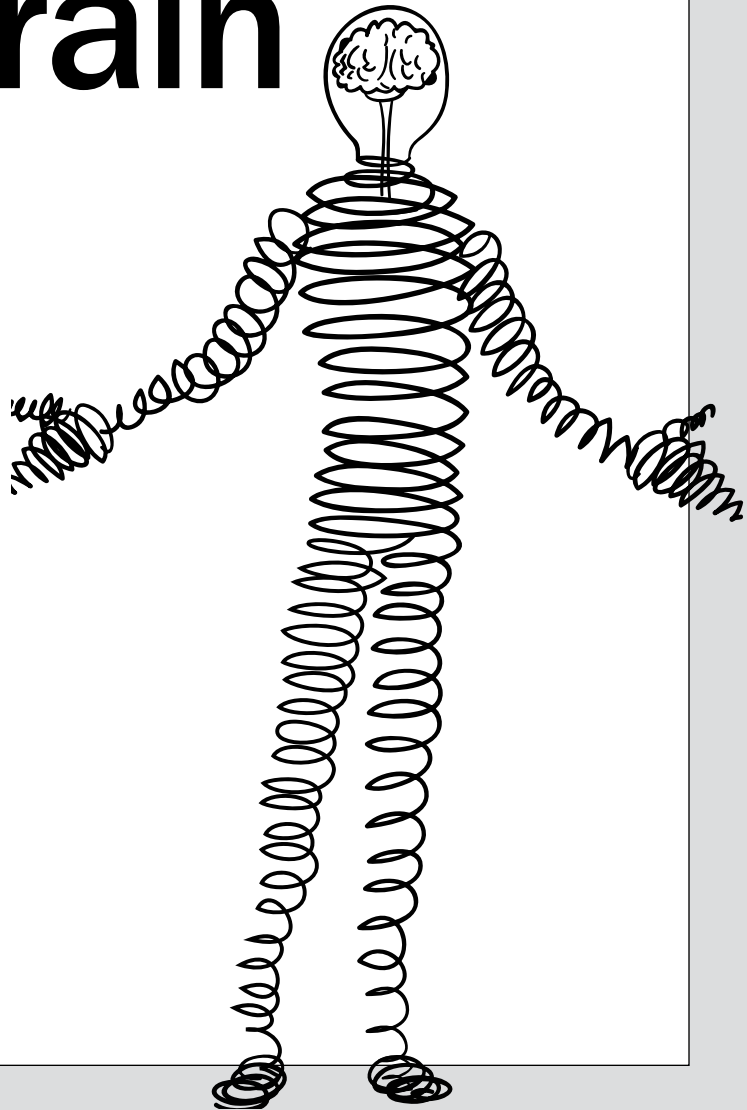
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CHAPTER TWO

Your Brain



Adrenaline profoundly affects your brain as well as your muscles. It is imperative that you understand the impact it has on your cognitive processes, and that you learn how to control and channel its power.

Adrenaline alters how you experience the passage of time. This can help, or hinder, your ability to function as an advocate, as well as your effectiveness in speaking clearly and persuasively under pressure. Adrenaline can be an enemy, by making you more nervous and causing you to speak too quickly, or it might befriend you, by creating the sense that you have plenty of time to contemplate what to say.

Perhaps you've noticed that most public speakers talk too quickly when they get nervous. This happens when adrenaline flows to a speaker's brain. It creates the illusion of a time warp; time seems to pass more slowly. To compensate, speakers often accelerate the pace of their speech, but talking too fast only makes thinking much more difficult for both speaker and listener. When you're under pressure, you need extra time to gather and process your thoughts.

Adrenaline and the Time Warp

Induced by a rush of adrenaline, the time warp is a vital complement to the fight-or-flight energy sent to your muscles. When threatened, you must decide whether to stand your ground and fight, or turn on your heels and flee. It would be ideal if you had lots of time to weigh your options and make the right choice when making a life-or-death decision. But you don't have the luxury of time; you must respond instantly to a perceived threat. In this moment of crisis, adrenaline helps you make the right decision by altering your perception of time's passage. It seems to expand the moment, enabling you to weigh your options and make the best choice. You may have experienced this phenomenon if you have ever genuinely feared for your life.

Consider this scenario: You are driving down the street towards an

intersection. The light is green. Being a defensive driver, you glance left and then right as you approach to make certain that no vehicle is running the red. Suddenly, there it is! A big green garbage truck is barreling towards the red light, speeding right toward your driver's side door. You've got three seconds to save yourself. You think, "*I'm about to die!*"

If you have survived such a moment, you'll recall this feeling of time slowing down. Survivors' accounts of their experiences are consistent: "When I saw that garbage truck, I thought I was going to die! And everything slowed way down." They frequently add: "At that moment, my whole life flashed in front of me!" How, in three seconds, can there be time for your whole life to flash before you? That detailed historical review of your existence occurs as your brain is simultaneously weighing a number of complex alternatives:

Swerve left? No, oncoming traffic!

Swerve right? No, little kids on the sidewalk!

Slam on the brakes? Too late for that!

Speed up? Yes, floor it!

Although scientists cannot fully explain how the time warp works, it's thanks to adrenaline that the brain seemingly has extra time to perform all those complex calculations (involving speed, mass, distance, and even ethics) necessary to assure your safety.

The human experience of time is highly subjective. In everyday life, time appears to pass much faster or slower depending on your circumstances. When you're having a good time, time seems to fly by. If you're bored and watching the clock, time slows to a crawl. Of course, the actual passage of time never really changes: a second lasts one second, a minute lasts one minute, an hour takes an hour.

Your subjective experience of time's passage, whether faster or slower, is also influenced by how much information your brain is processing in any given moment. During an adrenaline rush, as you instantly analyze and respond to a perceived threat, your brain processes information at an unusually high rate. In his classic book *On the Experience of Time*, Robert E. Ornstein refers to studies that found "...the amount

of mental content in an interval determines its subjective duration.” In other words, if your brain is processing increased amounts of information, as it must in a life-or-death situation (or in a jury trial), you may subjectively experience time as slowing down.

Another theory involves heart rate and adrenaline. Ornstein refers to a study that showed “...with more ‘beats’ in an interval, time experience lengthens.” Your resting heart rate is about 60 beats per minute. The regular rhythmic tempo of everyday life is *one heartbeat = one second*. Under the influence of adrenaline, however, your heart rate accelerates dramatically to 120 beats per minute or more. Your brain registers twice as many heartbeats per minute, and therefore twice as many “seconds” appear to pass in a given interval. Paradoxically, time seems to slow down as your heart rate speeds up. Does a doubling of your heart rate make time seem to pass twice as slowly? Time perception is probably too idiosyncratic to permit a general answer.

In the courtroom, you can turn the subjectivity of time’s passing to your advantage. Make it part of your technique; train yourself to channel and exploit the time warp. Rather than allowing it to prompt you to speak faster, use the time warp to give yourself the sense that you have more time to think. Instead of your whole life passing before you, now all available thoughts and words will flash in front of you.

Seeking the Zone of Concentration

Being “pumped,” as athletes are in competition, involves both muscles and mind. Muscles are highly energized, the mind sharply focused. Athletes who learn to exploit the benefits of the time warp refer to this heightened state of concentration as being “in the zone.” While in this zone of concentration, an athlete has more time to make decisions concerning the right moves to execute in order to play the game successfully. The great home run slugger Ted Williams famously exploited the time warp in the batter’s box, though he insisted he was just waiting for “a good ball to hit.” Being in the zone of concentration allowed him

plenty of time to decide whether, and how, to swing at a pitch.

For an advocate experiencing the time warp, silence can be particularly uncomfortable and intimidating. Time appears to pass so slowly that a silence of almost any length seems oppressively long, especially at the beginning of a presentation, when the initial adrenaline rush is most intense.

To compensate for these “long” silences, nervous advocates often rush to fill the void with thinking noises—*uh* and *um*—and they talk too fast. This sets a tempo that is impossible to sustain. Talking fast may fill the silence, but it also eliminates your thinking time. As a result, your brain cannot formulate clear, concise sentences or questions. Even if you could speak articulately at a fast pace, jurors, witnesses, and court reporters couldn’t keep up with you. Although your words might be understood, their meaning is not. For the listener, words spoken too quickly go in one ear and out the other. You cannot be persuasive when your tongue races. Moments of silence are a gift of adrenaline’s time warp. Use them.

How Many Seconds in a Pause?

During video review at a trial skills training program, a lawyer comes to watch the playback of her opening statement. “My performance was terrible!” she blurts out to the instructor. “I couldn’t think of what to say next. The pauses were endless.”

During the playback, the patient instructor quantifies those seemingly endless pauses by counting aloud: “one-thousand-one, one-thousand-two, one-thousand-three.” To the advocate’s amazement, most of her so-called “pauses” last only one second, a couple of them for two seconds. Just one “pause” lasts for three whole seconds!

Existing in the time warp, this attorney’s highly subjective sense of time led her to believe, mistakenly, that her opening

statement had been undermined by supposedly lengthy pauses—pauses that, to the listener, didn't even exist. By the end of the video she is flabbergasted: "That is so weird. While I was standing there, the pauses appeared to be soooo long. But now I hear that they weren't long at all. A silence of only two or three seconds doesn't even count as a pause."

Helpful hint: For jurors listening and existing in real time rather than in the time warp, three seconds last a mere three seconds. To them, three seconds don't even register as a pause, much less a problem.

As it does for athletes in the almost magical zone of concentration, adrenaline's time warp can work for you instead of against you. When you exploit the time warp, your silences will still feel much longer than normal—but in a good and useful way. With practice, the time warp will afford you what feels like an extra long interval to consider what you want to say. Those three seconds of silence feel like twelve. What a luxury to have so much apparent time to think! You've got all the time in the world to choose the right word or formulate your next sentence. You can weigh the merits of ending a line of questioning or delving more deeply into a topic. You've got all the time necessary to choose your next word, respond to an objection, or compose your next question. Silence becomes a valuable tool, an important part of your technique.

Take conscious control of the silence in the courtroom *before* you start to speak. When you first stand up, don't say anything. Pause for a few seconds, and count silently to yourself: one-thousand-one, one-thousand-two, one-thousand-three. It will seem like a long time, but it isn't. Purposefully focus on hearing the silence in the room. Once you've heard it, use it when you speak. Weave short, one-second gaps into your delivery. Say a phrase and stop (silence); say another phrase and stop (silence). At the end of a sentence, and especially at the end of a topic or line of questioning, pause even longer and listen. During that

silence—think! You will find that once you begin to focus on silence and its intersection with speech, you grow comfortable using it.

Exploiting the time warp and its partner, silence, enhances your capacity to think and speak effectively. It also increases the jury's capacity to understand and be persuaded by what you have to say. Silence is a critical component of your jurors' thought process. They need time to think. If you want to persuade people, you need to give them time to reflect. Jurors aren't persuaded by what you say *as* you are saying it; they are persuaded when they have a moment in silence to think about what you just said.

Consider the thought process of your jurors. They are not trained, as you are, to think like a lawyer. One of the challenges of being a juror is to get comfortable with legal issues, legal jargon, and legal concepts. It's foreign territory, cognitively speaking. Jurors need more time than you do to think through what is being said—to grasp your meaning fully, and ultimately to be persuaded. It is only *after* you have spoken that the jury has time to consider your words. The amount of time you require to choose your words is certainly less than the amount of time your jurors need to think about what you've just said. Give them time to think and process, and then form an opinion.

Echoic Memory

In the courtroom, jurors use “echoic memory.” As the word “echo” implies, that is literally what happens in the brain of an attentive listener...

As you speak... *As you speak...*
 the juror's brain... *the juror's brain...*
 echoes back what you say... *echoes back what you say.*

Echoic memory is used routinely in everyday life. For example, if you hear a phone number, you may simply say it aloud as a memory aid—555-1212... 555-1212... 555-1212—until you grab a pencil to write it down. That repetition or echoing helps the brain remember.

During an examination, the echoic memory in a juror's brain might be represented as such:

Q: What do you do for a living?

A: I'm a rocket scientist.

Juror: (*Oh, he's a rocket scientist.*)

Students taking notes while listening to a professor's lecture are engaged in a version of echoic memory. They echo into their laptops or their notebooks the important ideas the professor says. If he speaks too quickly, however, the students are unable to take notes effectively. Whether the listeners are students taking notes or jurors simply taking note of what you are saying, they need time to let your thoughts sink in. The more complex and/or important the information you give your jury, the more time they need to echo it back in their own minds in order to grasp it and be persuaded. When you give your jurors time to think about what you say, you are exploiting *persuasive silence*.

Silence is Golden

At a National Institute for Trial Advocacy training program a seasoned attorney serving on the faculty is demonstrating closing argument. His delivery is exceptional, and his use of pauses—those persuasive silences—is especially noteworthy. Afterward, a participant exclaimed, “Now I understand how effective silence and pausing can be, especially during a closing. His pauses gave us so much time to think about, and be persuaded by, his arguments.”

When another faculty member repeats these compliments to him, he chuckles and confesses, “That’s so funny. I was actually struggling to remember what I wanted to say next. So those pauses were not intentional; they seemed really long to me while I was searching my brain for the next thought!”

Helpful hint: Because of the time warp, silence of any duration feels longer to the speaker than it is to the listener. Use that silence to think about what's next, and give your jurors a chance to process what you've just said.

Thinking On Your Feet

Once you realize that you need time (and silence) to think on your feet, the next step is to understand exactly *how* to think on your feet. Should you read? What about memorization? Can you write out what you want to say? What's so bad about simply reading or reciting everything?

Do Not Read

Do not read to the jury from your notes during opening and closing. Reading is deadly. You may be tempted to do so, thinking that it will increase the chance that your delivery will be perfect. But the only perfection you will achieve is to be perfectly boring! It is unlikely that you have been trained, as broadcasters and actors are, to read aloud skillfully. Reading aloud is an art unto itself, and many actors can't even do it well. (Ever watch the Academy Awards? Some film actors can't read a few lines off a monitor!)

Everyone makes the same cognitive mistakes when reading aloud. You read too fast. You read without natural expression and inflection, burying your nose in your notes. If you decide to read in the courtroom, you will rarely look fact finders in the eye, and you will lack credibility. You will sound and look like you are reading—because you are! Listeners are not fooled by reading. If you wish to persuade people, you mustn't read *at* them, you must talk *to* them.