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Public speaking and the art of persuasion

WOULD YOU RATHER FIGHT A MOUNTAIN LION THAN SPEAK TO A LARGE GROUP OF PEOPLE (OR A JURY)?

As you rise to speak, your hands tremble and your palms feel sweaty. You step forward, but your knees are flimsy. You utter your first words, but your voice cracks. You stop to catch your breath, but your throat constricts. You try to compose yourself, but you have forgotten what you were saying.

If any of this sounds familiar, you are not alone. For all its sophistication, the brain draws little distinction between speaking to a large group of people and being attacked by a mountain lion. Both of these perceived "dangers" tend to trigger a "fight-or-flight" response.

When confronted with a perceived threat, an ancient part of the brain known as the amygdala sends a signal to the hypothalamus, which activates the autonomic nervous system and directs the adrenal glands to release the stress hormone epinephrine into your blood stream.

You have likely heard of epinephrine by another name – *adrenaline*. As adrenaline circulates throughout your body the heart pumps blood faster and breathing becomes shallow and more rapid. These and other physiological changes provide vital oxygen to your muscles and your brain, heightening your senses while preparing your body to confront the challenge that lies before you. Unless the adrenaline rush overwhelms and debilitates you first.

At the center of our reaction to an adrenaline rush lies the key difference between the novice and expert public speaker. The novice will lean on a "flight" response. Losing sight of the task at hand, the mind becomes preoccupied with an insatiable desire to escape the limelight as soon as possible. That tendency is a natural outgrowth of social anxiety and the fear of being judged. We are social creatures by nature. All of us want to be loved and accepted by those around us without judgment, embarrassment, or exclusion.

So how does the expert public speaker cope with and even *thrive* under these stressful conditions? Are they simply immune to that fear and anxiety? Absolutely not.

Every public speaker tends to experience the same fight-or-flight response every time we speak to a large group of people. But seasoned public speakers have discovered the truth about the body's stress response: If you embrace it, it can enhance your performance. Simply put, expert public speakers have learned that adrenaline is their most *powerful* weapon, providing energy to channel into their performance and keeping their audience engaged.

By learning the techniques and psychological underpinnings of persuasion, the public speaker slowly builds the confidence that makes a "fight" response more attractive than "flight." Eventually, harnessing the adrenaline becomes second nature and even enjoyable to the speaker.

From Aristotle to Trump: The art of persuasion has not changed

In his seminal work on *Rhetoric*, Aristotle set forth three essential components of effective persuasion: *ethos*, *pathos*, and *logos*. Today, these elements of persuasion are so well-established that they are routinely explained to students in introductory marketing courses and used by speechwriters and legislative aides to assist politicians in selling their policy priorities to a skeptical electorate. So what are they?

Ethos or "character" is your perceived likeability and credibility

It is no coincidence that this article begins with a second- person account of the mental and physiological effects of public-speaking anxiety. The second-person point-of-view was purposely used to make the reader visualize or simply remember an experience of public-speaking anxiety and its corresponding adrenaline rush. When second-person language is used (e.g., "Your hands tremble," "your voice cracks," etc.), it activates regions of the brain associated with memory, or imagination and empathy in the absence of first-hand memory.

When done correctly, the visual centers of the brain spring to life, creating

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an immediate image of the circumstances being described. If the image is also networked to real-life memories and experiences, the reader may even begin to feel the anxiety and its corresponding physiological reactions all over again.

The rhetorical invocation of a second-person perspective is a powerful tool of persuasion. Precisely because this type of visualization is so powerful and persuasive, it is generally prohibited in trial practice. Using this technique at trial by asking the jury to place themselves in the shoes of a witness or party can get you on the fast-track to a mistrial or an appellate reversal.

But there are subtle methods for evoking the same visualization without running afoul of those rules, such as beginning a narrative with the word "imagine" or the phrase "picture this" before proceeding with the story using third-person rhetoric (e.g., "Mr. Smith did this" and "Mr. Jones did that"). Both rhetorical devices can have the desired effect of triggering the visual centers of the brain. Skilled deployment of narrative structure and storytelling technique tends to have the same effect.

The core components of *ethos*, credibility and likeability, are intimately related, yet also somewhat at odds with one another. Stay too humble about your experience and achievements, and your audience may question your competency or your credibility. Say too much about them, and you may be perceived as arrogant, which makes you unlikeable no matter how competent you may appear.

Striking the proper *ethos* balance is of particular concern for trial lawyers. Jurors tend to harbor a wide variety of stereotypes about lawyers that are decidedly unhelpful to credibility and likeability. We are often perceived as elitist, rich, dishonest, intimidating, condescending, and manipulative (among many other pejoratives).

Hence, as trial attorneys we all start with a significant *ethos* deficit the moment we set foot in the courtroom, and we must be mindful of building trust with our audience without over-reaching and inadvertently reinforcing any of these stereotypes. So how do we do this? The following is a non-exhaustive list of ways you can improve your *ethos* when interacting with a jury that are applicable to any situation where you are attempting to persuade others.

Tell the truth

This one may seem obvious, but it is about more than refraining from speaking outright falsehoods. It is about being vulnerable and honest about your own flaws. If you get flustered and lose your place in the course of your opening statement, try reframing this as an opportunity to bond with your audience and build up your own credibility by just telling them what's really going on. Simply pause, take a deep breath, and say something like: "I'm sorry, folks. The truth is that this case is very important to Mr./Ms. [name of client], and it's very important to me to share their story with you to the best of my ability. But I'm feeling very nervous that I may screw that up, and that made me lose my place." Take a deep breath, refer to your outline if needed, and resume your delivery.

It is unlikely you will be able to shatter years of negative stereotypes about attorneys. But using this technique will provide a powerful counterexample that demonstrates you may be the exception to the rule, a vulnerable human being who makes mistakes and is too hard on themselves (just like the rest of us).

Telling the truth also means being honest about the flaws in your case. Few things will harm your credibility more than the jury hearing about the bad facts for the first time in your opponent's opening statement. This sends a message that you hide things from the jury when you find them harmful, reinforcing stereotypes that you are manipulative. It is far better to set aside a segment of your presentation to address and rebut your adversary's points before they have a chance to make them, a process referred to as "inoculation" in debate theory.

"Inoculating" your bad facts carries significant benefits beyond merely building *ethos*. Preexisting beliefs are literally hard-wired into our brains. Once a person has formed a belief, it colors their perception and cognitive processing of new data. If you present facts or evidence in an attempt to rebut a preexisting belief, your audience is far more likely to engage in a series of cognitive counter-measures to reject the new information while retaining the existing belief.

Preeminent trial-skills consultant and trial attorney David Ball refers to this phenomenon as "primacy of belief" to distinguish it from the concept of "primacy and recency," which is the psychological phenomenon whereby people tend to remember what they saw or heard first and last better than what was in the middle. As plaintiff's counsel, we have a decided advantage when it comes to each of these psychological phenomena, as we are both the first and last to speak to our audience at trial.

By "inoculating" bad facts, we get an opportunity to frame the beliefs that jurors will form around them. If we rebut the bad facts effectively, or at least acknowledge them and explain why they are insufficient to overcome the compelling story we have to tell, we get the benefit of these psychological phenomena and place the burden back on our adversaries.

Keep your (opening) promises

Opening statement is critical to building *ethos*. Every fact you recite, every piece of testimony you quote, and every document you reference is more than just a cold recitation of the evidence – it is a commitment and a promise to the jury that they are going to hear and see *precisely* what you tell them they will hear and see.

This is not the time to "interpret" or "spin" the evidence for the jury. It is not the time to argue your case or the inferences that should be drawn from the evidence. Setting aside the rules that prohibit you from doing this, it is also largely ineffective precisely because you do not have any *ethos* yet. Stating anything controversial, anything upon

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which reasonable minds may disagree, or anything that you are not certain is admissible is a huge gamble and ill-advised.

Suppose that document with a potential hearsay problem gets excluded. Who misrepresented to the jury that it was coming in? If a witness uses different phrasing that changes the meaning of a quote, points out that you took it out of context, or otherwise offers a reasonable explanation for what was said that conflicts with your story, who has attempted to mislead the jury?

Channel your inner Joe Friday and try to give them "just the facts." That does not mean a dry, emotionless recitation of the facts. You still want to structure the facts in a compelling narrative format that engages and persuades. You should try to the maximum extent possible to rely on facts that are undisputed or indisputable, acknowledge factual disputes or differing interpretations when they exist, and omit or at least qualify evidence you know has questionable admissibility (e.g., "you may even see an email that says…").

If you know there are witnesses or documents that may get cut from your presentation, leave them out of your opening statement. Once you have decided to cut them from your opening, consider chopping these bits of evidence from your case-in-chief regardless of time constraints. Value *brevity*.

If instead you overreach in your opening statement, be prepared for defense counsel to stand up in closing argument and methodically rattle off all the facts, witnesses, and documents that you never presented to the jury despite promising that you would. If you should find yourself in this unfortunate circumstance, remember that it is best to deploy "inoculation" in your own closing to preempt the sideshow you know is coming.

If you have kept all your opening promises and it is your opponent who has failed to do so, do not hesitate to use the above technique. A somewhat riskier twist – consider saving this technique for your rebuttal argument when opposing counsel has no further opportunity to respond. When combined with a few key examples of defense counsel distorting the record in their closing arguments, you can eviscerate your opponent's credibility beyond repair and ensure that yours is the only voice heard in deliberations.

Convey confidence

We tend to believe people when they seem to believe in themselves. Many novice public speakers tend to hide behind the podium, hold their hands closed in front of their own groin (i.e. the "fig leaf" position), avoid eye contact, and pace uncontrollably.

These are common coping mechanisms for public-speaking anxiety. Pacing and other fidgety behaviors are a side effect of one's lack of familiarity with the adrenaline rush. The fight-or-flight response channels more blood and oxygen to your muscles for a reason – to *move*. The problem with these behaviors is that they also convey fear, and your audience may mistakenly believe that you are afraid because you do not actually believe what you are selling. But once adrenaline is recognized and befriended as a gift of energy, the nervous tendencies become clear and can be managed.

With a little practice, you can learn to channel the same energy into *ethos*-building presentation techniques that strengthen rather than hinder your performance. The following are just a few of the ways you can convey more confidence in your delivery.

Put your notes down. By the time you speak to a jury, you should know your case cold. If you do not, taking the time to learn your case in advance will go a long way towards reducing anxiety and providing a much-needed sense of control. Further, a script is rarely helpful. Reading makes people speak faster and flatter than when speaking straight from the heart, which in turn makes it harder to hold the jury's attention and harder for them to process the information even if they are paying attention.

Remember that your cognitive skills are heightened from the adrenaline rush, so it is often the case that the words and phrasing you come up with in the heat of the moment will be *more* compelling than anything you attempted to script out in advance.

More importantly, it is far more difficult to inject genuine emotion into a scripted speech than an extemporaneous one. Every moment you are staring at the page reading is a moment you are not reinforcing your message with active gesturing, eye contact, and purposeful movement. It's also a moment you are not noticing the facial cues and audible reactions of your audience, key feedback for discerning whether and with whom your message is landing.

Instead of a script, give yourself an outline in a large and easy-to-read font with the key points or topics in a bulleted list. The list should be comprised of key words or phrases related to a topic to cover (e.g., "future medical" or "The January 2020 Whistleblowing Email"). This approach makes it easier to glance at the outline whenever needed rather than leaning too heavily on it.

One last caveat for those who still feel overwhelmed by nerves at the outset of their performance – adrenaline levels tend to spike within the first few minutes, then taper off. One can diverge slightly from our "bulleted outline instead of a script" advice above, carefully scripting *only the first two minutes* of a presentation and practicing that segment more than any other component.

Having this portion of the speech well-rehearsed and memorized will make it easier to get through the initial wave of adrenaline before settling into a more extemporaneous approach for the rest of the presentation after the spike has passed. Since primacy teaches us that what is said first will be remembered more than what is said in the middle, this approach also ensures the most memorable part of the speech is presented precisely how it was intended.

Step out into the open space (courtroom permitting). Except in federal court, most courts will permit

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you to traverse the open space in front of the jury box during opening or closing statement. Even in federal court, many judges will permit a step to the side of the podium, provided one maintains some physical contact with it or at least stays very near to it. The important point is to ensure there is no object – hands or podium – between speaker and audience, to the maximum extent permitted. By stepping out in front and physically displaying openness and vulnerability, it sends a subconscious signal that there is nothing to hide.

This is often the most difficult change for new trial attorneys, but it is one of the most important steps you can take to become a better and more persuasive public speaker. Nobody likes a monotone presenter lecturing from behind a lectern, but everyone enjoys a dynamic orator who utilizes every inch of the presentation space they have been provided. Meanwhile, your notes are right where you left them, should you need to pause for a beat, humble yourself by "telling the truth" to the jury about losing your place, and refer to the notes to get yourself back on track as described above.

Channel your adrenaline *into gesturing and other purposeful movements*. Gesturing is a fundamental component of our nonverbal communication. Speakers subconsciously use gesturing to find the words they seek and to subtly reinforce the message being delivered, while audience members use gesturing to subconsciously interpret and comprehend what they are being told. The bigger and more open the gesturing, the more confidence is conveyed and the more likely it is that the audience is engaged and understands the message.

Sometimes legs have a mind of their own, prompting pacing while speaking. Take the time to plan three or four spots in the outline where you will move *in silence* to a new location before planting and delivering your next point. When movement is planned and practiced in advance, you will be far less likely to move unprompted and unconsciously the rest of the time.

These two techniques (gesturing and purposeful movement) provide a much-needed outlet for the adrenaline literally coursing through your veins. By converting what were once nervous ticks into core components of a presentation, one begins to feel more control and self confidence in the courtroom. This serves to temper the very anxiety that caused the pacing or hiding in the first place.

Use silence

Silence is an important and oft-forgotten weapon in the public speaker's toolbox. Well-timed pauses will break up a presentation and make it easier for the jury to remember key points (i.e., there will be more opportunities for primacy and recency to drive the points home).

Make eye contact *with every member of the audience*. Eye contact is essential to attachment bonding between caregiver and infant. As adults, this association is hard-wired, and people are inherently distrustful of those who avoid eye contact when they speak.

There is no substitute for *actual* eye contact when it comes to building trust and empathy. But if eye contact feels overwhelming initially, start by picking a spot just above or below the eyes to focus (e.g., the forehead or the bridge of the nose). Focus there and slowly progress to the eyes when the anxiety has passed.

Don't forget to spread the love. Resist the temptation to focus eye contact exclusively on those who seem to be friendliest. This can send a subtle message to the other jurors that they are less important and may even encourage them to tune out altogether. Connect with and build trust with every juror, meaning make eye contact with all of them at some point during the presentation. If someone appears to have "zoned out" and let their mind wander, use eye contact to bring them back into the present moment and reset their attention span.

Do not linger on any particular audience member for too long. There is a fine line between bonding with another person and leering at them. A good rule of thumb is to lock eyes with an audience member, deliver two to three sentences or perhaps a self-contained point, then move on to someone else. In time, you will learn to *feel* the right amount of eye contact.

Pathos is your appeal to emotion

In law school, we were all taught to suppress our humanity in favor of "thinking like a lawyer" – setting aside emotions and engaging in a cold and calculated analysis of facts followed by a dispassionate application of the law.

But a skilled *trial* attorney must unlearn what we were taught. Human beings do not reason through problems and issues the way that lawyers and judges do. You have worked diligently to hone and maximize your linguistic intelligence, but now is the time to focus that same energy and effort into developing emotional intelligence.

Have you ever walked into the middle of a conversation to find others laughing at a joke, yet you find yourself laughing along with them despite your ignorance of the joke? Have you ever noticed that you have a more difficult time controlling your temper when arguing with someone who has already lost theirs?

These reactions are all the result of a special class of brain cells known as "mirror neurons," which prompt the brain to mimic certain actions or emotions whenever we witness them in another person. Social interaction has been so fundamental to our survival as a species that we are literally hard wired to empathize with one another. We do not merely perceive the emotions of others; we can also *feel* them as though they were our own.

Contemplate the implications this has on trial practice. Care deeply about clients and the harm they have suffered and infuse that compassion into the presentation instead of giving a dispassionate analysis of facts and law. This activates the mirror neurons in the jury and prompts them to feel the same way. This aids with *ethos* too, insofar as it provides another opportunity to

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subconsciously bond with the jury over a shared emotional experience. Conversely, expressing little to no emotion when speaking can leave your jury profoundly devoid of emotion.

This does not mean going overboard or exaggerating something that you do not truly feel. Unless you are an Oscar-worthy actor (and you probably are not) it is highly unlikely that you can activate mirror neurons with fake emotions. Worse, the jury may even realize that you are being insincere, completely devastating your *ethos*.

Instead, one must *actually* feel love and sympathy for one's client, moral outrage at the defendant's lawless behavior, or whatever other emotion you hope to stir in your audience. Keep this in mind at the case-selection phase. Instead of merely analyzing the merits, collectability, and profitability of a case, take the time to determine how you actually feel about the client and their story.

What if the case doesn't move you?

If the case does not tug at your heart strings at the intake phase, you will have a much more difficult time effectively deploying *pathos* throughout the entire litigation. If the case does move you, turn inwards and reflect on what emotions it stirs, why it stirs them, and try to connect with other times you have felt the same or similar emotions. Once you are fully attuned to your feelings, you can begin to think strategically about how best to utilize the emotional undercurrents of the case to enhance its framing and storytelling in every deposition, brief, hearing, and, ultimately, at trial.

This process can be uncomfortable at first. When we turn inwards to observe our feelings, it can bring up painful and traumatic memories, memories we have buried down deep to mitigate our own pain. But imagine if you were to finally acknowledge these feelings, embrace them, and use them in the service of others. Lawyers are made stronger by recognizing and channeling our feelings in the pursuit of justice.

As trial lawyers, we are uniquely positioned to shield others from similar emotional trauma and to seek fair recompense for that trauma when it has occurred. To do this most effectively, we must first accept a truth we were all trained to forget – emotions are as valid and important as logic. In fact, when attempting to persuade non-lawyers, emotions are typically far *more* important.

Make bonding with your clients a priority in your day-to-day practice. Visit them in their homes, eat dinner with their families, carefully observe their daily lives, and their personalities. Learn their hopes, dreams, aspirations, and their fears. Learn about their suffering and what brings them joy. Use these experiences as a way to remind yourself why you chose to represent human beings in the first place, instead of faceless entities or heartless insurance companies.

Fear and hope

To add a bit of empiricism, we will discuss a lesson that is taught to every introductory marketing and mass-communications student. From a persuasion standpoint, the two most powerful human emotions are *fear* and *hope*. View any professionally developed television commercial, newspaper advertisement, or billboard, and one or both of these emotions will be utilized. If you die today, would your family be financially secure? Buy a whole-life insurance policy and they will. Do you hope to meet beautiful singles at an exclusive after-hours party? Buy our product and you can be a part of it, too.

It is no coincidence that our last two presidents picked these two emotions, respectively, as the lynchpin of their campaigns. There is a large body of research from cognitive scientists that focuses on why hopeful rhetoric tends to work better with progressives and fearful rhetoric tends to work better with conservatives. For our purposes, though, understand that utilizing both emotions will maximize the persuasive impact of courtroom advocacy for audiences that are often a mix of both progressives and conservatives.

Paint a picture of the hopeful world the jurors can create with a verdict in your client's favor. Depict, in stark detail, the harm your client has suffered as a result of the defendant's unlawful or immoral behavior. Acknowledge that no amount of money can undo that harm, but fair compensation today can free your client to pursue the things that will bring them joy. If you have done your job, you can describe with clarity and conviction all the ways a just verdict will change lives.

But also paint a picture of the disastrous consequences of a defense verdict. All the pain, suffering, and fighting will have been for naught. The struggles will continue indefinitely into the future. Worst of all, the defendant and others like them will feel emboldened by the verdict, hindering change and resulting in the continued infliction of suffering onto others. There are generally two categories of persuasive fear – fear of *loss* and fear of *missing out*. Think creatively about ways to utilize them both. In the liability phase of a bifurcated trial or a trial with no punitive damages, the use of fear must be handled carefully to avoid a mistrial, but it can be done even within the strictures of those rules with careful planning.

Do not lose sight of other emotions. Fear and hope are powerful, but do not forget about sadness, compassion, anger, jealousy, spite, and countless other emotions that may play a role in your case. Effective storytelling often means explaining or subtly revealing the emotions and motivations of the characters within the story. Emphasizing emotion helps the jury place individual witnesses into familiar narrative roles like the antagonist, mentor, henchman, and the like, and research shows that we all receive information better when it is presented to us in a familiar story format.

Logos is your appeal to reason

This component of the Aristotelian model is where lawyers feel most at

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home. In fact, after emphasizing the importance of *ethos* and *pathos*, many trial skills students will ask whether *logos* even matters. This is a valid question, particularly now, when "truth isn't truth" and everyday life increasingly resembles an Orwellian dystopia. But the answer is "yes," reasoning still matters.

First, lawyers are not the only ones who have trained themselves to tune out their emotions. Despite the enormous importance of emotions, our post-Enlightenment society tends to stigmatize them. If one person is deemed "rational" and another person "emotional," the undoubted conclusion is the first person is complimented while the second is denigrated.

The sociological and patriarchal roots of these beliefs are beyond the scope of this article, but it is important to note that there are certain people who believe the only correct way to reach a verdict is to do so dispassionately and without allowing themselves to feel *any* emotion. These people have often been socially or professionally conditioned to "think like a lawyer," so a rational analysis of the facts and the law are critical to persuading them. Conversely, they will be far less motivated by emotional appeals, even though very few people are completely immune to them.

Logos also matters because stories must make sense in order to persuade. People may reject a story if it contains flawed logic, even if they cannot appropriately articulate the precise ways in which the logic was flawed.

Logos is also important to the Court of Appeal. Appellate justices were trained to "think like a lawyer" as well, and it is unlikely whatever emotional pull they feel will cause them to overlook flawed reasoning. A just verdict for your client has no value if it gets overturned on appeal.

The most important thing to remember as a lawyer deploying *logos*: Few, if any, of your jurors will have been trained to understand it as well as you do. Formal logic and critical thinking skills are not a part of the core curriculum of academic institutions at any level – even graduate school. Be wary of using polysyllabic words (like polysyllabic), making logical inferences and deductions implicitly instead of painstakingly explaining them, and otherwise walking through a particular analysis in a way that may leave some jurors behind. As the adage goes, if you cannot explain it simply, you do not yet understand it well enough.

What you can do now

Understanding the physiological, emotional, and psychological underpinning of communication is the first step towards conquering public speaking anxiety and becoming a more effective advocate.

This article scratches the surface of an art form that is thousands of years old and which has been extensively researched from a wide variety of academic disciplines. For those who are interested, there are many publications available through NITA and Trial Guides that synthesize, harmonize, and apply the social and behavioral sciences to the art of trial practice. (See https://www.nita.org/publications/books-dvds and https://www.trialguides.com/.) Many of these publications are tailored to civil plaintiff-side practice.

Our best advice to those who seek to master this art form is to practice it as much as you can once the pandemic ends and we can venture back out into the world again.

There are also many ways to practice and refine public speaking and persuasion abilities, skills that translate almost directly into enhanced trial performance. Join Toastmasters International, take an improv or psychodrama class. Some public defender and district attorney offices will accept volunteers to try misdemeanor, DUI, and other low-level offenses, simultaneously performing a public service while giving you an opportunity to get trial experience.

Whatever you do, remember that you are not alone. All of the great trial lawyers are human, with the desire to be loved and accepted, just like you. They all fear judgment and embarrassment, just like you. And they all had the capacity for greatness inside them, waiting to be unlocked, just like you.

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