

The Articulate Advocate

*New Techniques of Persuasion
for Trial Lawyers*

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CROWN KING BOOKS

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Printed in the United States of America on acid-free paper.

Last digit in print number: 0 6 2 0 0 8 5 4 3 2 1

Johnson, Brian K.

The articulate advocate : new techniques of
persuasion for trial lawyers / Brian K. Johnson & Marsha
Hunter.

p. cm.

Includes bibliographical references and index.

LCCN 2008927449

ISBN-13: 978-0-9796895-0-5

ISBN-10: 0-9796895-0-3

1. Trial practice--United States. 2. Public
speaking. 3. Communication in law. 4. Persuasion
(Psychology) I. Hunter, Marsha. II. Title.

KF8915.J64 2009

347.7375

QBI08-600351

Cover and book design by Charles Kreloff.
Illustrations by James Kacherlies and Jeanne K. Blahut.

Crown King Books
P.O. Box 4333
Prescott, Arizona 86302
www.crownkingbooks.com

Introduction

There are so many ways to persuade juries. One trial lawyer has a personal style full of folksy charm, while another argues issues with the tenacity of a pit bull. One lawyer strides dynamically throughout the courtroom, yet another stands absolutely still. One fills the courtroom with a booming voice, while another proves that *less is more* and speaks to the jury in more measured tones. One gestures frequently, another only for emphasis. One goes for the jugular on cross-examination, while another courteously destroys the credibility of the opposing witness and kills with kindness. All of these styles are effective. What an advocate needs to develop, therefore, is a distinctly individual, persuasive style.

Above all, an advocate's style must be personal. You cannot simply mimic what works for your colleagues or your mentor or your opponents, although these role models may be inspiring. Your personal style is a unique combination of elements involving the control and coordination of your body, your brain, and your voice. To discover—or polish, if you are well along in your career—your identity as an articulate advocate, you must experiment with all the varied stylistic elements of courtroom presentation and find those that suit you. Because no single choice works all the time, or under all circumstances, your style ultimately will consist of many diverse elements reconfigured and adapted to meet each advocacy challenge appropriately. In fact, all of the stylistic elements listed in the previous paragraph might describe a single advocate at different phases of trial.

Persuasive style is not based on pretending, acting, or faking it; you must look, sound, and feel authentic to be believable. It may seem logical simply to tell yourself to “be natural” or “be yourself,” but that is only part of the solution—for the challenge of being natural is complicated by a surprising paradox.

The Paradox of Naturalness

The word “natural” has many definitions: here it refers to the way you speak, think, and behave regularly and consistently in the course of daily life. If you do something often, it’s natural; if you don’t, it’s not. Paradoxically, some of these *natural* behaviors will make you look and feel *unnatural* in court. And as an advocate you need to consciously employ certain *unnatural* behaviors to look and feel *natural*. What a paradox! To complicate the issue, most people are not aware of their natural behaviors because of this pair of opposites in human behavior: When you are *natural* you are not *self-conscious*. When you are *self-conscious*, you don’t feel *natural*. Therefore, you can’t just tell yourself to “be natural” in court, because it is unlikely you are fully *conscious* of what your *natural* behavior is. What you need is technique.

Your Body

Consider some of the physical behaviors you display while engaged in everyday conversation. As you speak with a colleague, you unconsciously exhibit certain mannerisms. Perhaps you push your eyeglasses up on your nose, or brush your hair from your face. You may jingle the change in your pocket, fiddle with a pen, or shift your weight back and forth from one leg to the other. Neither you nor your colleague is likely to be aware of, or distracted by, these behaviors. They are normal, unconscious, and natural.

Now imagine that you’re standing up in court to address the jury. You tell yourself to be natural, and your body follows that instruction exactly. The jury watches you shift your weight back and forth, push your glasses up on your nose, brush your hair from your brow, fiddle with your pen, and jingle the change in your pocket. Do these behaviors make you look “natural” to that jury? No, far from it.

Under the intense scrutiny of the courtroom, the paradox of naturalness emerges and causes your perfectly normal behaviors to look unnatural. When energizing adrenaline gets added to the experience,

your body unconsciously engages in these natural actions with extra vigor. More frequent rocking, shifting, pushing, brushing, fidgeting, and jingling make you look increasingly uncomfortable and unnatural. In the courtroom—where a certain level of formality and self-control is expected—the natural mannerisms that go unnoticed elsewhere appear conspicuous and unnatural. Thus the paradox! Clearly, “being natural” is the wrong method for discovering your personal style.

Your Brain

Another example of this paradox relates to your thought process. How often do you turn to someone you know well and ask questions to which you already know the answer? When was the last time you asked a good friend or colleague an extended series of questions beginning with, “What’s your name? Where do you live? Are you married?” If you asked such questions, your friend would think you were suffering from temporary amnesia. Because you already know the answers, such questions seem decidedly odd.

Yet those are precisely the questions you ask your witnesses during direct examination. You ask questions to which you know the answers—indeed, *only* questions to which you know the answers. Your questions must be worded correctly, asked with appropriate curiosity, and sound spontaneous. Your examination should be as effortless as a natural conversation, not scripted and rehearsed.

Your Voice

You must be able to speak loudly enough for your voice to fill the courtroom. If you are a soft-spoken person by nature, this may feel completely unnatural to you. Yet, should the judge bark, “Counsel, speak up. We can’t hear you!” you can’t respond, “Sorry, your honor, that wouldn’t be natural for me.” Authoritative audibility is required in advocacy, whether it is natural for you or not. Further, you must be

able to control the pace at which you speak; rid your speech of “thinking noises;” assess how emphatic your most persuasive arguments are; and choose the right word when the pressure is on. The ability to make conscious decisions about using your voice and speaking with finesse is a job requirement for trial lawyers.

Technique

Clearly, just “being yourself” won’t make you a persuasive advocate, nor will instructing yourself to “be natural.” To discover your authentic, personal style, you need a solid technique that will provide you with reliable answers to all those challenging questions about how to look, sound, and feel natural in the courtroom. How you control your body influences your ability to use your brain to think clearly and your voice to speak persuasively. As you develop and refine this technique, you pass through self-consciousness to self-awareness, and finally, to self-control. Once you have mastered a technique, the skills of trial advocacy become second nature.