ON PAPER VS. IN PERSON:
FROM WRITER TO ACTOR

COMMUNICATION TECHNIQUES
FOR PERSUASIVE ADVOCACY

by
JOSHUA KARTON

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3014 Fourth Street #A-10, Santa Monica, California 90405
Tel/Fax 310.392.7558
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I. INTRODUCTION

FROM “ON PAPER” TO “IN PERSON”

Communication Arts for the Professional assembles and applies the skills of the working theatre artist -- actors, directors, and writers of theatre, film, and television -- to the specific communication requirements of trial advocacy:

What transforms presentation into persuasion?

While jurors observe and respect the advocate's presentation of evidence and knowledge of the law, what they respond to is the live human event that the advocate creates in the courtroom. Often, settlements are offered because opponents assess that you will do in court what they can't: marshal the jurors' feelings as well as the facts. Animate jurors with the full force of your credibility. Move jurors into action on your client's behalf. What are the live communication tools fundamental to the moment-to-moment exigencies of pleading, proving, examining, convincing, or even deposing, telephone negotiating, and first client meetings? Law school trains litigators to write for what will be read; the advocate in the courtroom must write not merely for what will be read, but for what must be spoken . . . and then heard, and felt, and believed.

Once the facts have been transmitted, how will the listeners' knowing be transformed into the listeners' caring . . . and choosing? How does an entire courtroom of individuals become a single body of attention, and how is that attention held, built and carried to an undeniable conclusion?

These skills are the foundation of the theatre artist's craft. Through their application, the most skillful of opposing counsel, the most idiosyncratic of judge or jury, the most challenging of witnesses -- even the very courtroom space which houses them -- can all become allies rather than obstacles in the successful "live event" of delivering into the courtroom the advocacy that persuades.
PERSUASIVE ADVOCACY: 
THE ACTOR/DIRECTOR/WRITER’S 
AGENDA OF TECHNIQUES

A. VOICE AND BODY
- Eliminating Nervousness and Stage Fright
- Expanding Vocal Range and Resonance
- Manipulating Vocal Tone (Inflection)
- Employing Silences as Effectively as Speech
- Body Language (Yours): How to Use It
- Body Language (Judge and Jurors): How to Read It and How to Change It
- Effective Use of Eye Contact

B. OPENINGS AND CLOSINGS
- Storytelling: Structure and Delivery
- Discovering the Theme that Defines the Case
- Creating Spontaneity in a Prepared Text
- Talking About Money
- Vaulting the Past into the Present: How a Story Comes Alive
- Translating Legalese into English
- Stanislavsky Applied to Advocacy: “Generality is the Enemy of All Art.”

C. RELATING TO THE JURY
- Presenting a Person, not a Lawyer
- Gathering and Uniting an Audience
- Talking to One vs. Talking to Twelve
- Conducting Jurors’ Emotions
- Quotes for the Deliberation Room
- Playing the Thirteenth Juror
- Increasing Juror Participation on Voir Dire

D. DIRECT AND CROSS EXAMINATIONS
- Controlling Where Judge/Jurors Look:: at the Witness or the Attorney?
- Controlling Where Judge/Jurors Listen:: to the Question or the Answer?
- Attorney/Witness Relationships: What Jurors Follow
- Creating Suspense in a Progression of Prepared Questions
- Alternatives to Anger on Cross Examinations
- Properly Preparing Your Witness for Depositions and Testimony
- Effectively Preparing Your Experts for Deposition and Testimony
The following pages offer ideas and exercises which have been developed as part of workshops, clinics, tutorials and case consultations and which are helpful to the attorney preparing for and engaging in trial.

ON PAPER VS. IN PERSON

II. FROM WRITER TO ACTOR:
BREATHING PERSUASION INTO AN AIR TIGHT CASE

When television writers attend on-the-set rehearsals of scripts they have written for weekly shows, they often become anxious and agitated at what they are not yet hearing, or at what they are hearing that differs from what they've written and are still reading right in front of them. A director of one landmark series, who, though trained for the classics, had known her first onstage fame as an improvisational actress, would counsel these anxious writers, "Close your scripts. Watch the play." Otherwise, they would miss what was actually working better on stage than it did on the page, or miss what should now be cut from the page, because if you were listening instead of reading, you could hear that this or that part of the script wasn't working.

The advocate who goes into the courtroom is usually the writer of the script, as well as the presenter of the script . . . the actor. Hours, weeks, years of preparation have gone into the script. Although the judge is not yet seated at the bench, indeed not a single oath has yet been taken, the writer's job is over. The advocate must close the script and enter the play. The attorney who walks into court must leave the writer in the office and activate a whole other set of priorities from those of the writer. It is not always easy to make the transition:

A. **Voice**

The writer need never utter one word aloud. The actor needs to be heard by every single member of the jury, and by the judge, the court reporter, the witness, the opposing counsel . . . and heard in a voice to which the jury wants to keep listening.

A widely circulated study reports that over a third of what listeners will take away from spoken communication comes not from the “language content,” (which
accounts for less than a tenth), but from the “audio content” -- pitch, volume, tone, inflection, intonation, emphasis, emotion, pace, and pause. Not what is said, but how it’s said.

And, the actor’s voice needs to be a supple enough instrument that it can credibly carry the listener through the shifting emotions of the story’s progress --for example, from the unconsciously rambunctious racket of a family road trip, to the terror of the crash, to the choking grief of the children’s funerals, to the numbing march through the surviving parent’s endless grief -- all without that over-deliberate vocal affectation that in calling attention to itself incurs the accusation of “playing for the jurors’ sympathy” and “overacting.”

(For more on voice, see V. VOCAL WARM-UP)

B. Questions

The writer proceeds rhetorically, never asking a question, as law school teaches, without knowing the answer in advance. But the actor is asking the question to focus everyone’s attention on the answer and how it is given. If the actor does not appear to need the answer, the jury will not be compelled to follow the testimony, no matter how vital it is. If the advocate appears unaffected by the answer, or does not acknowledge it, or poses the follow-up question unmindful of it, the jury will not be drawn into the conversation. Speaking merely for the written record, or “to establish a foundation,” may be meaningless to the jury. Conversely, what jurors have been instructed to ignore, or what an attorney wants to “strike from the record,” may be precisely what jurors most clearly recall.

1. The Sense of a Question: Text

When preparing questions, rehearse them aloud. Can they actually be asked, or are they so convoluted that they last longer than the listener’s attention span? Attorneys agree in theory that in voir dire, asking open-ended questions (that is, questions which invite/require more of an answer than a “yes” or a “no”) encourages prospective jurors to reveal themselves; but by “handing over the microphone,” these questions often cause the attorney to feel a loss of control. This sense can be so disconcerting that the open-ended question will be crammed with multiple qualifiers until it becomes an
unwieldy behemoth of syntax. Consider the following question, offered in a how-to article on voir dire as a sample open-ended question merely because it begins with the word “what” and therefore escapes calling for a “yes” or “no” answer:

“What do you think is entailed in the setting of insurance premiums and what do you know about how insurance companies invest the money from these premiums in volatile markets and the way in which the resultant extreme fluctuations in income actually are responsible for insurance premium rates?”

Assuming this question is even allowable, is it understandable? Listeners will have forgotten the first part of the question by the time the questioner has arrived at the end. Even if the question reads open-ended, it doesn’t play open-ended, and it probably will not uncork any geyser of self-disclosure from a prospective juror.

2. The Sound of a Question: Inflection

In almost all languages, a rising inflection signals that the questioner is dependent upon getting an answer in order to continue the dialogue. If the inflection doesn’t rise, the speaker doesn’t seem to care. Consider how, after hours on her feet, the wary waitress asks, “What’ll ya have?” The inflection falls, along with her arches. Whatever your order, it won’t make the difference in her day. Compare this with the sound of a question that requires an answer, such as when asking your child about curfew: “You are to be in this house by twelve o’clock. Do you hear me?” The inflection on “me” rises unmistakably, even if “hear” may receive the vocal stress.

On which word of a question does the inflection rise? It need not be on the last syllable of the last word, but when it is, the jurors’ attention between the question and the answer is the most tightly controlled. If too many words follow the rising inflection, the speaker obviously does not need an answer more than he or she needs to continue speaking . . . preferring monologue to dialogue.

To understand how the placement of the inflection and the order of the words in a question influence each other, ask the following question six times to six different people: “How do you feel about the accountability of a doctor?” Each time, raise the inflection on a different word -- “how,” “do,”
“you,” “feel,” “accountability,” and “doctor.” The question will be perceived differently by each person. Each will report feeling a different level of invitation, responsibility, challenge, confrontation, or expectation; and each will answer with varying degrees of candor, defensiveness, expansiveness, and self-revelation. Then, try re-ordering the words, letting the inflection rise and the stress fall where they may: “The accountability of a doctor . . . how do you feel about that?” “What kind of feelings have you about doctors’ accountability?” “‘Doctors’ accountability’ . . . do you have feelings?” Here again, the answers will reveal subtle but significant differences in precisely what the person feels he or she is actually being asked.

3. In the Wake of the Question: Silence

The writer need never deal with the space between questions and answers transpiring in “real time” -- the writer need never tolerate silence in public. A study once claimed that teachers find the silence that follows asking a question so harrowing that they wait an average of less than one second after having asked a question before giving the answer themselves. Many lawyers share this inability to tolerate silence. Fearing that the silence indicates a loss of momentum or control, they will keep talking, filling in, embellishing -- writing aloud.

The actor, on the other hand, must be able to use the silence and stay connected to the other players during the silence. This is why it is so often said that great acting lies not in the speaking of the lines, but in the listening . . . in the re-acting. In voir dire, how prospective jurors “see” you stopping talking to actually listen to and receive their fellows may have a far more powerful effect on how willing they are to answer you, than the particular content of any individual question you ask. During examination, allowing the pause that swells pregnant can provide exactly the opportunity that shifts jurors from passively sitting back and waiting for information, to leaning forward in their seats, actively seeking that information.

Conducting an effective dialogue in the courtroom can be the result of combining two skills: inflecting upward on the question, and then tolerating the silence that follows, the silence in which the drama of suspense is born. Lawyers often fill closing arguments with rhetorical questions, but then short-
change themselves of their full, inter-active value by failing to inflect them
with an upward, and then waiting the necessary moment . . . letting the
jurors answer in their minds, before you echo that answer aloud. Why tell
the jurors, when you can give them the opportunity to be telling you?

C. Eye Contact

No one watches the writer when the writer works. No one is expecting the
writer to “look up” or “look back.” Everyone is looking at the actor, or should be, if
that is where the director wants the audience’s focus. The actor must be willing to
look directly into the eyes of everyone in the play at any given moment to gather and
hold their attention. And, depending upon how the director envisions that particular
moment in the courtroom, the jurors, more likely than not, are with the
advocate/actor “in the play,” and not some observing audience existing outside it.

With some jurors, direct eye contact may not be the best choice, but assess
this based on the juror’s comforts and needs, not your own. “Voir dire,” the name of
that initial conversation between lawyer and prospective jurors, translates from the
French as “to see, to speak.” It requires, therefore, eye contact as well as language,
particularly if the prospective jurors are to believe you truly view them as vital
participants in the impending event. Certainly, there will be times you will be
looking away, for example, when taking or referring to notes. But after you have
consulted the notes, re-establish eye contact with the person you are addressing
before you resume talking. While looking down at what is written, feel free to stop
talking. This moment of silence while reading may feel awkward to you, but it will
not look or feel awkward to the juror -- particularly if a sustained inflection on the
last word before the pause has indicated that more is coming. (Generally speaking,
the rising inflection passes audio responsibility on to whomever you are addressing;
a sustained inflection signifies that the silence that follows your speaking is only an
interim pause, belonging to you, and that you are ready to resume speaking once the
purpose of that silence, as orchestrated by you, has been fulfilled.)

After completing a voir dire question, maintain eye contact with jurors if you
want them to believe that you value their answers. To deliberately deny eye contact
is a technique employed during cross examination to isolate or exclude a witness
from the “conversation” you and the jurors are having together. In voir dire and
direct examination, while you are being answered, resist the temptation to sneak a
look at your notes for fear you won’t be ready with your next question the second the answer is completed. Reading or writing during the answer signals either that you are not listening, or that if you are listening your course will not be diverted or influenced by the answer. Or -- and this may perhaps be the most damaging -- that what you are hearing means more to you than who is telling it to you. On direct examination if jurors see that you not actively listening to the person who is giving the testimony -- your own witness -- why should they?

D. Body Language and Movement

The writer need never worry about what to do with the hands; the fingers need only move enough to fill one page and reach the next. Writers can fidget and pace all they want. The actor must reach the audience and/or other players, even if they are at the other end of the room and the actor is pinned behind a podium. Although the actor can move more freely than the writer, the actor must know how and when to move. Movement must be purposeful, and not distracting.

As a general rule, in the courtroom move to further the message and/or your connection to the jury, not to massage your nerves. You can adjust your stance or posture to release tension, as long as the adjustment appears to clear the way for deeper communication. Your can toss your hair out of your eyes once, and the audience will believe you need to get a better look at them. You can clasp your hands, stare down at the floor, stroke your chin . . . once, maybe twice. But if you repeat these movements -- as in aimlessly pacing, shifting your weight, or rocking -- the jurors will regard your movements as characteristic, habitual gestures of self-medication for nervous tension. You are not using the gestures, the gestures are using you.

One goal of voir dire is to engage jurors sufficiently enough that they reveal their emotions, values, and attitudes; their physical expressions are often far more revealing of these than the verbal ones. Most articles on jury selection advise attorneys to have an observer in court during voir dire specifically to watch and note the prospective jurors’ body language. The importance of this has only been emphasized in the now widely disseminated finding that over half of what is absorbed by listeners from spoken communication is derived from the “non-verbals” -- posture, gesture, facial expressions, physical animation, etc. -- beyond any specific words used or the sounds of any voice with which those words are spoken.
You can elicit revealing behavior from jurors by freeing up your own expressive behaviors. “Freeing up” does not mean pasting on borrowed or canned gestures, or brandishing “theatrical” or ornamental flourishes, but rather integrating a range of your natural physical vocabulary into your communication. You can discover this by “telling” your opening statement to a few people in your office without speaking. Act it out. Use mime, charades, sign language -- however you can make yourself understood without sound. Then, have your audience narrate back to you what they have understood. Still not talking, you fill in the details by acting out those parts of the story that the listeners have missed.

By exploring this technique, you will uncover resources of eloquent storytelling that you bypass when relying solely on words. Movements and gestures that tell the client’s story far more effectively than speech become part of your “working vocabulary.” If you have never done this, you will be surprised by how quickly and deeply the “listeners” are moved by the emotions in your client’s story. By acting out the story in small sections, and only proceeding once your listeners have narrated back to you what they have understood, you also become more in sync with your audience, more in partnership with the pace of their developing ownership of your client’s story. You discover how much more involved they come when you are communicating with your whole self and body, and not just from the neck up.

When you, and not just your vocabulary, are communicating, physical gestures emanate out from the spine, since this is the main “weight-bearing support” of the body. Is your spine is actively engaged in your communication? Is your face involved? If your communication involves your spine and your face, as well as your voice, you will encourage the jurors' communication back to you in expressive behaviors that reveal themselves far beyond the mere content of their words.

(For more on gesture, see the closing two paragraphs of III. STORYTELLING AND THE OPENING STATEMENT.)

E. Being “In the Moment”

The writer can stop and leave, take a break. Not only can the actor not leave, he or she must appear to be more present in the on-going events than anyone else in the room if that is the actor who becomes our representative in the proceedings -- the one through whom we experience the “reality of the play.”
What this means for the advocate in the courtroom is that the writer’s discipline of shutting out all distractions must give way to the actor’s skill of fielding, incorporating, or even celebrating the unexpected. An advocate who ignores or denies the obvious suffers before the jury. They see it and hear it; why don’t you? If someone in the courtroom sneezes, or you drop something, or a door bangs, or the lights flicker, acknowledge it and move on. You don’t have to make a speech about it. Just don’t ignore it. If you pretend not to see and hear what everyone else does, you appear less alive to the immediate environment, and, thus, less reliable and trustworthy as our leader or guide.

The writer follows an outline of pre-selected information. The actor must not just follow, but actually respond to, whatever has just happened -- a withering objection, a juror’s yawn, a judge’s bark or glare. Otherwise, the advocate is no more alive/alert to what is actually happening than the pieces of paper on which the notes are written. Nothing lives on that page of the legal pad -- not the client’s loss or suffering, not the advocate’s credibility, not the juror’s capacity to care. No audience in the theatre is ever moved to empathy or action by how perfectly the actors demonstrate their ability to remember their lines verbatim. We do not gasp or weep or stand to cheer because an actor never “lost his place.”

During trial, there are so many “realities” floating within the net of the jurors’ attention -- those presented by your opponent, by the judge, or those brought in by the jurors themselves from their own life experiences. You are asking the jurors to enter and value your client’s reality; you must be demonstrably willing to share in theirs. The advocate who brings a spontaneity of presence, a sensory awareness and aliveness to the very courtroom environment the jurors are experiencing -- a full surrender to the communal here-and-now -- assures the jurors this advocate is not hiding the truth or standing sentinel before some secret agenda. Rather, “we are all in this together.”

F. Relationships

Most writers work alone, and must usually isolate themselves, physically as well as psychologically, to accomplish the task. The writer need only present a “voice,” not a self, nor a self capable of engagement. But the audience needs to see and feel relationships; it’s what they follow. We trust the actor who seems to be
offering up his or her full, true self to the other characters. Who we don’t trust are actors who seem more concerned with presenting themselves, with protecting their performance -- with “acting” -- than with connecting with others. Just as an actor must be able to kiss a creep with bad breath if we are to believe that we are seeing a love scene, you must be able to draw sympathetic testimony for your witness, even if you personally find him/her creepy. If you are recoiling from said creep, this will not happen. (He may be a creep, but he’s your creep.) So, from a director’s point of view, witness preparation may not be so much a process of rehearsing what is said, as it is working out how the parties engaged in the dialogue appear to feel about each other. How truly comfortable and confident the attorney and the witness are with each other are what jurors will feel and recall long after specific bits of testimony have been lost along the way.

During voir dire, the attorney is establishing two kinds of relationships: the relationship between the attorney and the individual juror, and the relationship that the jurors observe the attorney has with him- or herself. If you are too out of touch with yourself, the jurors cannot identify a “you” with whom they can connect. I once worked with an attorney during a voir dire workshop, and it was obvious the jurors did not like him. He was so anxious and uncomfortable, how could they? His eyes never left his notes, and his reaction to each answer was the same impervious scribbling. He asked one woman, as he had each person before her, her marital status. “Married,” she stammered after a long pause, and then looked down, struggling to correct herself. “. . . Uh, no. I’m sorry, that’s wrong. I’m single. I’m widowed. Four months ago. My husband died.” “Any children,” he said, moving on to his next question, without raising his eyes or his inflection.

At this point, I had to interrupt. He was a perfectly nice man and they were hating him. “Excuse me. In any other situation, if someone told you her husband had died four months ago, c’mon, John, what would you say?”

He flushed, because he realized he had heard information but he had not heard her. He looked directly at her and immediately said, “I’m so sorry.” He meant it, too. He allowed a human connection to develop between them. His eyes softened. He smiled. Blood flowed in and out of his face. The voir dire didn’t take any longer for it. In fact, it then proceeded at a swifter pace because he wasn’t needing to backpedal through the group’s hostility. By the time he finished, the mock jurors had
become so partial to him that they wanted to know when the actual trial was to begin and how they could get on “his” jury.

If because you are nervous, or to save time, you bulldoze through your prepared questions, if you are more connected to the legal pad than to the person you are addressing, the prospective juror has no one else to bond with except the other prospective jurors -- or opposing counsel, if they are more available. Jurors must feel that their answers personally register with you and prompt a human response. Unless you appear to have received something from them as people, there has been no exchange, only the giving and noting of information. No transactions, only broadcasts.

The attorney in the voir dire workshop discovered one of the stage director’s axioms: When the on-stage action is dragging, the amateur speeds up; the professional slows down. The action feels like it’s dragging because nothing is really “happening” or “connecting.” You may be reciting, but if you are reacting to no one, or being affected by no one, you will be convincing no one. Once the connection happens, no one is watching the clock.

G. Role Playing

Conventional wisdom holds that you should not become fixated on jurors whom you feel do not like you, and that in voir dire you should trust your instincts about people whom you do not like. But sometimes we misread others. Or we see them accurately enough, but our perception affects us too personally, inappropriately. For example, I may intellectually accept that the judge is not my father, but his wrath may be affecting me as if he were.

In such instances, it can be helpful to use the actor’s role playing skills and simply pretend the person to whom you are speaking is someone else. Plant some physical detail of the imaginary person onto the body of the person whom you are addressing. For example, in your mind’s eye, put a clown’s nose, a pink tutu and ballet shoes on an intimidating opposing counsel, or treat a hostile prospective juror as if he were your grandfather suffering from physical pain or Alzheimer’s disease. When the opposing expert antagonizes you, but irritability will backfire, picture a zipper running down the back side, and “realize” that your poor beloved wife is trapped in the body-suit of this arrogant, pompous creature, desperate to escape.
Remarkably, this technique often radically changes the other person’s behavior. And, if it doesn’t and the person’s behavior remains negative after your behavior has changed, the jurors begin to perceive the other person as seriously disturbed because this other’s behavior is so unilateral, so inappropriate in the context of how this person is actually being treated.

There are also times when your public or professional self has become worn down or burned out. Perhaps your client has exhausted your patience, or you just do not feel like being in court, or you’re nervous and you hear a legal robot usurping your own personality. In such instances, instead of projecting a different role onto another person, allow your imagination to toy, for just a moment, with the possibility of what if . . . you were someone else. Re-cast your role. What if someone else were called in to do your job? Or pretend that -- again, just for a moment -- that you actually were someone else. Allow yourself, for just a moment, to walk, talk, and react as if you were another person, real or fictitious. Spiderman. Al Pacino. Miss Piggy. Abraham Lincoln. Aunt Ida. Yoda. For most of us, our gifts of impersonation are not so powerful that the observer will detect a metamorphosis or a splintering of personality, only an enlivening release and sharper focus on whomever we are addressing. Since our presentational selves -- our “professional personalities”-- are only a bookmark in the fuller volume of our inner selves, anyway, who often emerges from this exercise is a more “real” you, who has been buried under layers of the lawyer’s burdens.

If your customary “lawyerly” cadences of speech have been taking over, practice your voir dire, your opening statement, your examination questions while jogging, in dialects, as cartoon characters, as opera, as country western songs, as rap -- whatever you need to jostle the armor, displace the mask. Rehearsing questions and openings in character voices and dialects also liberates your writing skills, because you surprise yourself by spontaneously using words that are more direct, more colorful, and more evocative than those of the default settings of your customary style. Instead of toning down your actor to accommodate your writer, you find your writer begins to serve your newly limber, refreshed actor.

I. Stage Fright

The writer need never worry about how nerves and fears restrict voice, movement, or expressive behavior. The actor must be able to manage these nerves or
fears not just as they affect imagination (as in writer’s block), but as they affect the physical self. The actor cannot hide behind the words.

The writer can begin working cold, or while eating, drinking, or smoking. The actor’s machine, however, is run on blood and breath. Unlike the writer’s word processor or Dictaphone, which is at full power as soon as it is plugged in or booted up, the actor’s machine must be warmed-up if the nervous tension is to be released through voice and behavior, rather than being walled up behind them. If an advocate suppresses fears instead of releasing them, the jury will perceive the overlay of self-control for exactly what it is: having something to hide.

A proper warm-up puts the actor’s nerves and fears at the disposal of the character’s purpose, rather than at war with it, and at the disposal of the physical instrument of the presenter, rather than inhibiting it. The purpose of an actor’s warm-up is not to create any single mask of presentation, but rather, to release whatever constrains the individual’s unique powers of presentation.

There is no one ideal presentational style. Many young advocates, eager for the confidence they attribute to successful experience, believe the goal is to appear “comfortable” or “smooth.” But credibility is not granted to the person making the least effort; rather, it is vested in the one whose effort requires overcoming the greatest obstacle. In fact, this very struggle to overcome the obstacle is what make for the drama. So, the audience will always watch the actor who limps, or listen to the actor who stammers, as long as they can see and hear that actor struggling through those personal barriers to achieve their goal.

The advocate who mistakenly tries to establish credibility by banishing any indication of the personal cost of standing before the jurors lets them direct their sympathies and sense of justice elsewhere. If the speaker could just as easily be somewhere else as here, why shouldn’t the audience?

Any attorney can captivate the jurors’ hearts and minds if, in telling the client’s story, he or she allows the jurors to see the full, unguarded person inside the professional . . . the self beneath the suit. Once you are so present that you cannot hide your vulnerabilities, jurors can believe they are with someone who is willing to forgo self-protection in order to protect the client.

The physical and vocal relaxation essential for this spontaneous, fully “present” behavior may indeed surface of its own accord well into the trial, but actors make certain it is available from before their first entrance. Given the bond that you
can form with prospective jurors during voir dire, and the opening statement’s impact on jurors, the third day may be too late.

One purpose of an actor’s warm-up is to release the voice out from under the aegis of the daily personality, so that it is ready for whatever it may be called upon to do. And because voice is carried on breath, the breath is the first place to direct your attention in warming up, the first thing to “let go.”

(For more on breath, see V. VOCAL WARM-UP, and VII. BREATHING EXERCISES FOR VOCAL AND PHYSICAL RELAXATION.)

Fear causes us to hold our breath in a biological response that directs all the body’s energy for survival into instinctual fight or flight. We may not physically flee the courtroom, but we certainly flee from real intimacy with the jury and hide behind some pose or prose, behind some legal pad of the mind. A widely quoted piece of research purports that the fear of speaking in public -- the minimum required for a courtroom appearance -- rates as the number one fear in human beings. As long as you are holding your breath, poised at the self preservation of fight-or-flight -- you cannot hold the jury or the client. So the warm-up’s first purpose, even before sound is released, is to allow the advocate to release the breath and be fully present: in the body, in the room, on behalf of the client, in relationship to the jurors. Long before any words are shared, the advocate has begun the process by which stagefright transforms into stage presence.

III. STORYTELLING AND THE OPENING STATEMENT

In an article which appeared in the now long-ago American Bar Association Journal issue of April 1, 1986, Gerry Spence considered the question, "How do we make a complex case come alive for the jury?":

"Give me the story -- please, the story. If I can finally understand the case in simple terms, I can, in turn, tell the same story to the jury and make them understand it as well. I go about my life confused most of the time, but when I get something clear I usually can communicate it. Getting it clear is not the work of huge minds, which often are baffled by
themselves, but the labor of ordinary minds that understand simplest of stories... most of all, lawyers must be storytellers. That is what the art of advocacy comes down to -- the telling of the true story of one's case.

“Drive down the highway in your car addressing the jury in the rear view mirror. Tell the story, the alarm on your watch set for three minutes. Tell them why you care about your client. When you arrive home, gather up your children and tell them a bedtime story for practice, for if you can explain it to your children then you finally have acquired the skill to speak to a jury. I say this not out of disrespect for the jury but for the lawyers who cannot speak to children. It takes little skill to mouth the puckery brine of legal gibberish. But it takes skill, indeed, to relate a clear and understandable tale that our children will cherish.”

It has been suggested by evolutionary anthropologists that appetite for story is encoded in the genes of the human race. Our studies of other primates and of cetaceans reveal capacities of language in these species that far exceed earlier suppositions, but the creation of stories, those irreducible molecules of beginning-middle-and-end, appear to remain an exclusively human offering. It has also been suggested that the social organization necessary for dividing the hunting from the hearth labors in our species almost 15,000 years ago was only possible because of the ability of the hunters, on their return to the caves, to relate their experiences in story to those who'd stayed to tend the fire. (Cave paintings functioned as visual aids.) These stories had to sufficiently impress the fire tenders with the dangers the hunters had encountered so that the tenders would be willing to forego the adventures. But the stories also had to render the adventures thrilling enough that the hunters would retain importance within the cave once they'd brought the meat and the tenders had eaten. The tenders had to feel as if they had been with the hunter: they had to believe the hunter's story. And visa versa -- the travails of the fire tenders had to be narrated sufficiently to command sufficient respect for the arrangement to continue.

This basic desire for, and vulnerability to, a good story may also lie at the root of that now repudiated but widely circulated finding from the University of Chicago study that 80% of jurors are decided at the end of opening statements. It appears that the evidence is weighed in the context of the story, and not the other way around. (If you bring back only one scrawny bison, instead of your usual half dozen, you better have a good explanation. If it's good enough, I'll feel grateful for what you've brought, and grateful to you for bringing it.
If the story isn't good enough, I'll feel you've either been playing while you should've been hunting, or that you ate the rest on your way home, or that you're keeping another cave elsewhere. Similarly, the fire tender needs a good story if the fire has gone out in the hunters' absence.) The evidence sends me looking for a story in which to support it, but the evidence does not create the story on its own. To Spence, the ability to tell the prevailing story is paramount, but the advocate faces a crucial obstacle:

"The problem is that we, as lawyers, have forgotten how to speak to ordinary folks... lawyers long ago abandoned ordinary English. Worse, their minds have been smashed and serialized, and their brain cells restacked so that they no longer can explode in every direction -- with joy, love and rage. They cannot see in the many colors of feeling. The passion is gone, replaced with the deadly droning of intellect. And the sounds we make are all alike, like machines mumbling and grinding away, because what was once free -- the stuff of storytelling -- has become rigid, flanges and gears that convey nothing...

"By the time the case has become processed through the ears of the lawyer, ears trained to listen for words and phrases from which justiciable issues can be formed, the paranoid ears of the litigator tuned to lineal arguments, ears tuned out to the human issues that drove the client to the lawyer's office in the first place -- by the time the simple case has been forced into complex boxes called ‘causes of action’ and run through the judicial mechanisms of interrogatories and depositions, all rendered by the pound and billed for by the hour -- by the time the simple case is finally presented to the jury like one's loved one is delivered up by the pathologist, the liver sliced in neat sections, the brain laid out the same way, the belly gaping open to expose each and every organ, and after all that was extracted for examination is dumped back into the bloody cavity and sewed up again in a glorious final argument -- by that time the once simple case too often has become an abominable soup..."

The jury wants to hear a story. They're hard-wired for it. And you want to tell them a story, depositing in their laps and conscience the responsibility for providing one and only one ending -- the ending you are seeking. Since they are not going to read the story, or hear it off an audiotape, but going to have it told to them live, by you, they have to believe that you are as human as your client is, as they are, at least as human as you are asking them to be. If the iron mask of Lawrence or Lydia Lawyer has descended upon you -- be it in a bid for credibility, from stage fright, in an effort to contain strong emotions, from boredom,
indignation, the reason doesn't matter -- the jurors will not be hooked on a live human event. They will be hearing a report recited, however conscientiously, by a technician of the law. If they hear it at all.

There is a wonderful passage in Tom Wolfe's *Bonfire of the Vanities*, in which he describes how after the prosecutor's voice has droned on for awhile, even the sloppiest housekeeper on the jury finds himself wondering why the city would allow the windows he is staring through to get so filthy. Jurors are wondering lots of things -- will the kids get home safe from school, will my car get vandalized in the parking lot, will the juror three seats over ask me to her group for lunch? For the teller of the tale to supersede all this and focus everyone's attention on this telling as the only true telling, the *real story*, the teller must be personally involved and be speaking as one human to a group of fellow humans. Not as a professional to amateurs. Not as a bureaucratic or corporate cog to unfortunately necessary guests. One needs to be able to tell the story as if one were talking about, or about what happened to, one's friend, wife, child, father, pet, etc.

The opening statement might be rehearsed while jogging, to so disrupt customary cadences of delivery that bespeak "lawyer," that the story forces its way through in its simplest, most emphatic terms. If you don't like how you're flattening the story, rehearse it in dialect, in gibberish, in mime, as someone else -- whatever will free you out of rote recitation, back into the excitement, discovery, and personal engagement you felt the first time you heard it. Tell the story without the use of any legal terms. "Defendant." What's a defendant? A lonely, lost little girl? Or, a drug-soaked Britney Spears wanna-be? The word "defendant" neither specifies whom the jurors are to see, nor arouses their capacity to care.

Beyond the use of non-legalese, there are some rules of thumb for choosing language that will actively engage the listener. Use active verbs. "The board came down and struck Mrs. Nussbaum's head" is not felt by the listener as fully as "the board flew down and smashed Mrs. Nussbaum's head," or "the board snapped down, smacking Mrs. Nussbaum's head." Even better, however, is "the board snaps down. It smashes..." because by using the present tense, the story is happening NOW, and the listener is inside it. It's one thing to be told, "they thought they heard an intruder. Sam remembers Jenny telling him she could hear footsteps on the stair," and quite another thing to be told "there's a noise downstairs. They
hear somebody. Then, they hear somebody on the stairs. Somebody's creeping up the stairs." The second phrasing puts the listener in Sam and Jenny's place. The first phrasing puts Sam and Jenny inside a story that happened in the irretrievable past with the advocate standing guard. The story phrased in the past tense ended the night the intruder entered the house; the same story told in present tense does not end until the jurors do something about making sure this intruder doesn't intrude again. It also puts the advocate and the jurors on equal footing as "experiencers" of the story; the story doesn't "belong" to the teller, but to the audience and the teller together, experiencing it simultaneously.

Use sensory-awakening nouns and adjectives. If you are trying to describe a solid marriage that was destroyed by a manufacturer's negligence, you could say, "Bill and Sally had been married for twenty-five years. They took care of each other, and every one of their friends will tell you they were the most devoted of couples." Or, you could say, "Sally opened her eyes in the morning, and like every morning for the last twenty-five years, the first thing she'd become aware of was the smell of fresh brewed coffee. She waits a minute, looks up, and in walks Bill, his glasses fogged up by the steam rising from the two cups he'd bring in to start their day."

We learn and experience through our five senses. Unless a juror is handicapped in one of these five, his/her ability to touch, smell, taste, see, and hear is more or less equal to yours. If your story can enter the listeners through one of these senses, the listeners can experience the story as if it were happening to them. Again, they are on equal footing with the teller. Since sight is the most used, it is the least potent to evoke. But once your listeners' vulnerability has been dilated through touch or smell, their ability to absorb large amounts of factual information is sizably increased. This exact same amount of information, if misplaced ahead of sensory engagement, will not be absorbed. Compare the difference between, "On the night of April 26, 1994, the night in question, Felix Schlesinger arrived home quite late in what was an unusually bad storm for Flaxton County," and "Drenched, dripping wet, Felix Schlesinger parked his car and climbed back out into the pitch black downpour that had already soaked him. Flaxton County hadn't been socked with a storm like this for thirty years, but on this night, April 26, 1994, Felix can't even see his front door."

Very often, the date isn't important at all, but attorneys just feel more secure announcing particulars, and using phrases such as "The night in question." If the date is significant, it
will be remembered by the listener if something about being there, at that time, can be felt first.

One of the things which makes a story different from merely a description of a situation or an event is that the story moves through a beginning to a middle, and on to an end. We've already introduced the idea that a story is more magnetizing to the listener who feels his/her active participation will be necessary for the story to achieve its proper ending. If the teller is human enough, and in direct relationship to the listeners through eye contact and properly chosen language, the listeners will even feel that they are necessary for this story to proceed, moment-to-moment. Anywhere along the way, however, it is possible to lose even the most sympathetic listener if the teller veers off the course of beginning/middle/end. A story may start anywhere -- each story has an infinite number of possible beginnings. Each one of these beginnings can lead to a finite number of middles, but each of these middles must lead to one, and only one, end. If there are 250 relevant bytes of information you need to tell the jury, and you give them all undifferentiated presentational weight, there is a line-up of data, but no story. Within the context of a certain situation, SOMETHING HAPPENED. These 250 bytes must be grouped so that they are part of a 3-part mechanism, a story with a beginning, middle, and an end.

In order to find the simple story Spence speaks of, which underlies all your facts, and which you can communicate to a jury, choose ten words that you would say to the jury, as if ten words were all you were allowed. Find out how much information can be packed into each single word. You are not making a sentence here. You are sending a telegram. So that you won't be usurping the end from the jurors, make sure your end involves a verb telling the jury what to do. (It's understood you cannot argue in opening statement, but you are forming a story skeleton here which can support your relationship to the jury even within the procedural parameters of opening statement.) Make sure that there is at least one other verb somewhere else in the ten words on which to hang what it is that HAPPENED.

Beyond this, the other 8 words should chronicle a sensorially transmittable beginning and middle. For example, to prosecute Patty Hearst: "Heiress. Blows it. Dances with Captors. Violently Robs. Protect yourselves." Defending Patty Hearst: "Sheltered. Fine-grained. Young. Kidnapped. Raped. Armed. Forced. Responsible? Free her." Reduce your story down to its essential kernel. Know which facts are part of the beginning and
which belong to the end. The other value of finding the ten words to tell your story is that in its crystallization of your central story, it clarifies the various points of view within the story and makes clear to you if you are letting them entangle in a confusing manner. For example, it would be saying something subtly but significantly different about Patty Hearst's responsibility if you said, "Heiress. Blows it. Captors become Heroes ... etc." In the earlier version, we watch her dance. We are looking at her. In this version, the Captors suddenly become protagonists or equal value. Her responsibility is diluted. We're now paying attention to what's happening to them, not what she's doing or not doing. Amplified thousands of times in the actual narrative telling of a story and into all of the additional words and facts, such vagaries in point of view can badly confuse a jury. (At it's worst, they don't know who the hell you're talking about!)

The ten word telegram makes one aware of how much of talk is padded with piffle, gratuitous and time-wasting and useless to the story being absorbed and believed. In this category: "Your Honor. Counsel. Ladies and Gentleman of the Jury. My name is Robin Woodruff and I represent the plaintiff. I want you to know right off the bat how much this case means to me, how excited I am to have the opportunity to come before you on the Lerners' behalf. Now, over the next several days, you're going to hear lots of witnesses. And they're going to..." All of this is commonly heard in the name of establishing a relationship with the jury. That happened (or did not happen) in voir dire. Besides, your telling me you're excited to be here doesn't convince or persuade me, particularly if your body, voice, or manner belies this statement. If I believe your engagement in the story, I'll believe you. Similarly, statements such as, "Now if you'll all look over at this chart, I'll tell you..." may just as easily be stated, "let's look over at this chart, and what we see is...". The second version puts you and the listeners on the same team.

(A final word about the application of this telegram before you even get to trial. In its oversimplification, it can give you an easy handle for wielding control over the entire case,
even in pre-trial. One attorney with whom I worked was representing a client who was suing a developer. He began every contact, every phone call to the other side, regardless of whether he was answering or placing the call, with his telegram. When his secretary would buzz him that opposing counsel was on the line, he’d pick up the phone: "'Greedy developer poisons village well. Make him pay.' How ya doin', John? Whaddya need?" He used the telegram as a mantra, a battle slogan, and it freed him in the rest of the conversation to communicate with a friendly ease. In a previous case which he had won, he had introduced his telegram to the jurors in voir dire, begun his opening statement with it, and later learned that the jurors had then quoted it verbatim in deliberation. The confidence it gave him to initiate every contact with this telegram so unnerved John that two days before trial John came up with a very satisfying settlement.

Our appetite for story, our deep availability to its structural momentum, our thrill of having one of us render the past into a virtual present for the rest of us, even our accessibility through our senses into our imaginations -- all these remain undiminished. What has virtually disappeared from our culture in the past thirty years are the opportunities to have these capacities satisfied. The court of law is one of the few remaining places where, despite any visual aids or visual depositions, one must be able to create a live human event by telling a story to a group of strangers and compelling their belief into action, all through the telling.

For centuries, live storytelling was all we had. On the road, in the theatre, at your table after you'd taken care of your hunger. But with technology, we are now able to acquire vital information, as well as education and entertainment, without ever sharing the oxygen with another live, present human being. There is no exchange and no guarantee of communication, merely of broadcast. The antennae and skills of live storytelling, unused and untaught, dilapidate. When radio arrived in the living room, people learned to sit and stare at a box which did absolutely nothing, but one could hear stories coming out of it. People found themselves watching it to concentrate: the imagination had a whole world to create to accompany this sound track. Ironically, television's ability to present its little moving shadow facsimiles of humans -- again in a box, but now behind glass and flickering like the fires in the caves -- further estranged us from the palpable, live immanence that had still been implicit in the blind universe of radio. Magically animated homunculi now moved and
talked in our rooms right in front of us, but they were oblivious to us. Were they alive? Yes, but no. If they were alive like us, it was somewhere else than here. They couldn't see us, but we saw them. Their space was flattened into ours, and their time was sped up.

The stories which television tells are all accelerated and minced, chopped into tiny scenes sandwiched in between alien commercials. This format has trained us to limit our attention span to less than six minutes. If we are bored we change channels or get up to go get food. The miniature human figures on television present themselves to us without ever seeing or hearing us. We could sit in front of them naked and they'd neither know nor care. We become accustomed to a disengagement between story "deliverer" and story "receiver". We become conditioned by television's pervasive presence in our lives to communicate behaviors which we unconsciously bring to the task of live storytelling and which are wholly inadequate to its dynamic and temporal requirements. Television-talk is snipped lean: "47 dead. 135 wounded. Film at eleven." Its narrative arcs are short and its rhythmic presentations compressed. Even enlightened, educational "SESAME STREET" cascades at quite a clip. Television is not designed to render a long, information-laden tale, to compel its audience to action, to sustain an audience which cannot leave. And, television encourages us to form a conclusion based on what something first looks like.

This last aspect of video, the impact it imparts to initial appearance, is what makes it such a tricky tool in advocacy training. Most people recoil at what they look and sound like when they see and hear themselves on videotape. A teaching aid which leaves the student horrified at his or her own image has definite drawbacks. The student may well be left further inhibited -- trying not to look or sound a certain way. In acting terminology, this is called "playing a negative objective". It doesn't work. One is never freed from restrictive behaviors by trying not to be so weird. This is why the "what should I wear in court?" question has no ultimate answer. Some of the most celebrated trial attorneys wear weird clothes. Part of what they offer a jury is the profound exhilaration of having one's separate-ness and resistances evaporate, of being enveloped and transformed as one is swept or seduced or stalked into a story. Once we are being held in rapt attention, we are never thinking about what the storyteller looks like. Neither is the storyteller concerned about his or her appearance once this connection is made. When one is telling a personal truth, with passion, in order to persuade the listener, whatever the cost in self-consciousness -- when one has gotten this far, one is never wondering what to do with one's hands. And one never gets
this far, or persuades the listener, solely on the basis of one's choice of tie. The search for the right "gesture" leads the live storyteller up this same blind alley as the search for the right image or outfit. In the last several televised elections, we have become increasingly bewildered and alienated by candidates on television pinning onto their bodies certain gestures -- such as the jabbing forefinger, or the fist with the extended thumb -- which their handlers and spinners have advised them will read as sincere, or decisive. These signal gestures hail back to the Nineteenth Century school of acting in which certain gestures were used to signify certain emotions. A woman in despair could always be recognized by her arm flung back over her brow. But if it's a symbol, and not an organic behavior, we don't believe it. We know it has been tacked on, and therefore is obscuring our view of whatever is truer that lies beneath.

There is no single flourish of body language or single article of "power clothing" upon which the live storyteller can depend or hide behind. And, there is no purchase in trying to tell a story under the burden of the "negative objective" of trying to let the audience not-see one's true physical self. If one's first allegiance is to make the story come alive for the listeners, and one's physical self has been relaxed sufficiently to be fully available to this task, then self-imposed restrictions and externally imposed obstacles either fall away of their own accord or are burnt through by the intensity of the search to make contact. One can ask:

**IV. CHECKLIST FOR COURTROOM COMMUNICATION EFFECTIVENESS**

v Am I trying to do something or to not do something?

v Am I talking to the people present or am I broadcasting to them?

v Am I all affect or am I receiving and adjusting to the feedback cues, non-verbal as well as verbal, which these individuals are sending me?

v Am I in eye contact with the listeners or am I really addressing the carpet or the ceiling? Are my hands stuck in my pockets, clasped behind my back, or are they available to fulfill gestures which naturally emanate out of my telling?
Have I warmed up my voice and physically relaxed both my body and my breathing so that the sound of my voice can reach anyone, anywhere in the room? Is my voice ready and able to carry my intention fully through any part of my story or my questioning?

Have I chosen and conveyed a clear theme for this case which is underlying the strategy of my questioning?

Am I telling a story with a clear beginning, middle, and end?

Am I engaging the listeners through their senses?

Am I letting people to whom I ask questions -- witnesses on direct and jurors in voir dire -- answer?

Am I speaking in clear, active English, or am I speaking in the legal lingo that separates me from the jurors?

When I move, is it because the communication demands it or is it to lull myself out of nervous tension? Am I moving to further my relationship to these people, or to protect myself from their scrutiny? Am I carrying the listeners into a process of inquiry which they will share or am I checking off a list of information, satisfied to move forward all by myself?

Am I in active relationship with these prospective jurors or am I in relationship with my legal pad in the presence of on-lookers?

Are the jurors being invited to care by a full human being, or is the jury being given an oral book report by a competent robot?

Am I using language which counts or am I using more words than meaning, creating sound that does not communicate?
Am I allowing the presence of silence as an essential component to live communication, as essential as the sound of my own voice?

Am I bringing my full self, my whole person into the courtroom, or just my lawyer?

Am I telling a personal story?

(Find out. Put two chairs facing each other and sit across from someone. Begin your opening statement. At a hand signal from your silent partner, begin a second story, a personal story. [One Christmas when you were a kid. The funniest or saddest movie you ever saw. Your first date with your husband. How once you were unfairly or wrongly accused of something when you were a child. Your first day at your present job. Etc.] Use sensory detail and active verbs.

Share what it felt like. Make clear what happened. At a hand signal from the person across from you, switch back to your opening statement. Note the differences in your two storytelling styles. Allow your partner to keep switching you without warning from one story to the other, back and forth, beginning again if you come to the end of either, until you are talking in both stories "like yourself". Continue the exercise as you separate the chairs and slowly work yourself up to a standing position, and then a good distance away from your listener. At any point in the separating, if you find yourself having reverted to a fixed style, be willing to stop, and continue again in the personal story. Do not make getting to the finish position your goal; your goal is to get there having maintained contact between your listener and "the real you" every inch of the way.)
V. VOCAL WARM-UP

A. Steps

1. Tension Awareness

   Stand with feet at shoulder width, arms hanging loosely at your sides. Inhale and exhale through the mouth without holding in the abdomen, allowing the ribs to expand with each inhalation.
   Wrap shoulders up around ears, hold until shoulders have accepted the fact that they will be there "forever". Release shoulders, letting them fall, not placing them back where you feel they "should" be. Repeat at least three times. Extend to rest of the body, so that your shoulders, arms, hands, face, torso, buttocks and legs are tense. Release. Repeat at least three times.

   Repeat this last step, including scrunching face into a tiny fist, and then opening it wide. Repeat at least three times.

2. Head Rolls

   Let head fall forward, rolling gently from side to side -- ear to shoulder, not nose to shoulder. Repeat several times, until you have relaxed the sides and back of the neck and you are not merely moving the head on its pivot, or merely moving the neck's tension into another part of your body (such as into your fingers). Use exhalations of breath to release tension out of body.

   Extend the head roll, so that it goes all the way around -- front, side, back, side. Keep it loose and free from tension, and try to pick up some speed without picking up tension. Remember to change directions often (at the end of each breath). Stop and focus eyes on a single object if you get dizzy.

3. Drop Downs

   Release jaw hinge and let head fall forward, the chin onto the chest. Allow the weight of the head to lead the body all the way down, in slow motion -- one vertebra at a time -- until you are folded "in half" with your head, arms and entire top of your body dangling down. Hang there -- relax. Think to yourself that you will be in this position forever, so you can release
any vestige of impatience to move on the next step. Breathe. Repeat at least three times.

4. Touching Sound

Begin by gently voicing the sound "huh". Let the sound slowly extend, one per breath, into "huuuuuhhhh". (Take several breaths to accomplish this.) Then, close the lips at the end of the sound -- "huuuuummmmm". Collect the sound in the mouth and massage the lips with it. Repeat several times until lips are tickling. (To test if you are humming on lips, pinch your nose while humming. If sound is cut off entirely, you are humming in your nose.)

Every time you take a breath, pick a new note to hum on, thus warming up your entire vocal range.

Re-open the hum on the word "mmmmmmUUUUUHHHHHHHH".

5. Put It All Together

Begin a hum. Drop your head. Move it from side to side, and then extend this into a full head roll. Feel the hum move around in your head as your head moves in the head roll. Reverse direction of head roll. Remember to pick a new note when you take a new breath. Now, allow head to continue down, until you are in a full drop down. When you reach the bottom, open your eyes, look at a point between your legs that is behind you, open up the sound and send it to that point. Humming again, work your way back up your spine, balancing your head at the top, opening your eyes, and focusing on a spot opposite you. Open up the sound again, and send it to that spot.

Repeat steps #1 and #5.

B. Reminders While Doing a Vocal Warm-up:

1. Keep breathing.

2. Try always to maintain a broad balanced base, with your feet about shoulder distance apart.

3. Do not lock your knees.
4. Tension will try to hide and hang on. Check yourself often during your warm-up to see where it lurks in your body.

5. When balancing your head after coming up from a drop down, don't go "past" your stop, lifting the chin forward and crunching up your neck. Keep the face forward, so the neck extends as long as possible.

C. Articulators:

1. Scrunch your face into a teeny, tiny fist. Then open it wide -- mouth wide open, tongue out, eyes popping. Repeat.

2. Make a tiny "o" with your mouth -- just the lips. Then open your lips into a large, tight grin. Whistle and grin. Repeat.

3. With the heels of your hands, smooth down the jaw line, beginning up at the hinge connecting your upper and lower jaws, and tracing all the way down off the chin. Let the jaw hang slack, and using your hands, gently apply enough external pressure to push the jaw back and forth, and then side to side.

4. Take the tip of your tongue, and place it behind the lower front teeth. Now try to thrust the back of your tongue out of your mouth. Now relax the back of your tongue. Repeat.

5. Blow through your lips like a "motorboat". Repeat.

6. Blow through your lips and tongue like a "raspberry". Repeat.

7. Tongue twisters. Till you laugh.

D. Resonators:

"MEE-MAY-MAH-MOE-MOO"

This exercise is designed to warm up all the resonating cavities of the body. It will increase the range and placement of your voice. Do this at the end of your vocal warm-up, never cold without first some warming up.

MEE: Quack like a duck and force the voice way up in the nasal resonating region, squeaking MEE, flow down to
MAY: across the nose and sinuses in the middle of your face, honking out MAH, flow down to

MAH: right at the mouth -- the whole mouth cavity resonating, flow down to

MOE: down into your throat, where your vocal chords live, flow down to

MOO: way down into your chest. If the sound is in your chest, it will vibrate when you pound your chest. **STAY ON VOICE -- FULL SOUND FOR ENTIRE DURATION OF BREATH.**

E. **Sirens:**

From all the way down to a MOO level in your chest, up through all the resonators to a MEE level, make a pure vocal sound which never breaks, but changes shape:

Ooooooo.... Oh.... Ah.... Aye.... Eeeeee.... (MOO-MOE-MAH-MAY-MEE without the "M").

Repeat, but after "Eeeeee" don't stop, reversing direction right back down again, all the way to "Oooo," completing one full, unbroken circuit.

Repeat SIREN in the other direction, beginning in the top resonator.

F. **Flop Outs:**

1. Let head's weight fall forward carrying down into a full drop-down position. Lift the head forward, and let it extend outward and upward, leading the spine out one vertebra at a time from the tailbone, until the spine is stretched parallel to the floor in a concave position, dipped through the small of the back. Then, again starting at the base of the spine, let the body flop down into the convex position of the drop down. The motion feels almost serpentine. Go slowly at first and then build up speed. You must be very loose to do this movement.

2. Repeat a series of flop outs opening a hum into an "Mmmmm--uuuuuhhhhhhh".
(NOTE: Flop outs should only come in your warm-up after you have combined humming, opening the hum, and drop downs. NEVER do this exercise "cold").

VI. CONTROLLING SOUND: INFLECTION

A. Falling Inflection:
"City Burns. Ten Dead. Details at 11." This is the inflection that means "THE END," communicating that the speaker has finished something, and is separating from the listener. "Good night, John Boy." "And they all lived happily ever after."

In court, a falling inflection is often used inappropriately in a long series of perfunctory questions (such as, "What is your name? What is your address? How long have you resided at that address?") as the speaker finishes each item in a checklist. Despite the script "pretending" to be curious or needful of response, the inflection is signalling the jurors to not listen to the answers, that the answers do not matter. A continued pattern of falling inflections will actually make the listeners drowsy.

B. Rising Inflection:
"You took the money and did what?" Most closely associated with questions asked with an actual need to learn the answer (as well as with the lilt of British Speech), this inflection invites, or demands, a response.

C. Sustained Inflection:
"Your honor, my worthy opponent is drunk, has bad breath, failed the bar more times than even I did, won't return phone calls . . ." This is the inflection we associate with lists. It keeps the speaker in audio control even if no longer speaking, communicating to the listener that more is still coming. "Once upon a time . . ."
VII. BREATHING EXERCISES FOR PHYSICAL AND VOCAL RELAXATION

Supposedly, a lot of the population tests a higher degree of fear at standing up and speaking in public than of death. One of the body's first responses to fear is to hold the breath. Postures of readiness -- the soldier at attention, the diver poised on the board, the student waiting to be told, "Bluebooks open!" -- all involve inhaling and waiting. In none of these examples, however, is the individual expected to talk. Breath is the fuel and the medium on which the voice is carried. So the advocate in the courtroom must re-learn how to verify that he or she is capable, at any moment, of taking a full, deep breath. If you want to create an audience out of the jury who will hold its collective breath waiting for the witness' answer to your drop-dead question, you must be able to consciously control your own breath. Through training the body to respond to a deep, relaxed way of breathing, stage fright can become either a thing of the past, or something quite usable.

A. Vacuum Breath

Begin by closing your eyes. Slow down and extend your inhalations and exhalations. Breathe through your mouth. Fill your body with air. Inhale down into the small of your back. After a particularly complete exhalation, stop. "Spit out" in short blows the remaining reserve of air in the lungs. Keep "spitting" until there is nothing left. Truly nothing. Then just wait. You will feel your diaphragm drop and your lungs will fill so full of air you may well cough. You have just experienced the involuntary breathing of humans. Relearning how to allow a relaxed, full breath is not a matter of having to do anything so much as eliminating the restrictions we have applied to our breathing.

(So. The mind proceeds from Step X on to Step X+1, satisfied and confident at having learned Step X, but the body has not had time to actually learn Step X at all. Restrictive habits of breath and posture, particularly as they govern the bodies of intellectually impatient and accomplished adults, may be doubly difficult to unlearn. Their seeds are planted, in part or in whole, long before the creature learned to read or even speak the language. As a result, issuing verbal orders in subvocalized inner monologue, i.e., telling yourself, "Okay, relax my shoulders. NOW!" can be
accomplished without in any way actually entering the area of muscular tension or relaxing the shoulders one iota. Shoulders can be obediently yanked down, with all their tension intact. In order for the mind to allow the body the risk of experiencing itself without the armor or the bandages to which it has become accustomed, or addicted, the organism must learn that it can literally survive without the "assistance" of defense provided by these habits. The organism must re-learn how to "live through" the entire breath. Appreciating the logic of these procedures in no way guarantees that the body has re-learned them. The student must slow down sufficiently to become conscious of each subtle, habitual pulling away from the simple but radical experience of breathing without interfering. Someone who is wanting to re-learn to breathe without unconsciously, "automatically" tensing the shoulders, will often be able to accomplish in little time 7/8 of an inhalation free of shoulder tension interference, but then speed through the last 1/8, trying to outtrace the shoulders' entry into the process. The lesson has been "understood”, but the body still has not yet experienced one full breath without the shoulders muscling their way in. It will take several attempts, each one requiring greater concentration and greater relaxation, for the mind to tolerate being present, without directing the body through the familiar paths to which both mind and body have become long accustomed. When you begin to explore the breath, you will inadvertently come across the emotional memories associated with the "sites" where you applied the restrictive habit. Your eyes may inexplicably well with tears. As you begin to remove the restrictions, your intake of oxygen is increased and you may find yourself giggling. Whatever emotions come up, notice them, respect them, but breathe through them and do not be diverted from your focus on the exercise.)

B. Taking Inventory for Vocal Production

Many vocal problems are at root breath problems. If you are trying to improve a "problem voice", begin with the breathing exercises outlined above. A wispy, squeaky, or breathy voice may drop dramatically simply by providing it with a breath that is not shallow. Smooth down the jaw line with the heels of your hand, all the way from your ears to off your chin. Use the articulation exercises outlined in the "Vocal Warm-up" to relax your tongue. Start at the highest note in your range, working down to the lowest on the sound "ah". Don't separate the notes, but let them
merge in a siren, as explained in the Resonator section (See V. D.) from the "Vocal Warm-up". Work your way up and down your range, going only as far as you can on each full breath. Never rush the breath to accommodate a destination. Let the range expand a single note at a time at the end you are trying to strengthen. Always make sure that you are working on full voice, filling the breath entirely with sound. Do not just push out breath -- this will damage the vocal chords. Do not try to work loudly -- if you use supported breath fully given over to carrying the sound, the volume will be more than loud enough. Find where in your range the sound is produced with the greatest ease -- this is your "natural placement".

C. Volume -- Adjusting Sound to Space

Many voices do not reach the ear of the listener. A smaller percentage shoot right past the listener's ear and into deafening decibels. Again, it may first be a question of breath. Most people who speak too softly don't take in breaths that are deep enough; most who over-shout are gulping in great gasps rather than relaxed inhalations. Once the breath has been released, imagine that you have a ping-pong ball of sound in your mouth. The sound is heard as "huh". Pop the sound out of your mouth to someone. Find out if it actually reached the person, or popped out on the floor in front of the person, or shot right past the person and bounced against the wall behind. Now have the partner pop the sound back to you. After you become comfortable conceiving of the sound as a tangible entity that you are sending back and forth to each other, play a game of ping-pong, or "vocal volleyball". By involving your whole body in the aiming, chasing, slamming, and volleying, you will re-discover your natural coordination for adjusting volume to distance. (Be honest about admitting when you've hit it off the court or into the net!)

D. Releasing Voice From the Body

Finally, stand a good distance from your partner -- as far away as across the room if it is not more than 15 feet. Stand with your feet at shoulder width, the hip bones directly beneath the shoulders, the shoulders released and dropped, the pelvis slightly tipped under but neither swayed back nor thrust forward. The arms hang loosely at the sides. The spine is released to its full extension and the head rests
easily atop the spine, as if it were suspended by a helium balloon. This position is called "the neutral stance". Relax your face entirely. Begin your opening statement. DO NOT MOVE FROM THIS POSITION. Do not gesture. Do not employ your facial expressions, such as raised eyebrows or furrowed brows. As you make your way through your opening, keep disengaging your habitual expressions and gestures from your power to communicate. Let your voice do all the work. This is not easy. It is certainly not "natural". But you will hear (or your partner will tell you) how much clearer and more present the voice becomes when it is all on its own, and when tension is not allowed to enter anywhere in the body. When you find yourself clenching your fists or curling your toes or trying to gesture with either head, face, or limbs, stop, breathe into the location where tension has entered, and release it on the exhalation. When the tension cannot be cul-de-sac'ed into the body, when it cannot be stashed into nervous or habitual mannerism or gesture, it is forced into the vocal expression. Then, the voice will enlarge to accommodate it. The voice will learn how to carry all the feeling and information to the listener.
VIII. A REVIEW OF COURTROOM COMMUNICATION TECHNIQUES
FOR ADVOCATES:

A. Vocal Warm-Up
Tension awareness/breath release
Head rolls
Drop downs
Touching sound
Humming/opening sound
Articulators
Resonators
Sirens
Flop outs

Warm-up the face and voice and shake tension out of the body before entering the courtroom. End the warm-up with tongue-twisters so that you actually get your tongue confused and make some mistakes and laugh in frustration. The effort not-to-make-a-mistake keeps the speaker tentative and masked behind word choice. Ending the warm-up by enforcing some flubs, before engaging in inter-active communication, moves the speaker past this.

B. Controlling Sounds
Inflection: Use rising inflection on the terminal syllable of a question and then be willing to be quiet -- really "give the microphone over" to the witness or the prospective juror. If you find yourself consistently tagging questions with a phrase such as "Isn't that true?" or "Would you agree with that?" you may well be perceived as impatient, contesting, or even scolding. Consciously employ sustained and rising inflections in lieu of these tagging phrases, or connecting sounds such as "um." The inflection can direct the listener to connect ideas or answer questions and saves you "over-writing," or communicating an attitude toward the listener.

Sound exercises for directing and landing the voice.
C. **Opening Statement**

A jury needs to be able to follow a story with a strong storyline, for which you provide the beginning and the middle, and they provide the rightful ending.

Use of sustained inflections so the story doesn't end till it is over.

The jury needs a consistent Point of View to embrace as its own.

A jury also needs a clear EMOTIONAL basis of prosecution or defense.

There should be no wasted language or an overabundance of legalese.

When possible, use active verbs in the present tense and sensorially evocative language to create a living, felt experience for the listener.

(Create a telegram that accomplishes all this in 10 words.)

D. **Personal vs. Professional Delivery**

The story you tell in court must mean as much to you as an incident from your own life. We have to feel that it is PERSONALLY IMPORTANT to you that the case is decided in the favor of your client.

Let yourself laugh, early on. The laugh releases breath, facial tension, stage fright, and the human being out from under the lawyer persona.

E. **Eye Contact**

An advocate who can look someone in the eye, in an unprotected, neutral stance, and really ask a question that is IMPORTANT to him or her... and who can also look ME in the eye is an advocate who is speaking for ME. Before talking, take a moment to establish eye contact with the people to whom you are about to begin talking, so you are never reading at or reciting at them.
F. Five Senses
The five senses are what we all have in common. If you can make the jury understand and embrace your point of view through their senses, you will have them experiencing your client's story as your client did.

G. Movement
Remember to keep yourself on a broad balance base. Move when you are moving on in your thoughts -- in other words, when you are making a transition -- in your opening and closing. Beware of shifting around from side to side, foot to foot. Beware of shifting eyes -- look people straight in the eye. Shifty people are not on the side of truth and justice. You are. Use moving towards or away from someone or something, pointing, etc. to your advantage as a technique for giving and taking focus.

H. Examining Witnesses
Remember to treat each witness individually. Treat them in such a fashion that the jury members will regard that witness in the way that you want that witness to be regarded by the jury. Treat sympathetic witnesses like real people in your life who elicit that response from you, or like fictional personalities that elicit that response from you. (Example: your Aunt Harriet, Bambi, for sympathetic; Captain Hook, your Uncle Louis for someone you want to nail, etc.)

Also -- remember to control the focus of the jury while examining your witnesses. Is this someone that you want the jury to look at? Is this someone that you would rather the jury was not focusing on -- should they be looking at you instead?

I. Directing Juror Focus through Eye Contact During Examinations
Start the question on the witness and end it at on a juror, if you want the jury to focus on you during the answer rather than on the witness. Start the question on the juror and end it on a witness if you want the jury to focus on
the witness during the answer. If you want jurors to look at you alone, don't ever look at the witness. If you want them to look at the witness alone, only look at the witness. When you say "Objection", do so standing with a sustained inflection if you want to take back the focus. Experiment with different combinations.

J. Role Playing
Speak to witness, judge, or juror as if he or she were someone else.
Speak to witness, judge, or juror as if you were someone else.

K. Rehearsal
Rehearse aloud. By practicing aloud, you will discover that for clarity of communication, you may wish to re-phrase a lengthy question into a proposition, followed by a quick, short question. For example: "Does anyone feels doctors should not be held accountable even if they have been negligent in treating a patient and severe injuries result from that negligence?" The writer may be satisfied with this wording, but the actor will make better contact with, "Let's say in treating a patient a doctor is negligent, and severe injuries result from that negligence. Do you feel the doctor's accountable?" or "Some people would feel the doctor is definitely NOT accountable. Anyone here agree with that?"

Rehearse aloud every technical term you will mention. If the listener is going to have to own an understanding of "ankylosing spondylitis" sufficient to its effect on your client's life, your teeth, tongue, and lips must know their way unhaltingly, through this word, each sound clear enough that the listener can repeat it silently. It is possible for the writer to be so sight familiar with technical terminology that the actor has never had to actually speak it, or taken the time to rehearse it aloud, and will do so in court for the first time, awkwardly.

Rehearse aloud every amount of money you will mention. To write a number, and speak it aloud are two entirely different actions. A reticence to speak aloud of money is trained in us early and deeply. To ask a juror if there will
be any difficulty in committing to compensation of several million dollars in a
voice that inadvertently drops or stumbles as it utters the "m-m-m-money"
words sends a very mixed message.

After "constructing" an opening, rehearse with a listener, deliberately
sabotaging your facility with language:

1. By working in mime without any words at all. This will allow
you to extend your powers of communication, to discover the kinesthetic
aspects of the story that truly connect to the creature reality of the listener,
and to locate the human dimension of your client's case (and the appropriate
body language) that words obscure;

2. By delivering it in a foreign language or gibberish or with a
speech impediment that forces you to compensate with tools of persuasive
behavior you normally leave dormant;

3. By delivering it as a persona other than your normal courtroom
presenter (General Patton, Daffy Duck, Marilyn Monroe, Jimmy Stewart,
Aunt Winifred, etc.). These alternate archetypes spontaneously offer up
boldnesses of expression and conviction that your careful lawyer writer often
overlooks.

L. Breathe.
COMMUNICATION ARTS FOR THE PROFESSIONAL

JOSHUA KARTON, president of the Santa Monica, California firm of Communication Arts for the Professional, specializes in teaching litigators how to apply the personal communication skills and techniques of theatre/film/television to the art of advocacy. As the former Director of Education and co-creator of the Applied Theatre Techniques Workshops™, he developed its unique step-by-step system for transforming courtroom presentation into persuasion, which trained over 8,000 attorneys nationwide (*Harper's Index*). He has served on the faculties and developed curriculum for ATLA's National College of Advocacy, Gerry Spence Trial Lawyer's College, the National Association of Criminal Defense Lawyers, multiple National Institute of Trial Advocacy colleges, the JAG Corps, ABA programs, and numerous state trial lawyer association presentations. He designs and conducts training programs for private firms, law schools, CLE programs, as well as maintaining a private practice of case consultation and witness preparation.

After attending the Universities of California and Edinburgh, Joshua Karton studied at the American Conservatory Theatre, returning there to teach after writing/directing the film and video exhibits of THEATRICAL EVOLUTION, winner of the New York Drama Desk Award. His acting students include the recipients of Oscars™ and Emmys™. Television writing and acting credits range from *Forever Fernwood* to *Beverly Hills 90210*. He is an editor at Samuel French Trade and the creator of Bantam Books' "Film Scenes for Actors," series. His museum education programs and installations have been the recipient of grants from the Arco Foundation, the Ford Motor Company Fund, the California Arts Council, and the Kellog Foundation. He serves on the faculties of the School of Theatre at the University of Southern California, Loyola Law School, and California Western School of Law.

COMMUNICATION ARTS FOR THE PROFESSIONAL assembles and applies the skills of working theatre artists -- actors, directors, and writers -- to the communication needs of the legal profession. While jurors observe and respect the advocate's presentation of evidence and knowledge of the law, what they respond to is the live human event that the advocate creates in the courtroom. What are the techniques -- neither gimmicks nor tricks -- that make litigation come alive off the legal pad? What are the actual mechanics of live storytelling, interviewing, examining, proving, and persuading? CAP trains advocates to "write" not merely for what will be read, but for what must be spoken . . . and then heard, and felt, and believed. CAP equips litigators in areas such as vocal range and flexibility, body language, eliminating stage fright, storytelling structure and delivery, shaping jurors' perceptions of witnesses, creating and controlling emotion in the courtroom, coordinating spontaneous behaviors into pre-written or outlined scripts, invisibly directing where jurors look, what they hear, and what they quote in deliberation.

3014 Fourth Street #A-10, Santa Monica, California 90405
Tel/Fax 310.392.7558