The Articulate Advocate

Persuasive Skills for Lawyers in Trials, Appeals, Arbitrations, and Motions

SECOND EDITION
Great lawyers come in all shapes and sizes, but they share the ability to capture the essence of an idea and express it in ways that convince others of the idea’s inherent strength and persuasiveness. The power to persuade is essential, and the development of that skill is critical to anyone who hopes to have a successful and rewarding career as an advocate.

This is hardly a piercing observation; however, speaking as someone who has taught attorneys how to be advocates for over twenty-five years, I can tell you that two things have changed greatly in the world of advocacy education. The first is our understanding of the blend of scientific rigor and individual personality that enables us to persuade others, and the second is our awareness of the need to apply those skills in a variety of settings, only one of which is a jury trial.

Thirty years ago, opportunities for lawyers to try cases in the early years of their careers were far more abundant. I tried a federal jury case—by myself—as a very junior lawyer. While that didn’t happen every day, it was not unusual for young lawyers to amass a lot of courtroom experience long before they became partners in a law firm. Now, opportunities for lawyers to get into the courtroom—at any stage of a career—are so few and far between that law firms routinely pay for young associates to take public interest fellowships in order to give them pro bono trial experience not attainable in cases for paying clients. And because fewer cases go to trial, the stakes are usually higher, and clients are more focused on experienced trial lawyers. It is more important than ever for lawyers to be skilled and persuasive advocates, and it is less and less common to have the opportunity to learn that on the job.
The Investment

The difference between ordinary and extraordinary is that little extra.
—Jimmy Johnson, American football broadcaster and former player, coach, and executive

Few people are born with the ability to effortlessly think and speak publicly, and with fewer opportunities for courtroom experience, it is up to practitioners to get the training we need and up to leaders to ensure that our lawyers have a way to develop their skills. This is necessary to provide the best possible client service, but it is also necessary to retain the best attorneys—the perfectionists who are always looking to improve their skills and obtain any advantage they can on behalf of their clients.

Providing our attorneys with the best training possible is what turns our great associates into partners that uphold our traditions of excellence. In a business where you are only as good as your last case, we can’t afford to staff any case with anything less than our best, and we need to raise that bar every time. It is that need for constant excellence and reliable improvement that has led Morgan Lewis to turn to Brian Johnson and Marsha Hunter for more than a decade to work with our lawyers on honing their advocacy skills—whether they are taking a deposition, arguing a motion, trying a case, or even speaking to a group of clients or colleagues.

We are not alone in this. Brian and Marsha support dozens of programs around the country. Among other things, they are responsible for training new Assistant US Attorneys at the Department of Justice National Advocacy Center, and since 1988, they have kicked off the National Trial Skills Session for the nation’s premier legal advocacy skills training program, NITA.

Taking a weeklong program with Brian and Marsha is a career-changing event in the lives of their participants. The skills and tools they give you stay with you indefinitely, and I can often tell when someone has had the benefit of their guidance. Not everyone has that luxury, and this book fills the gap for those who want to invest in their skills but don’t have access to the in-person or online training program.
The Science Behind the Art

Any fool can know. The point is to understand.
—Albert Einstein

Effective advocacy is both an art and a science, and Brian and Marsha have invested decades in breaking down the elements necessary to understand that science behind the art. The book starts out talking about the importance of being authentic. Brian and Marsha know that you can’t convince others of anything if they don’t believe in your sincerity. Being authentic or natural when speaking to a jury or cross-examining a witness is easier said than done, but it is critical if you are going to persuade the fact finder.

To help you communicate that authenticity—not only to be natural, but also to be recognized as such—Brian and Marsha use science to unlock the art of your personal style. They focus on understanding what is going on with your body when you are publicly speaking and help you control it consciously. The Articulate Advocate explains the science of why you talk too fast and why you say “um” fifteen times during your argument. The book then goes a step further to tell you exactly what to do to slow down and eliminate those “thinking noises.”

Part of my personal style has always been the use of analogies to translate arcane concepts into human values that a jury can rapidly understand, and so it was with great joy that I read the various case studies and analogies that convey practical and helpful tips on applying the skills taught throughout this book. Brian and Marsha’s focus on the use of a “performance ritual” to get your body, brain, and voice under control uses the story of a 72-year old retiree, Dr. Tom Amberry, who made 2,750 consecutive free throws on the basketball court without a single miss. How? Dr. Amberry says his mental and physical ritual before each shot gave him control and consistency. Brian and Marsha explain that a consistent “pre-game” ritual can give you the same success in the courtroom, and they help us create and refine our own physical rituals. When they are done, the way that you position your body or gesture with your hands will be second nature, increasing your focus on what you want to say and how you want to say it.
Real-life examples and practical, detailed solutions like these enable you to solve specific problems, while still allowing room to customize those solutions to suit your personal style, whether you are a first-year associate just starting out or a twenty-year veteran prosecutor looking for that extra edge.

**Practice Makes the Master**

*We are what we repeatedly do. Excellence, then, is not an act, but a habit.*

—**Aristotle**

At the end of the day, advocacy is often the art of the practical. People support what they can understand, and their basic concepts of fairness and honesty drive the practice of law. Brian and Marsha understand this, of course, and their book excels at pragmatic advice.

It is a universal truth that practice makes perfect, and *The Articulate Advocate*’s last two chapters give you detailed instructions not just about the skills needed, but also how to practice those skills (think conscious breathing) and apply them in real-life advocacy situations, including exercises to try if you speak too softly, can’t stand still, or have bad habits like saying “okay” after answers on direct examination, among others. And the book is structured with the pragmatism that comes from training thousands of busy, type A professionals, with summaries at the end of each chapter and appendices that serve as helpful refreshers you can refer to time and time again.

This book is an essential part of the tool kit for anyone who really wants to be a skilled advocate. It is an investment in you, your career, and your clients. If you cannot attend training with Brian and Marsha in person, this book is the next best thing. And if you are one of the lucky among us who has benefited from that training, the book serves as a great refresher!

**Jami Wintz McKeon**

Chair, Morgan Lewis