

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

Visualize Your Performance

Sports psychologists advise athletes to visualize their actions prior to competing. Athletes practice what they call “mental rehearsal.” The Olympic skier imagines the moment when the buzzer sounds and she pushes off to plunge down the mountain in the giant slalom. The sprinter sees the moment when the starting gun goes off and he explodes out of the starting blocks. As an advocate, you can sit at counsel table and visualize the initial gestures you practiced. Visualizing an action that has been ingrained through practice frees you to gesture with even greater skill and confidence.

Athletes warm up and loosen up physically until right before a competition commences. Sitting in a courtroom, you don’t have that same luxury. You may have to sit at counsel table for a long time before you get to stand up and speak. Even if you warmed up prior to walking into the courtroom, sitting for a long time will cool you down again. Visualization will help you to be ready when finally the judge says, “Counsel, you may proceed.” As you sit there, think of the words you will say at the very beginning. See in your mind’s eye the gestures you’ll use to accompany those words. Hear the pace of speaking in phrases in your mind’s ear, and see the slow, smooth gestures that will accompany those words in your mind’s eye. Athletes use this visualization technique to win medals; you can use the same technique to win verdicts for your clients.

Prosody: The Music of Natural Conversation

Prosody is a general term for the musical elements of everyday speech. It encompasses tempo, rhythm, loudness, silence, and intonation. These musical elements interact with syntax and meaning as you speak. We have examined some musical features already: tempo or pace, and emphasis on key words lends a natural rhythmic cadence; loudness; and

silence. This leaves intonation as the final element of prosody necessary for persuasive speech.

Intonation refers to the up-and-down movement of the musical pitch of your voice. This movement creates the subtle melody of natural speech. We have touched on the dreaded monotone, which lacks all melody or movement. Let's explore the desirable, persuasive alternative. No matter whether your voice is naturally pitched higher (soprano or tenor) or lower (alto or bass), you instinctively use a range of musical pitches as you speak, encompassing a lower, middle, and upper register. To speak persuasively you need the technical ability to make periodic choices about the intonation and pitch of your voice.

Fortunately, much of the necessary variation of intonation or pitch results from simply emphasizing key words in a phrase or sentence. The very act of emphasis leads your voice to vary the pitch appropriately. That being the case, now focus your attention on the intonation or pitch direction of your voice at the end of a sentence or question. Whether your voice is descending to a lower pitch or ascending to a higher one as the sentence or question ends, intonation affects the persuasive power and meaning of your words.

Walking Up and Down the Steps of Intonation

Compare the movement of your voice's pitch at the end of a sentence to going up or down the steps of a staircase. When your voice descends to a lower pitch, it seems to walk down the steps, and when it ascends to a higher pitch, it walks up the steps. Imagine that your voice has three levels, like a house with a main floor, basement, and attic. The middle pitches are the main floor where you spend most of your time. Your voice also has a basement and an attic where you go once in a while, but you don't spend as much time there as you do on the main floor.

Here is a familiar example: your voice naturally indicates finality by walking down the steps to a lower pitch. Say aloud the final phrase of the *Pledge of Allegiance* and listen to your natural intonation:

...with liberty and justice for all.

Because that is the end of the *Pledge*, your voice naturally indicates finality and closure by descending to a lower pitch. The descent provides audible punctuation, with the pitch of your voice placing a period at the end of the sentence:

...with liberty and justice for all [period].

To make this stepwise descent visual, we can notate the downward, stepwise progression like this:

...with liberty and
 justice for
 all.

Say this example aloud several times until you can confidently make your own voice walk down the steps. Once you can manipulate your voice in this way, use that same pattern, walking down the steps as you say:

Ab-so-
 lutely
 not!

Here is another familiar example of this descending pitch pattern. Broadcast journalists on radio and television walk down the steps at the end of every news report when they sign off by saying their name, news organization, and location. That descent looks and sounds like this:

Cokie Roberts,
 ABC News,
 Washington.

Imitate this familiar pattern. Sign off as a broadcaster, walking down the steps in this descending pattern. With that intonation pattern confidently in your voice and ear, use it to say:

The defendant
refuses to take
responsibility.

Walk down the steps as you say:

Use your
common
sense.

As you descend to a lower pitch, don't force your voice into an uncomfortable or unnatural range. These variations in pitch take place within your natural vocal range and should not sound forced or artificial. If they do, you are pushing your voice too low.

In a subtle yet significant way, walking down the steps at the end of a sentence conveys confidence and finality. If you expect to persuade your jury, you have to sound like you believe what you are saying and are confident in your case. This pattern helps to achieve that goal.

The other advantage to walking down the steps is that the finality suggested by the descending pitch buys you some extra time to think about what to say next. Both to your jurors' ears and to your own, that descending pattern signals a conclusion. The sentence is finished. Period. Your jury has a little extra time to think about what you just said. The sound of finality will help you mind the gap between sentences because this intonation pattern makes the brain less inclined to fill in the gap with a thinking noise.

Walking down the steps is especially useful at the beginning of a presentation when you are tempted to talk too quickly. Walking down the steps will help you mind the gap, speak in phrases, and emphasize key words. Here's a printed notation of this pattern:

Compose your sentence
a phrase at a time,
and on the final phrase
walk
 down
 the steps.

Say that aloud, and do what you are saying.

If you begin a courtroom presentation with a series of sentences that end with this descending pattern, you immediately convey a sense of confidence and control. This puts you at ease as you employ the melody of power and persuasion, and also buys you time to think. And when you have enough time to think, you can say what you want to say clearly and persuasively.

Ending with Confidence

The law of primacy and recency tells us that listeners pay close attention to beginnings and endings. If endings are as important as beginnings, then you need a technique to signal reliably that you are finished. Whether saying the last sentence of a speech or the last question of an examination, walk down the steps to indicate that you are concluding. To reinforce the sense of finality, walk down the steps and slow down: go slower as you go lower. This powerfully conveys the message that you have finished.

You might end your opening statement with this plea:

Members of the jury, at the end of this trial we will ask you for
a verdict in favor of
 Acme
 Industries.

Say that aloud and end the sentence by going slower as you go lower. Keep the volume up until the last word. Don't confuse lowering your

pitch with lowering your volume. Walking down the steps is also the intonational pattern of the leading questions you will most often use on cross-examination.

Walking Up the Steps

Walking up the steps takes the voice to a higher pitch at the end of a sentence, and this conveys a different meaning. This is the melody of exclamation, when your voice rises to a higher pitch. We indicate that additional energy on the printed page by ending the sentence with an exclamation mark: “I am shocked!” Spoken, it looks like this:

I
am
shocked!

Speak that example aloud (with the requisite energy) and make your voice walk up the steps. Try this example of the audible exclamation mark used in conversation when you jokingly exclaim to a friend:

You are
out of your
mind!

Walking up the steps is a pattern you will use less often than walking down the steps. If you overuse it you may sound like the stereotypical used car salesman. In fact, this pattern is used excessively in television commercials. Think of the huckster in the late night infomercial braying:

I
guaran-
tee it!

But walking up the steps is useful in court. Use it to energetically declare your theme at the beginning of opening statement:

choices!
case about
 This is a

You could also walk up the steps in closing argument. Walk up the steps as you say aloud to an imaginary jury:

guilty!
 is not
 Mr. Nelson

The additional energy of walking up the steps builds momentum, and establishes at once that you are wholly committed to what you are saying. It can also be a useful technique in the middle of a lengthy opening statement or closing argument when you need to add some energy and spark to regain the jury's attention. Walking up the steps provides an intentional infusion of vocal energy to win back a listener's wandering attention.

Don't fear that you'll be constantly thinking about the upward or downward intonation of your voice at the end of every sentence you utter. You won't. Only periodically will you consciously use a rising or falling intonation for the specific, persuasive purposes of adding energy and enthusiasm (by walking up the steps) and adding finality and conclusiveness (by walking down the steps).

The Questioning Curl

How would you say this monosyllable:

“Huh?” ↶

This melody sliding upward, sometimes called an uptick, has different linguistic uses. Beware—use it carefully, because if it creeps into your language when you aren't paying attention, it can make you sound

unsure of yourself. Listen to what happens to the sound of the vowel as you speak. When your voice slides upward on the vowel sound of a word, the sound suggests a question, right? Right? We call this intonation pattern the questioning curl because the musical pitch curls upward at the end. Say these phrases aloud and hear the difference between the questioning curl on the vowel of the final word, and walking down the steps in response:

Am I right? ↶

And the affirming answer:

You are right. ↷

Or more graphically...

You
are
right. ↷

It is important to understand the difference between walking up the steps to the exclamation mark and the subtle upward slide of the questioning curl. The difference is the upward curl or slide of the pitch on the vowel. This curl does not happen when walking up the steps to the exclamation.

The questioning curl can turn a declarative sentence into a question. The declarative:

You went home.

with a questioning curl on the last word becomes:

You went h
o
m
e? ↶

Say these two examples aloud and hear the difference.

Use the questioning curl when asking open-ended questions that begin with the interrogative words *who*, *what*, *when*, *where*, *why*, *which*, or *how*. Ask the following questions aloud, and as you do, end each one with the questioning curl:

Who were you with? ↷
What did you do? ↷
When did you return? ↷
Where did you go? ↷
Why did you go there? ↷
Which route did you take? ↷
How did you get home? ↷

You also can ask these same questions by walking down the steps with your voice. Say the questions aloud, walking down the steps as you do so. Then repeat them, and walk up the steps. Walking up the steps, when asking an open-ended question, adds a sense of urgency to the delivery, as when a parent interrogates a child.

Who were you with?
What did you do?
When did you return?
Where did you go?
Why did you go there?
Which route did you take?
How did you get home?

Ask these questions one final time, but this time mix up your choices and use all three options: walk up the steps, walk down the steps, and use the questioning curl. Hear the subtle melodic differences. Don't be surprised if you find this challenging. Many people have never thought about the musical pitch patterns of speech, much less attempted to control and manipulate those patterns. It simply takes some practice to get the feel of it.

Curling and Listing

When you say a list of items aloud, your voice does the same kind of upward curl on the vowel sound of each item in the list.

Go to the store and get some milk, ↷ eggs, ↷ bread, ↷
and coffee. ↷

Say that sentence aloud and hear how your voice slides upward on the vowel sounds of "...milk ↷, eggs ↷, bread ↷..." and then finally descends on the last word of the list: "coffee ↷." This is our natural way of making an audible list, with the curl at the end of each item in the list indicating to the listener that more is coming.

This listing intonation can affect your voice unconsciously in trial advocacy: the questioning curl can make you sound unsure of yourself. When you first begin to speak, your brain begins to tick off items on your mental list of things you need to say, including the opening boilerplate. First on the list is the request of the court: "May it please the court?" Next is the acknowledgment of your opponent, "counsel," and the jury, "members of the jury." Because the brain conceives these introductory formalities as a list, an upward inflection just like the questioning curl is used for every item on the list:

Robert Cooper ↷ was in the wrong place ↷ at the wrong
time ↷.

Once established, this list-making, upward intonation pattern is apt to be extended into the first substantive sentence and potentially through the entire opening paragraph.

May it please the court ↷
Counsel ↷
Members of the jury ↷
My name is Jane Doe ↷
Counsel for the defendant ↷

Although there is no conscious intention on the advocate's part to ask a series of questions or convey a lack of confidence, the listing inflection gives that impression. The jury's first impression is that this trial lawyer isn't very sure of himself. In fact, he sounds like he is questioning virtually everything being said, including his own name and his client's! So beware of the trap lurking in the repetitive listing inflection. To avoid this problem, use the introductory boilerplate as an opportunity to consciously and confidently walk down the steps.

Robert Cooper ↷
 was in the wrong place ↷
 at the wrong time. ↷

May it
 please the
 court, ↷
 counsel,
 members
 of the
 jury ↷.

My name is
 Jane
 Doe,
 counsel
 for the
 defendant. ↷

This short-circuits any listing tendencies, and gets you started confidently, in command of the courtroom.

Along with the expressions *like* and *you know*, the upward curl is another form of the accent of adolescence. The repetitive use of the rising inflection at the end of declarative sentences suggests lack of certainty, confidence, and maturity. If you wish to be taken seriously, expunge this vocal habit from your courtroom delivery as well as your

professional conversational style. To avoid questioning yourself, beware the questioning curl.

Tone as a Tactical Choice

Chapter Two discussed the need to pick an attitude, and then make that attitude a tactical choice. When you don't pick one, you will default to the general attitude of "serious"—and serious, although appropriate to the courtroom, quickly becomes boring and bland.

We have been using the word "pitch" to describe the musical pitch of your voice, whether high or low. The word "tone" can be synonymous with pitch, as it is when we discuss avoiding a monotone delivery. However, here we use "tone" to mean that element of vocal delivery that reflects the attitude of the speaker, as when we say that someone used a curious or scornful tone of voice.

Together, attitude and tone constitute the underlying, driving energy of your vocal delivery. Once you choose an attitude, your tone of voice adjusts to fit it. They go hand in hand, and both should be used consciously. If, for example, you choose to conduct a "soft cross" on a sympathetic older witness, you may choose "respectful of elders" as your attitude. Your tone would be deferential, measured, not too loud, and never impatient. Should the witness become difficult, however, you might change your tone to be firmer, respectfully at odds, or somewhat louder. Your attitude could stay the same by using phrases like, "with all due respect, sir..."

Practicing Verbal Skills

Fortunately, you speak every day of your life, and this affords you abundant opportunities to practice regularly outside the pressurized environment of the courtroom. For example, you can practice eliminating thinking noises during a casual conversation with a friend. That