Litigation #41

Killing Me Softly with Your Song: Learning to Know How Your Audience Goes about Understanding You

Back as far as Aristotle and Cicero, Rhetoric was defined as "the art of persuasion." The two of them wrote about it a good deal. For the most part, they wrote about in what order you should place the different stages of your argument. Cicero, especially, emphasized the importance of becoming skillful in the use of the many "figures of speech." Any lawyer might do well to read the shortest of his treatises on Rhetoric, the *Ad Herennium*." Herennius was his nephew. Has any uncle ever given a better present?

You can introduce yourself to all the contemporary figures of speech (the same ones Cicero details, but in modern English) by getting a copy of Arthur Quinn's wonderful *Figures of Speech: Sixty Ways to Turn a Phrase*. It is a candy store for the mind, written with both humor and wit, and extremely concisely. I predict you will be delighted to read it. Every trial lawyer should master this text.

Plato hated Rhetoric. He wrote a dialogue called *Gorgias,* in which he attacked it for being immoral

because it would allow a clever person to make the worse argument seem the better. (Gorgias was the #1 teacher of Rhetoric in his day.) But, of course, Plato was at great pains to summon everything he knew about Rhetoric in order to make his argument persuasive.

Apart from the stages of argument and the figures of speech, a trail lawyer should also be aware of how his or her audience goes about the act of *learning*. If you have arranged your argument in a perfectly logical order and summoned all the best-fitting figures of speech, your audience will not "learn" from you (be persuaded by you) if they are all asleep. For the 52 years I have been teaching, I have endlessly pondered how to keep an audience awake, alert, and willing to listen. As Director of the University Writing Program for two universities, I have had 20 years experience teaching rookie teachers (graduate students and law students) what I know about the subject. I would like to share some of that with you in this article.

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Many people say the first rule of Rhetoric is "Know your audience." That means you should know to whom you are speaking: What knowledge do they have or lack? What are their concerns? Will they like plain

language or language adorned in the high style? All this knowledge is important; but I want to expand beyond that. I add, "Know how your audience goes about learning that which you have to say to them." In different words, "Come to understand how they go about learning when you are in front of them, trying to teach them to agree with you."

I have become convinced that adults learn in three distinct ways: (1) auditorially; (2) visually; and (3) conceptually. While everyone is doing all three all the time, I believe I have never met a triple-threat – one who does them all equally well, or even equally much. In my experience, 60-65% of my students were primarily auditory learners, 30-35% primarily visual, and only 3-5% primarily conceptual.

And yet by far the majority of teachers – and you play the role of teacher for your juries and judges – prepare their material almost exclusively for their conceptual learners. They do the research; they summon the appropriate material; they arrange it in a logical order; and then they deliver that, somehow, in a classroom or conference hall. These teachers, brilliant and scholarly though they might be, are ignoring 95-97% of how their audiences go about learning.

Let us summon up the image of the worst teacher you

might have encountered. Since women tend to be not quite as bad at this as men, let us picture this teacher as a man. I think you will recognize him, probably having seen him a number of times in the course of your education.

He stands behind the lectern and does not move. He reads from a text almost continually. He doesn't look much at you: After all, the important information is all on the page. He never varies the presentation of his voice: He rarely, if ever, varies his volume by venturing louder or softer; he rarely, if ever, varies his tessitura by venturing to notes higher or lower than the four notes with which he feels safe; and he rarely, if ever, varies his tempo, keeping a tight rein on his vocal horse, lest it speed up or slow down noticeably.

Why is this fellow always in danger of losing your attention? Well – and you can guess this coming from me if you have been reading my previous 40-something essays in this journal – it all has to do with my favorite pre-occupation -- expectation. If he never varies his volume, his vocal range, nor his tempo, his primarily auditory students always know what kind of vocal sound to expect, minute after minute, hour after hour; and he constantly fulfills those expectations. There is no auditory shock for which the listener must be vigilantly prepared.

We are not finished with him, even though he has already deadened the sense of 60-65% of his audience. This fellow is both thorough and consistent. (And, I should quickly add, may be a famous scholar and a highly laudable gentleman.) He also offers his primarily visual students a diet equally lacking in variation. He stands behind the lectern. You can always find him there. One hopes there is not a clock visible behind him; or, much worse, we hope he is not lecturing in a Chemistry classroom and has the periodical table in back of him -- that endlessly fascinating labyrinth in which the mind can wander. Not only does he not change position, but he also does not change his posture. He does not gesture, or even raise his arms, at any time. He probably dresses the same from lecture to lecture. So his primarily visual students always know what kind of sight to expect, minute after minute, hour after hour.
There goes another 30-35% of his audience.

Only his primarily conceptual students will find him fascinating, if he is a great enough thinker. Any faculty member worthy of his or her salary should be able to find important things to say and arrange them in a logical order. That alone cannot make one a great teacher.

What happens to you as a student (judge or jury member) when all your auditory and visual expectations are constantly fulfilled, with no need on your part to be prepared for something different to happen? Your breathing slows down. When your breathing slows down to a significantly low level, we call this "sleep." If it slows down significantly more, we call it "death."

Therefore, the advice I give is for you to become consciously aware (and after a while you can do it unconsciously) that you have to *vary* what your audience is hearing from your voice and seeing from your visual presentation. Such well chosen variety will aid them to attend keenly enough and long enough to receive your message clearly.

Let us consider first what you can do for your primarily auditory learners.

How do you know what you sound like to your listeners? We are each in a worse position to judge this than anyone else in the room. Let me tell you of my earliest vicissitudes.

For my first class hour ever, in a Harvard classroom back in 1970, I was so petrified to have my back to the blackboard that – in the act of reading the syllabus to

them and letting them go 10 minutes early – I realized, as they scraped their chairs back on the tile floor, that I had been staring intently at the intersection of the toe of my right shoe and a floor tile's edge for the entire 40 minutes. I was numb.

That never happened again; but by the third class hour I was so distressed by my performance that I truly contemplated quitting. If I didn't quit, I would have to find a way to get better at teaching. The help Harvard offered was so slight as to be of no help at all. So I decided to tape record my next class. This was in a day when tape recorders weighed 45 pounds and had two ungainly reels of tape you had to co-ordinate. I lugged one into the classroom and told my students to ignore it. I turned the machine on; and my very first sentence showed so clearly that I was incapable of ignoring it that the entire class burst into laughter. I persisted and taped the whole class.

Listening to that tape later that evening was one of the most painful and humiliating experiences I have ever had. I made a good decision: I would listen to it again (an act worthy of being included in *Profiles in Courage*) to discern what I thought the number one problem to be. It had to do with pacing. (The pace died every 12 minutes, forcing me to gear it up again, with great and awkward effort.) I concentrated on this for 9 classes, by

the end of which I thought I was making progress.

I lugged in the tape recorder again, already having decided to figure out what the #1 problem was this time around. 9 classes later, I had that problem better in hand and repeated the process.

I did this continually (only with longer periods between recordings) for three years. I was no longer bothered by anything major and therefore abandoned the tape recorder.

It probably will not take you anything like three years; and the advancement in technology that allows you to cary a video camera around in your phone will lessen the physical burden. Selective videotaping of your performances will show you yourself in a way that you cannot see from your side of your eyes. I recommend it highly.

For your auditory learners, it is essential that you vary the way you use your voice. Practice techniques for getting either louder or softer to make a point with extra emphasis. You need not even wait for such a substantive moment. Watch your audience's eyes. If they are down, or askance, or wandering anywhere other than looking at you, MAKE A SUDDENLY LOUDER NOISE! I assure you their gaze will return to

you. You can accomplish the same by getting significantly quieter – though this probably should have a more significant connection to the point thus being made.

You are not doing these things primarily for you; you are doing them primarily for them.

As Director of the University Writing Program at two schools, I have watched literally hundreds of new teachers try to become comfortable in a classroom. Many of them have voices that they say they cannot vary very much. They report that when they try to make louder noises (especially at local basketball games), they always get hoarse.

This hoarseness is primarily due to the fact that they do not know how to breathe. Most of us have forgotten how to breathe. We do it, of course; but we do not do it well enough to support a prolonged issuance of sounds louder than usual.

Why do I say we have forgotten how to breathe? Well, think of an infant, howling at the top of its lungs endlessly. They never get hoarse, do they? We are born knowing how to breathe. We forget it sometime around puberty. Maybe earlier.

Unless you have taken speaking or singing lessons, you are probably in the same boat. So let me instruct you how to breathe in the support of louder talking.

First, take this little test: Put two fingers at the bottom center of your rib cage and take a huge breath, one that will prepare you for making a very loud sound. You need not make the loud sound. Try it again. Did your chest swell when you took those breaths? If so, you have forgotten how to breathe.

Your vocal cords are, well, cords. They run through your throat. Place you thumb and your fingers on either side of your throat and waggle those cords while making a sustained sound. Can you hear the sound waggle, too? Now put your hand back there and take a huge breath in your chest. Can you feel those cords tighten?

We make vocal sound by forcing air through the throat, surrounding the vocal cords, making them vibrate and sending the results to our head cavity, which acts as a loud speaker. If you tighten the cords every time you emit loud sounds, you are going to strafe them. You will get hoarse.

Instead, you must learn to put all the energy of taking in a breath down in your stomach area. You will have

to support this by tensing up parts of the body below that area – thighs, legs, buttocks. These body parts do not suffer from a little extra tension. Try that, keeping a hand on your upper chest to make sure it does not inflate. Try it again while you waggle your vocal cords. You should be able to do this without tension in the throat.

Practice it in a mirror. I predict it will take you no more than three weeks to learn how to do this. Eventually, you will do it without thinking, every time you need to turn on your speaking apparatus.

Proof of the pudding: My normal consulting lecture about the language extends to two full days, from 8:00 to 5:00, with two 15-minute breaks each day and an hour's break for lunch. By the end of the second day, my voice is never tired nor worn. I learned this from Donna Roll, an operatic soprano in Boston back in 1970, from whom I took 4 breathing/speaking lessons. Two months ago I found her on the internet and called to thank her. You can thank her too, if you try this out.

I once was conferencing with a female grad student rookie teacher whose voice had been very tinsel-like in class. She recognized it was a problem, complaining that as a short, very thin person she could not muster up a big enough voice to do the job well. I told her that

if I were ever caught on a ledge in the Alps after a serious avalanche and could have only one person with me to cry for help, I would choose a soprano. She learned how to breathe properly and, quite literally, found her voice.

Varying your voice on a regular basis – volume, tessitura, and tempo – will keep your primarily auditory audience with you. They will hear what you have to say.

For your visual audience, you need to present them with engaging visual aids. What is your primary visual aid, the one that makes the most difference? Well, of course, it is no sheet of paper, nor Power Point slide (I never use Power Point): It is you, yourself. Most of the time when your visual learners are looking at you, you is what they see. If you never move, either from place to place or standing in place, they soon have nothing interesting to look at. You can find what is comfortable for you, but find something. Somethings. You don't have to do what I do, but what I do fits me well: I am so often in motion, walking from one end of my space to the other, that it becomes a noticeable variation when I occasionally alight somewhere and *stop* moving. (Variation is still the key.)

But just as you should become better aware of how you breathe, you should also become better aware of how people go about the act of seeing. I discovered this for myself because I am visually handicapped, being able to see clearly out of only one eye. I figured out what I needed to do to compensate for that; I eventually realized that this is knowledge every public speaker should have.

We are (almost) all one-eyed in the sense that we tend to have a dominant eye. Perhaps you were brought up on Superman comics, where they show you eyebeams coming independently out of each of his eyes and piercing solid objects. Well, that's not how we go about seeing. One of our eyes dominates the other: It insists that the other one see things its way. It is important to know which is your dominant eye, because, like me, you see one half of what is in front of you preferentially. I walk constantly while lecturing for three main reasons: (1) It gives my audience no chance to stagnate visually if they are looking at me; (2) the activity for me is actually a source of continued energy; and (3) I see the right half of my audience so badly, it is necessary for me to take myself all they way over there to keep re-establishing contact with them.

You perhaps can recall a lecturer who walked a great deal from left to right but would go all the way to the

right but only part of the way to the left. That person was probably left-eye-dominant. Once past the center, going left, it is increasingly the non-dominant eye that is facing the audience. Better not go too far in that direction!

This is true whether you are in front of a jury or sitting at a conference table. Though you may well not know it, you are more aware of the people on the side of your dominant eye. You have to make a special effort to walk towards the non-dominant side – or (at a table) to turn your head – so that your dominant eye will be able to spend an equal amount of time with the folks over there.

That makes it necessary for you to determine which is your dominant eye. It can be done simply and quickly. Extend your arm in front of you with your index finger raised. Line up the tip of that figure with some target on the far wall. Without moving your head, close one eye. Look. Then open that eye and, again without moving, close the other eye. For one of those two actions, your finger tip should have stayed in line with your target; for the other, it should no longer be in line. The eye that kept your finger in line with the target is your dominant eye. Become aware that you are not an equal opportunity seeing person: You favor the side of your dominant eye. Compensate for that by consciously

getting the other half of your audience in regular, if alternating, view.

In addition, remember that they can see all of you, all the time. Use your hands. Use your arms. Cock your head to one side for effect. Nod with emphasis. In small spaces, you can even use your eyebrows, if you have any. Smile on occasion. Scowl on occasion. Shake your head at the appropriate moment. Whether you are further away from your audience or closer, the key, once again, is to give your audience a *varied* visual experience of you.

Visual aids may seem a simple matter. Pictures of what the dastardly defendant did are always an effective tool. Charts and graphs – well, you know all about that.

Why, you might ask, have I such an antipathy for Power Point and the like? It's because the same image – and a thoroughly intellectual image at that – is usually up here for far too long. If it outlines the next four points you are going to make, the slide becomes a time-teller. "O dear. He's only on point number 2, and there are 4 of them. Zzzzzz."

One last point: We are all creatures of habit. In *On the Papers,* I have often written for you about writing habits. We also have habits of oral presentation. As with our writing habits, we are rarely aware of these unless someone points them out to us. When we are new at speaking to audiences, we tend to have a great fear of what radio people call "dead air." Cursed be silence! Even in very short quantities. Fill that space! We thus become prone to developing verbal tics – sounds that are silence-fillers. These can even be made up of any sounds that are not actual parts of the words we are choosing. Sometimes they can be whole words or phrases like "you know," or like "so," or like "like." But the most common and prevalent verbal tic, by far, in my new teachers was either "uh" or "um." Most people don't even know they are saying it. When I noticed it was popping up with regularity in a rookie's classroom, I would listen intently for precisely the next 5 minutes, counting every utterance of "um." For an habitual "um"-user, the average number in 5 minutes was 31. A good way to find out if you are such a practitioner is again, the tape or video recorder. That might be painful; but no pain, no gain.

These are perfectly basic things we could have been taught and should have been taught; but I do not know of anyone who has been teaching them. Investigate; identify; and practice. It will not take very long to

make a remarkable difference in the presentations you are so often called upon to make. And, along the way, you are likely, eventually, to enjoy it.