

**AVATARS, ACTING AND IMAGINATION:  
BRINGING NEW TECHNIQUES INTO THE LEGAL  
CLASSROOM**

*Joy Kanwar\**

“All the world's a stage,  
And all the men and women merely players;  
They have their exits and their entrances,  
And one man in his time plays many parts...”

*As You Like It*, Act II, Scene VII.

“Lawyers, like actors, require development of human awareness: *self*-knowledge and *other*-consciousness. Learning the fundamentals of acting helps practicing and student lawyers get in touch with their intuition, their emotions, and their imagination.”<sup>1</sup>

This project is part of an ongoing effort to build the “360° lawyer,” a concept that I came up with to capture related strands of thought I have had while teaching students in my first-year legal writing classroom. “360°,” or “whole,” or “all the way around.” These felt like the right ways to describe someone who could see legal issues from multiple perspectives, but also

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\*Assistant Professor of Legal Writing, Brooklyn Law School. I am grateful for the immense support from numerous colleagues here at Brooklyn Law School, including the Deans for Brooklyn Law School’s support through the school’s Summer Research Stipend, my Legal Writing Director, Heidi K. Brown, my mentor, Jocelyn Simonson, and to so many Brooklyn colleagues who read drafts and kept me inspired through this process, including Maria Termini, Susan Greene, Carrie Teitcher, Cameron Arnold, Heidi Gilchrist, Sabeel Rahman, Julian Arato, Jodi Balsam, Susan Hazeldean, Carmen Maria Rey and Deborah Berkman. I am also thankful to my administrative assistant, Marva Skeene, and my research assistants, Claire Wasserman, Craig Harrington and Karina Castro, and to Professor Lola Cohen of the Lee Strasberg Institute, for their invaluable assistance. I am thankful to Marilyn Walter, Elizabeth Fajans, and Mollie Falk for taking a chance on me and bringing me into the legal writing academy years ago, and to Kathryn Young, Sharon Finegan, Kim Chanbonpin and Vik Kanwar, for helping me navigate the academy once I got here. Finally, I am forever grateful to Cush Jumbo for encouraging me – and helping me – to try these ideas out in the classroom.

<sup>1</sup> James Maxwell, *Acting and Legal Education*, 17 VT. L. REV. 533, 573 (1992).

had the quality to sustain him or herself in the practice of law – the “w-holistic” lawyer.

The first endeavor was to think about ways that I could teach or inspire students at the particular moment in the spring semester where they had written their appellate briefs and were just about to present their oral arguments – in other words, in the liminal space between what students know and what they do not (yet) know.

Along with the traditional “moot-courtisms” and instructions, such as to make eye contact, and not to be rude or disrespectful to the judges or opposing counsel, I decided to try something new this year. I set aside one extra class period, after I had already taught my normal oral advocacy classes, in which I pulled together six tips to help my students navigate this space. I employed the help of one of my neighbors, a Shakespearean-trained actor who was currently, in her words, “playing a lawyer on t.v.”<sup>2</sup> Together, she and I brought these tips to life for the students, and met them right in the space that they occupied that week.<sup>3</sup> This article describes the concepts I created for that class, as well as other theater-based techniques that can be helpful for students to transition into oral advocates, and ultimately, into holistic lawyers.

In Part I of this article, I examine the scope of the existing legal academic research on theater techniques in the law, including those in the courtroom as well as the classroom. Although some of the pieces connect acting and lawyering, they

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<sup>2</sup> Cush Jumbo plays the impressive Lucca Quinn on the CBS television shows, *The Good Wife* and its spin-off, *The Good Fight*. She is a classically trained theater actor and dancer and has been in numerous productions in London and New York, most recently at the National Theatre in *Common* in the summer of 2017. In 2012, she won the Ian Charleson Award for her performance as Rosalind in [William Shakespeare's As You Like It](#) at the Royal Exchange Theatre, Manchester. Clare Brennan of [The Guardian](#) wrote about her performance in *As You Like It*, that “[i]f these performances truly reflect her talent, Jumbo looks set to become one of the best actresses of her generation.” She is also the author of the one-woman show, *Josephine and I* (which, for my Legal Writing colleagues, is supposed to be “I” and not “me” for a particular reason relevant to the play), which several major awards in London in 2013 before coming to New York’s Public Theater in 2015.

<sup>3</sup> The class took place on Monday, March 20, 2017. Video is on file with the author, and photos are available at: <https://www.flickr.com/photos/brooklynlawschool/sets/72157679264427432>. I also ran a version of this class (albeit without the extra star power since Cush was wrapping up her television season) on March 30, 2018, and was able to get the same general points across to the students.

leave room to explore the use of theater theory and application in the law classroom – including the legal writing classroom – in a deep and impactful way. Further, even though the literature on oral advocacy is richly developed, it also leaves openings to inspire students while teaching them to be advocates. I discuss why theater techniques can help students feel more prepared for the oral argument process, including addressing concerns about whether such techniques can bring through an authentic perspective.

In Part II, I describe the six techniques, some from my own experience, and others from formalized theater training, which I brought to my spring persuasive writing and oral advocacy course, and how we presented them to the students. The six tips are to: 1) **find an “avatar,”** which is the core concept of this paper, and one I developed to help students feel more steady when they first think about presenting themselves; 2) **be prepared**, which requires them to review the material facts and law just as an actor would review a script; 3) **know the “heart” of the story**, which is common in both a student’s theory of the case and an actor’s understanding of her character’s motivations; 4) **think in a 360° way**, in which I ask students to “recognize the round,” and think from the other side’s perspective, just as actors are taught to think about other character’s motivations; 5) **understand the power of projection (the voice)**; and, finally, 6) **understand the power of body language (the stance)**.

Finally, in Part III, I conclude with my thoughts on the class and the process, and discuss ways in which these techniques – unbundled or bundled—might be useful in other law teaching moments.

## I. Background and the Current Literature

Only a few major articles examine the use of theater techniques in the law. Some of the articles focus on practice (trials, etc.)<sup>4</sup> and others on training (paralegal training)<sup>5</sup>, but

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<sup>4</sup> See Kathleen B. Havener, *Method Acting for Lawyers*, 31 LITIG. 48 (2005). This short but excellent article draws upon the similarities between acting and trial advocacy to highlight how lawyers should approach oral argument. In her view, the same factors that lead to effective acting also lead to effective advocating. In this piece, the author discusses the role of authenticity, the audience, ways to overcome “stage fright,” and inflection.

there is still a great deal of potential to think about these techniques in a law school context.<sup>6</sup> As an initial matter, it is useful to categorize and think about what we can learn from how theater and presentation skills are being used in a variety of classroom settings so far. Scholars indicate that “there are three main ways in which drama could be utilized in the law school: as part of skills training through simulation and role play; as part of instruction in substantive law via the depiction of law or lawyers in film or theatre; and to help students explicate and analyze legal concepts by engaging students in a dramatic production.”<sup>7</sup> This paper will ultimately focus on harnessing creative dramatic tools to prepare for and present an oral argument on a persuasive brief, but it is useful to think about some of what makes simulations useful in the first place.

#### **A. Simulations and theatrical teaching exercises within the law classroom generally**

First, simulations in the classroom deepen student understanding of and engagement in the legal learning process. Inspired by her time learning French at Dartmouth College, Professor Susan Apel has successfully used dramatic technique in her family law classroom for over two decades.<sup>8</sup> In her article, she illustrates a teaching exercise in which students “free write” on a theme from their assigned readings (“A family is ...?”) and then act out a skit in groups of 4-6 students based on their responses to the readings and the writing assignment. After all the students have performed their pieces, the group then undertakes a second exercise in which they create their own written responses to the whole set of the student performances.<sup>9</sup>

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<sup>5</sup> See Allan M. Tow, *Teaching Trial Practice and Dramatic Technique*, 13 J. PARALEGAL EDUC. & PRAC. (1997).

<sup>6</sup> See Susan B. Apel, *Bringing Theater Techniques to the Classroom*, in TEACHING THE LAW SCHOOL CURRICULUM (Steven Friedland & Gerald F. Hess eds., 2004); Peggy Cooper Davis and James Webb, *Learning from Dramatized Outcomes*, 38 WILLIAM MITCHELL L. REV. 1146, 1148 (2012).

<sup>7</sup> Anne Scully-Hill, Paul Lam, and Helen Yu, *Beyond Role Playing: Using Drama in Legal Education*, 60 J. LEGAL EDUC. 147, 148 (2010).

<sup>8</sup> See Apel, *supra* note 6, at 219.

She argues these types of exercises are effective because the instructor utilizes a variety of teaching techniques within one exercise.<sup>10</sup> Finally, she says “I am convinced that this exercise is long-remembered because it incorporates actual physical activity with mental activity, use of words, and visual images, all of which involve more of the students’ whole persons.”<sup>11</sup> Professor Apel means this in the literal sense in this article (the whole body as well as the mind), and the “whole person” concept is a useful framework for how these techniques can help law students.

### **B. Simulations in Counseling and Negotiation**

Next, a number of authors acknowledge that client counseling and negotiation training can also benefit by incorporating theatrical techniques.<sup>12</sup> According to James Maxwell, “acting training can help law students prepare for situations where they must think in action and respond effectively.”<sup>13</sup> In the context of client counseling, acting training helps students learn how to build relationships and effectively obtain information from clients, promote collaboration skills, and practice active listening.<sup>14</sup> Peggy Cooper Davis and James Webb bring the “process drama” into the client counseling and negotiation context, in which the “students engage in and reflect on the process of acting in the world, and they learn from – and are judged by—their reflective engagement in that process.”<sup>15</sup> For example, the purpose of a client-counseling “process drama”

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<sup>9</sup> *See id.* at 220.

<sup>10</sup> *See id.*

<sup>11</sup> *Id.*

<sup>12</sup> *See* Tow, *supra* note 5, at 70; *see also* Taylor Simpson-Wood, *One Approach to Teaching Maritime Law: The Admiralty Classroom as a Stage*, 55 ST. LOUIS U. L.J. 601, 606 (2011) (The author examines how acting enhances the role of the teacher, but indicates that “in the arena of law school studies, the relationship between acting techniques and success in legal practice has also been emphasized in the areas of trial advocacy and mediation.”)

<sup>13</sup> Maxwell, *supra* note 1, at 538.

<sup>14</sup> *See id.*

<sup>15</sup> Cooper Davis and Webb, *supra* note 6, at 1148.

is learning task analysis, management and contingency planning rather than whether a student can master an idealized script.<sup>16</sup> By emphasizing knowledge and flexibility, the “process drama differs from traditional theatre practices in that it ‘proceeds without a script, its outcome is unpredictable, it lacks a separate audience, and the experience is impossible to replicate exactly.’”<sup>17</sup>

Training students to be flexible also helps them in negotiation contexts, “where the original issue may need to be redefined mid-negotiation.”<sup>18</sup> Actors are trained to understand that human conflict is inevitable and to look forward to working through conflict.<sup>19</sup> In fact, these may be the two contexts in which law professors are most likely to use “actors” in the classroom – often other students or colleagues – to play clients and opposing parties or counsel, and it seems a natural fit to incorporate some acting training into the student side of the equation as well.

### **C. Simulations in Trial Advocacy**

Finally, dramatic techniques may also enhance teaching trial advocacy practice in law school.<sup>20</sup> As with negotiation and counseling, acting skills help prepare students for the awareness and flexibility required in a trial setting.<sup>21</sup> Learning concentration techniques enables the individual to focus on the details, and adapt to situations with external cues and an unknown outcome.<sup>22</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* quoting CECILY O’ NEILL, DRAMA WORLDS: A FRAMEWORK FOR PROCESS DRAMA 4-5 (1995).

<sup>18</sup> Maxwell, *supra* note 1, at 538.

<sup>19</sup> *Id.*

<sup>20</sup> See generally Tow, *supra* note 5, at 70; Maxwell, *supra* note 1, at 538.

<sup>21</sup> See Maxwell, *supra* note 1, at 538.

<sup>22</sup> See *id.*; see also Peter W. Murphy, “There’s No Business Like...?” *Some Thoughts on the Ethics of Acting in the Courtroom*, 44 S. TEX. L. 11 (2003) (in which the author argues that theatrical exercises and techniques, such as like voice production and public speaking, can also benefit practicing trial lawyers in their courtroom skills).

Tow likens the courtroom to theater, where the actors in both “engage in dialogue before an audience using voice, action, and props,”<sup>23</sup> and that simple acting class exercises helped to encourage “self-awareness” and “self-acceptance”, which, in turn, promoted self-confidence.<sup>24</sup> Further, Scully-Hill, Lam and Yu also found great value in trial simulation models where students take on the role of trial counsel, make arguments, and question witnesses.<sup>25</sup> The authors write about a mock trial at The Chinese University of Hong Kong’s law school in 2006 and 2007.<sup>26</sup> The students who participated in the productions were later interviewed, and reported feeling as if they had a greater understanding of the common law, enhanced writing and editorial skills, and – notably – an even better grasp of how the law impacts real life.<sup>27</sup> These authors reinforced that this type of theatrical “education enhances self-confidence, interpersonal skills, and communication skills, and enhances professional skills alongside emotional intelligence.”<sup>28</sup>

Lastly, authors Les McCrimmon and Ian Maxwell explore a variety of acting theories (Classical/Galenic, reception, and Japanese *no* Theatre) that can be incorporated into trial advocacy training.<sup>29</sup> The authors consider the trial process as

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<sup>23</sup> Tow, *supra* note 5, at 70.

<sup>24</sup> *See id.*; *see also* Interview with Lola Cohen, May 17, 2018, discussing her “Intensive Communication Skills for Attorneys” course, which is based in method acting principles, and which she has taught at Brooklyn Law School for several years. Her syllabus begins: “Be it Hamlet’s soliloquy, a closing argument at trial or at the negotiating table, both the lawyer and the actor must capture and control the attention of his or her audience. Performance skills basic to acting including relaxation, concentration and motivation when incorporated into legal work will significantly increase the likelihood of the message being conveyed in the most effective manner.” Professor Cohen was kind enough to let me audit her course, which she divides into 1) relaxation techniques, 2) sense-memory exercises, 3) “need” exercises (addressing the 15 expressive human needs), and 4) the recitation of a monologue that the students choose themselves.

<sup>25</sup> *See* Scully-Hill, Lam and Yu, *supra* note 7.

<sup>26</sup> *See id.*

<sup>27</sup> *See id.*

<sup>28</sup> *Id.*

<sup>29</sup> *See* Les McCrimmon & Ian Maxwell, *Teaching Trial Advocacy: Inviting the Thespian Into Blackstone’s Tower*, 33 THE LAW TEACHER (2010).

incorporating foundation skills, preparation skills, and presentation skills.<sup>30</sup> They argue that presentative aspects are underdeveloped in teaching advocacy courses, and models of acting instruction should be considered when creating advocacy courses.<sup>31</sup> In this article, I posit that “method acting,” as developed by Lee Strasberg,<sup>32</sup> as well as some improvisational and Shakespearean training techniques are highly useful tools for oral presentation skills.

#### **D. Do Ethical Issues Arise by Bringing Acting into the Classroom?**

Scholars are (rightly, in my opinion) concerned with the ethics of introducing acting into the classroom.<sup>33</sup> Maxwell examines the ethics of acting training and the law, and what he deems the misconception that acting training encourages deceitful behavior.<sup>34</sup> He finds that, on the contrary, acting requires the actor to take responsibility for words and actions, and moves the student in the direction of personalization, rather than the opposite.<sup>35</sup> Maxwell encourages an ongoing dialogue

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<sup>30</sup> *See id.*

<sup>31</sup> *See id.*; *see also* Kathryn Lee Leader, *Trials, Truth-Telling and the Performing Body* (July 2008) (unpublished Ph.D. thesis, University of Sydney) (This follows Bluebook rule 17.2.2 Unpublished and forthcoming sources, dissertations and theses.) Leader’s thesis reframes the behavior of trial court lawyers in Australia and the United Kingdom as a type of acting called “legal naturalism.” It examines how the characteristics of the adversarial criminal trial are similar to the theater. The thesis asserts that the skills trial advocates need to perform effectively in court room are more than an acquisition of legal skills. Successful trial lawyers engage in a performance in which the audience consists of other lawyers, the judge, and the jury. It looks at the way lawyers are introduced to this social universe through pupillage and how lawyers can acquire strategies and tips through private advocacy training programs. The author also draws distinctions between good acting and bad acting, and comments on the experience jurors have with trials through television shows that theatricalize – and influence – the process.

<sup>32</sup> *See generally* Lola Cohen, *THE METHOD ACTING EXERCISES HANDBOOK*, Routledge Press, 1st Ed. (2017); Havener, *supra* note 4.

<sup>33</sup> *See generally* Maxwell, *supra* note 1, at 538; Murphy, *supra* note 24, at 112; McCrimmon & Maxwell, *supra* note 29, at 46.

<sup>34</sup> *See* Maxwell, *supra* note 1, at 538.

<sup>35</sup> *Id.*



regarding acting and ethics if implemented in a law school.<sup>36</sup> Peter Murphy, in his article about practicing trial lawyers, similarly acknowledges the thorny ethical issue of theatrical training for lawyers because it might seem improper to appeal to emotion rather than “objective and logical inquiry.”<sup>37</sup> The author distinguishes older stage techniques, which are known for faking responses, with more current, authentic techniques which encourage the actor to emit an authentic reaction to the drama.<sup>38</sup> In their article, McCrimmon and Maxwell also examine the ethics behind acting training, and acknowledge that if used inappropriately, students may engage in “over-zealous” advocacy.<sup>39</sup> The authors encourage a holistic teaching approach that incorporates forensic technique and trial ethics.<sup>40</sup> The movement towards “authenticity” is important, both in acting and in oral advocacy,<sup>41</sup> and has to be considered in any program we develop to guide our students.

### **E. Current Literature on Oral Advocacy, Pedagogy, and Simulations**

The literature on oral advocacy itself is well developed<sup>42</sup>, and authors continue to push for law schools to recognize the importance of training students in oral advocacy, which does not garner much classroom time or attention as written advocacy.<sup>43</sup>

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<sup>36</sup> *See id.*

<sup>37</sup> Murphy, *supra* note 24, at 112.

<sup>38</sup> *See id.*

<sup>39</sup> McCrimmon & Maxwell, *supra* note 29, at 46.

<sup>40</sup> *See id.*

<sup>41</sup> *See* Heidi K. Brown, [Cite to new work or else original articles about not “faking” responses. Professor Brown’s 2017 book is cited later in this article.]

<sup>42</sup> *See*, e.g., Karen K. Porter, Nancy L. Schultz, Lauren Scott, Louis J. Sirico, Jr. and Annemiek N. Young, INTRODUCTION TO LEGAL WRITING AND ORAL ADVOCACY, Matthew Bender and Co., 1989; Michael R. Fontham, Michael Vitiello, David W. Miller, PERSUASIVE WRITTEN AND ORAL ADVOCACY IN TRIAL AND APPELLATE COURTS, 2d Ed., Wolters Kluwer, 2007; the Monograph Series, 2017, published by the Legal Writing Institute (LWI) compiling classic and influential articles on moot court and oral argument.

<sup>43</sup> *See* Michael Vitiello, *Teaching Effective Oral Argument Skills: Forget about the*

Although Sirico and other scholars have been the standard setters for how to teach students the basics of how to prepare for oral advocacy, and have done an excellent job standardizing this methodology, there remain creative ways through which we can inspire the students by building on top of these methods.<sup>44</sup>

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*Drama Coach*, 75 Miss. L.J. 869-915 (2006); Jennifer Kruse Hanrahan, *Truth in Action: Revitalizing Classical Rhetoric as a Tool for Teaching Oral Advocacy in American Law Schools*, 2003 BYU EDUC. & L.J. 299-338 (2003).

<sup>44</sup> Louis J, Sirico Jr., *Teaching Oral Argument*, 7 PERSPECTIVES: TEACHING LEGAL RES. & WRITING, 17-20 (1998). This is a good summary of what current oral advocacy training looks like in a legal writing classroom. The author breaks down the preparation for appellate arguments into four parts.

A. Start by Teaching the Nuts and Bolts

The author suggests to first start by teaching the students the basics of where to sit, stand, what to bring (including the record and brief), and how to organize their notes. The author suggests writing notes on the inside of a manila folder, with single words, short phrases, or part of sentences. He also suggests organizing in outline form according to issues and subissues, and writing information about important cases on note cards and attaching them to the folder. He does not suggest writing out scripts and using lots of notecards. There are five additional lessons: (1) tailor the argument to the audience, (2) focus on one or two themes, (3) anticipate questions and answers, (4) be flexible in moving from one argument to the other, and (5) prepare rebuttals.

B. Emphasize That the Argument Is About Substance

Author distinguishes real world advocacy with moot court. Moot court is more about whether the student can withstand the pressure of answering scattered questions. Real judges want information about substantive issues in order to come to a conclusion. The author says working with the student on the main theme so that it is as persuasive as possible is important. He also suggests encouraging moot court judges to role-play real judges, rather than asking questions just to ask them.

C. Prepare the Students and the Bench Adequately

For students: Watch tapes of oral arguments and offer critiques. Schedule practice arguments and ask moot court members, TAs, volunteers, or recent grads to serve as the judges to lessen the burden on professors.

For judges: He draws attention to the judges being ill-prepared for arguments, and suggests ways to make sure they are prepared. If using student judges, could do an orientation beforehand and ask about their experiences first-year as a way to encourage them to better prepare. Also, bench memos are helpful (6-10 pages with summaries of significant cases). He also mentions that it is helpful to supply the judges with questions beforehand as an optional reference.

D. Give Helpful Feedback

In her article, *From Grimm to Glory: Simulated Oral Argument as a Component of Legal Education’s Signature Pedagogy*, Lisa McElroy draws upon the Carnegie Report and the Best Practice Reports to highlight how simulated oral argument exercises can further the goals of legal education.<sup>45</sup> She focuses on the important role oral argument plays in legal education to develop “great legal thinkers, [and] great legal practitioners.” She posits that law professors:

can better train their students to engage in the basics of legal analysis by having them argue that analysis on their feet in simulated oral argument exercise” and that “students become better at legal analysis; they can improve student satisfaction with the first-year experience; they can involve students in their own learning; and they can help students develop key skills they will need in law practice.” These simulation exercises “can help to ‘bridge the gap between analytical and practical knowledge and unite, in a single educational framework, the two sides of legal knowledge: 1) formal knowledge and 2) the experience of practice.”<sup>46</sup>

As a “first response” to the Carnegie and the Best Practice Reports, McElroy models how simulated exercises can further the goals of legal education, highlighting what she terms a nonthreatening method (as compared to Socratic method).<sup>47</sup> She uses fairy tales as the facts for case law to teach the major topics: weight of authority, recentness, court level, jurisdiction,

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Two suggestions: (1) videotape the argument and make them available to the students, and (2) engage in a dialogue critique (e.g. ask the student how their argument went) as opposed to lecturing.

<sup>45</sup> See Lisa T. McElroy, *From Grimm to Glory: Simulated Oral Argument as a Component of Legal Education’s Signature Pedagogy*, 84 IND. L.J. 589 (2009).

<sup>46</sup> *Id.*

<sup>47</sup> See *id.*; but see Vitiello, *supra* note 43, at \_\_\_\_ (cautioning against a “kinder, gentler and less demanding” version of law school that dispenses with the Socratic method because the method teaches the importance of listening and responding with thoughtful answers).

precedential issue, rule synthesis, etc.<sup>48</sup> She demonstrates the effectiveness of using a “script” to show how the process works, and concludes that the use of simulated exercises will help students “synthesize key legal concepts, to remember what they learn, and to apply what they learn in the law school classroom to legal practice.”<sup>49</sup> Further, they will “enable students to grasp what the law is, as well as how to think within it, to give students experience of practicing the varied roles lawyers play while coming to appreciate the engagements of self and the world that these entail.”<sup>50</sup>

## II. Avatars, Acting and Imagination: A Real-World Experiment

### A. Why is this Important?

Students feel unprepared and anxious about having to “present” themselves as lawyers. This is a common feeling shared by many first year students, although some deal with more anxiety than others.<sup>51</sup> Despite having written an appellate brief – either in draft or final form – they are often overwhelmed with the task of bringing that argument to life, or unsure how to

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<sup>48</sup> See McElroy, *supra* note 45, at \_\_\_.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> See Brown, *THE INTROVERTED LAWYER, A SEVEN-STEP JOURNEY TOWARDS AUTHENTICALLY EMPOWERED ADVOCACY* (American Bar Ass’n) (2017). Professor Brown is an expert in the areas of introversion, social anxiety, quietness and shyness (which are separate characteristics and do not necessarily manifest together) and how the expectations in law school – including moot court – can lead quiet students to feel acute public speaking anxiety. In her book, she outlines seven steps to help empower these students to find their authentic voices, and presents a series of live workshops on our law school campus in the spring based on her principles as well. She notes that any kind of “fake it until you make it” or “just do it” mantra will not work for these students. It is important to keep in mind that some students, particularly those students who are described in Professor Brown’s book, will need extra guidance and support through the moot court/presentation process, and she provides a complete method to help them become empowered advocates. In my work, too, the goal is not to supplant the real law student with a fake version, even though I start with the idea of an “avatar,” but rather provide tools and inspiration – from a variety of fields and media – to show them how to create the best version of themselves.

convert written advocacy to oral advocacy.<sup>52</sup> In this section, I will lay out six techniques, inspired by mythology and method acting, and address why they might help students overcome these hurdles, and – ultimately – give them tools for the future.

## **B. The Six Tips**

These tips serve a number of pedagogical goals, which include student investment in the oral argument process, reducing their anxiety in having to undergo the experience, and, finally and most importantly, building confidence that they can “show what they know” after having done the hard work of crafting the brief papers. The tips are most useful after the appellate brief (or first draft of the brief) is written and conferenced, and the professor is preparing to talk about oral advocacy. They are also most useful once the professor has already explained the “nuts and bolts” of the moot court process, as is the case in my school, or else how the oral advocacy components will be undertaken (the process) and scored or graded (the evaluation). In my school, this came between one-half and two-thirds of the way into the spring semester, and the oral argument was based directly on the brief assignment.

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<sup>52</sup> See Larry Cunningham, *Using Principles from Cognitive Behavior Therapy to Reduce Nervousness in Oral Argument or Moot Court*, 15 NEV. L.J. 586 (2015). This article is about the role legal educators could play in reducing the nervousness that many lawyers and law students experience around oral argument. It asserts that using a Cognitive Behavior Therapy (CBT) framework, educators can help students address anxiety and fear to calm their anxiety, which will improve their effectiveness as advocates. It highlights the purpose and features of oral argument and how it can cause anxiety. The article then discusses how public speaking in general causes nervousness, anxiety, panic; and that people have a fear of public speaking. It describes the difference between normal nervousness and anxiety that could rise to the level of a disorder. The author describes CBT, the development of CBT, and how CBT is used to address nervousness and anxiety. The author argues that CBT could be used as an educational tool to help lawyers overcome their nervous feelings towards oral advocacy. Specifically, the author applies the principles of CBT to oral advocacy:

- 1) acknowledge and talk about the issue;
- 2) correct unrealistic thoughts about oral argument;
- 3) educate students about deep breathing exercises;
- 4) focus on the role preparation can play; and
- 5) try exposure to low-risk simulations.

The author concludes that “understand[ing] anxiety better” through CBT, students and lawyers can “become healthier people and more effective advocates for their clients.”

Here, I lay them out in the order that made sense to me for my course progression, but, as noted in the last section, each of the tips can be taught separately, individually, together, or in a completely different order depending on what you want to bring across in your classroom. They move in the order of mind and then body preparation, with the first four steps designed to orient the mind before activating the breath, voice and body in a physical presentation. By incorporating these techniques, students can learn ways to feel more connected to and more in control of their presentations, while allowing their imaginations to help guide them along the way.

1. **Find an “Avatar”**
2. **Be prepared**
3. **Know the “heart” of your story**
4. **Think in a 360° way**
5. **Understand the power of projection (the voice)**
6. **Understand the power of body language (the stance)**

### 1. **Find an “Avatar”**

Avatar (pronounced “Ah-vuh-Thar”), originates from the Sanskrit language, and Hindu Mythology, and is defined as “the descent of a deity to the earth in an incarnate form or some manifest shape; the incarnation of a god.”<sup>53</sup> This is a concept I know very well, having grown up in a culturally Indian and Hindu household, and read countless stories growing up about the avatars of our Hindu God, Vishnu. These avatars appeared centuries apart from one another, in human or demigod form, and often came down to Earth to live among humans, and teach them great moral lessons. In this context, avatar “is used to describe what happens when an ethereal deity embodies its heavenly essence to visit the material world.”<sup>54</sup>

The more common understanding, in the non-Hindu context, is “an embodiment or personification, as of a principle,

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<sup>53</sup> [www.dictionary.com/avatar](http://www.dictionary.com/avatar).

<sup>54</sup> James K. Scarborough and Jeremy N. Bailenson, Avatar Psychology, Chapter 7, THE OXFORD HANDBOOK OF VIRTUALITY, Mark Grimshaw, ed. Oxford University Press (2014), at 131.

attitude, or view of life.” Finally, a third definition of the concept, and the one that may resonate the most for our millennial students,<sup>55</sup> is that of an “avatar” in the digital space: “a graphical image that represents a person, as on the Internet.”<sup>56</sup> In this last context, the avatar is a character that “stands in” for the real person, and may or may not resemble the actual physical person.<sup>57</sup>

I have been fascinated with bringing this concept to the classroom for years – both in the context of the avatar as a veil in which a student can cloak herself while she is learning the craft and (once the technology is readily available) the avatar that can interact in a virtual courtroom setting. This article focuses on the first concept. But much of what has been written about “avatar psychology”<sup>58</sup> applies as much to why the avatar can apply in the real classroom as well as a virtual one. Social psychologists James Scarborough and Jeremy Bailenson have found that “interactions between humans while they are embodied in avatars have distinct psychological implications,”<sup>59</sup> including feelings of greater confidence and self-awareness as well as a feeling connectivity with others. Avatars have also proven useful to teach new skills, particularly in medical or military training contexts<sup>60</sup>, in which an “actual” experience is

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<sup>55</sup> Other than, perhaps, the James Cameron juggernaut of a film, *Avatar*, which is experiencing a new life as an entire land (“Pandora”) at Walt Disney World’s Animal Kingdom park since the summer of 2017.

<sup>56</sup> This concept, although in use in some form since 1979, when it was used in a “PLATO role playing game” which itself was called *Avatar*, was used throughout the 1980s, and then popularized in Neal Stephenson’s 1992 cyberpunk novel, *Snow Crash*. [www.wikipedia.org/avatar\(computing\)](http://www.wikipedia.org/avatar(computing)).

<sup>57</sup> See generally Brooks Barnes, *Coming Soon: Dreamscape Turns Patrons into Avatars*, N.Y. TIMES, Sept. 27, 2017, Business Day at B1, which describes Dreamscape Immersive’s plan to create a virtual reality multiplex which “allows up to six people to explore a virtual reality environment at once, seeing fully rendered avatars of one another.” It is a move away from “just a heightened level of video game towards cinematic storytelling.”

<sup>58</sup> See generally James K. Scarborough and Jeremy N. Bailenson, *Avatar Psychology*, Chapter 7, THE OXFORD HANDBOOK OF VIRTUALITY, Mark Grimshaw, ed. Oxford University Press (2014). [*Supra* note 55].

<sup>59</sup> *Id.* at 131.

<sup>60</sup> See Bruce Damer and Randy Hindrichs, *The Virtuality and Reality of Avatar Cyberspace*, Chapter 1, THE OXFORD HANDBOOK OF VIRTUALITY, Mark Grimshaw, ed. Oxford University Press (2014), at 29.

either cost-prohibitive or just simply dangerous. The concept of embodiment has great utility in the legal teaching context as well, particularly when students must first envision themselves as lawyers making their first presentations.

In contrast with most of the other tips to follow here, I introduce the concept of an avatar early in the spring semester of my persuasive writing course, usually in the first class.<sup>61</sup> I ask the students to think of a person, either real or fictional, who inspires them.<sup>62</sup> The person can be a lawyer, but, if not a lawyer, certainly an advocate. The person does not need to be famous or well known, but someone who represents the kind of lawyer the student wants to be. I do not ask the students to tell me whom they have chosen (unless they wish to volunteer it), but I do ask them to write it down for themselves. This is going to be their avatar, an embodiment, a vision, a personification.

Here is the specific email I sent to my students:

“For Monday, come to class having picked a character that inspires you from real life or fiction that you think you can emulate to help you feel brave when you have to stand up and present your arguments. The person does not have to be a lawyer, actually, although you might find it useful to look in the fictional legal world as well. I thought it was timely that this article came out in the WSJ recently:

<https://www.wsj.com/articles/atticus-finch-perry-mason-and-michael-clayton-have-nothing-on-the-legal-professions-favorite-attorney-vinny-1489340085>

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<sup>61</sup> In addition to this concept, we also get the students into the “persuasive mode” by assigning a one-page writing assignment for the students to bring to the first class. The prompt is to “persuade me about something on any non-legal topic.” I received many wonderful responses, including on why cats are better than dogs, why Blink gym is superior to its parent gym, Equinox, and a proposal for Brooklyn Law School to adopt a mascot, the rock dove (otherwise known as the pigeon), because it represented the tenacity and city smarts of a Brooklyn-trained lawyer, and was also known to facilitate communication between parties.

<sup>62</sup> I ask, “Who inspires you? What person or character can you take on to carry your message?”



And a pdf version of the article is attached to this email



Atticus Finch, Perry  
Mason and Michael Cl  
as well.

Along with Vinny, Atticus, Perry Mason, and Michael Clayton from television and literature, and as mentioned in the article, do not forget Patty Hewes, Ally McBeal, Alicia Florrick, or a personal favorite, Lucca Quinn.

But it really can be anyone. And, at the end, it will be you.”

As we progress through the semester, and the students have learned their appellate positions and roles, I ask them to draw upon the avatar again – to “imagine that person carrying your message forward.” For some, just taking on the role of “appellate lawyer” cloaks them in confidence – the role, and the fact that it allows them to speak for someone who needs assistance, helps them be brave. For others, they need a more specific touchstone. Here, the avatar can help them to visualize themselves in an advocacy role, but in a persona with which they can identify. After one or two classes, they will not even need the avatar, but, for the moment, it gives the real law student another manifestation, a way to come down to terra firma and position themselves in their arguments.

I talk to them about the contexts in which they have encountered avatars already, whether computer graphics, Bitmoji, emoji, and explain the historical origins of the term. I also emphasize that I am using this idea rather than having them use a “photograph” of their actual real selves (even an expertly filtered and curated “selfie”) because that does not actually “add anything” on top of the self. The avatar process can help them ascribe traits and characteristics that they are thinking about critically and purpose-fully, and can also simply be more fun.

To show them this process, I brought my own “avatar” to the classroom. I told the students that my model of the type of lawyer I envisioned for myself would be like a particular lawyer I saw on television – a whip-smart, poised, woman of color attorney, as I saw myself on my best days. I brought Cush Jumbo into the room, but, when she entered, she did not speak

as herself (the British born actor of Nigerian and English descent), but rather came into the room as Lucca Quinn, the serious, confident, insightful Chicago attorney, and law partner to Alicia Florrick on the *Good Wife*. I handed her the exact opening script for one side of our appellate problem,<sup>63</sup> which all the students had also received for their respective sides in the weeks before this class, and asked her to read it out loud. She stood straight, scanned the room and read the script out in the exact form and pacing we would be learning in the weeks to come. The students immediately recognized the script. They also recognized the tone, which was at the appropriate level to address judges.<sup>64</sup> The confidence building came from starting with this set up, where they could see someone model what was expected of them, but even more from what we did afterwards. We stopped the action, so that Cush could step out of the role, and speak to the students as herself. She explained that she plays a lawyer every day without any formal training in American law, and that they – the students – are so much better positioned to speak before judges because they have a deep sense of the context and consequences of the actual legal arguments. While she could not help prepare them to make sound legal points (that was my job, and what the students had been preparing for weeks in their written briefs), she could help show them the ways in which actors prepare themselves to present before an audience, techniques that we both believed would help the students with the transition from written to oral

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<sup>63</sup> The script read:

“Good morning, your honors.

May it please the court, my name is Lucca Quinn, and I represent the petitioner, Steven Rogers.

Petitioner respectfully requests that this court REVERSE the decision of the court below

for the following two reasons:

FIRST, Steven Rogers is entitled to First Amendment relief for his retaliation claim because he spoke as a CITIZEN when he addressed matters about terrorism policy at a publicly-attended event.

SECOND, Steven Rogers is also entitled to First Amendment relief since his right to speak outweighs the police department’s interest in efficiency.”

<sup>64</sup> As a general matter, we teach students to speak to judges with “respectful intellectual equality,” as phrased by Bryan Garner, in <http://www.lawprose.org/lawprose-lesson-249-the-advocates-mindset-toward-the-judge-respectful-intellectual-equality/>. He notes that good advocates are “neither condescending nor kowtowing,” but rather “approach the judge as an intellectual equal, and always with respect.”

advocacy. She then shared ideas of how actors visualize and prepare for their performances, many of which are incorporated in the tips to follow.

Once the students saw an example of my avatar present the opening for our appellate argument, I asked them to visualize their own. And again I asked them, “who and how do you want to carry your message forward?” The students shared their visions of the kind of attorney they each wanted to be. They were varied, coming from life as well as television, film and literature – an aunt, a cousin, Atticus Finch from *To Kill a Mockingbird*, Jake Tyler Brigrance from *A Time to Kill*,<sup>65</sup> Michelle Obama (and, in my other section of students, her husband as well), Jason Statham, the actor and martial artist. And many traits were common to their avatars, with themes along the lines of “passionate,” “balances knowledge of the law with appeal to emotion,” “greatest lawyer of that time,” “fights for what’s right, not what is easy,” etc. The goal here is to carry that avatar – with all the attendant characteristics – as an inspiration and a layer on top of the self as each student moves forward to get ready for oral argument.

## **2. Be prepared (understand the script and find your way around the scene)**

“Stanislavski says that the play, the characters in it, the circumstances, and all art is the product of imagination...for the actor ‘to turn the play into a theatrical reality...imagination plays the greatest part.’”<sup>66</sup>

Preparing students to move from the brief writing process to an oral presentation requires multiple steps. These steps can be compared to several stages of acting preparation, including the steps that get an actor familiar with the script and the setting.

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<sup>65</sup> With particular note of his masterful closing argument in that film.  
<http://www.americanrhetoric.com/MovieSpeeches/specialengagements/moviespechatimetokill.html>

<sup>66</sup> Cohen, *supra* note 30, at 100, referencing Konstantin Stanislavski (Константин Сергеевич Станиславский) 1936 (original Russian publication) *An Actor Prepares*, London: Methuen, 1988 (English translation). ISBN 0-413-46190-4.

**a. Creating and Committing to the Script:**

First, I ask them to think about the “script.” A legal brief will already have an internal organizational structure (such as the point heading structure) that maps out the major points (or in theater or storytelling terms, the arcs) of the argument. I ask the students to know the roadmap for the argument first, and then begin building from there.

Just as with an acting script, they should know the basic roadmap, flow and important points of their arguments cold. For some people, creating a roadmap gives them a sense of control in the process because they can rely on the substance of what they know from their briefs. It is also always important to consider their audience, purpose, and tone<sup>67</sup> when committing to a script and presenting it. I tell students that they have already done so much thinking and writing about these issues (they are the “experts”), that creating the oral argument script just gives them a chance to boil it down and have a conversation about it.

To help them to get a sense of what they will carry to the podium, I create “oral argument folders” for each side of the appellate argument which I hand out to the students. On the left hand inside part, I staple a basic opening for each side to memorize for themselves (“May it please the court, my name is” etc.).<sup>68</sup> On the right hand inside part, I staple a model table of contents which is made up of point headings from the appellate brief. My table of contents has no text in it, and is meant to be replaced by the students’ own point headings once they have met me for conferences and gotten feedback on their brief papers. It is better to ask students to start with this type of basic framework (the point headings) and then have them add key text than asking the students to “cut down” their long briefs for oral argument purposes. I encourage them to try to keep everything they need on just a few pages in front of them, but they may take their briefs and record up as support or back-up, which often makes them feel better.

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<sup>67</sup> It is also always important for the students to consider their “audience, purpose, and tone” when committing to a script and presenting it. *See generally* Helene S. Shapo, Marilyn R. Walter, and Elizabeth Fajans, *WRITING AND ANALYSIS IN THE LAW*, 7th ed., Foundation Press (2018), at 279.

<sup>68</sup> *See* Oral Argument Opening Script, *supra* note 63.

**b. Blocking the Production:**

Next, I ask the students to break up and visualize each part of the presentation process. When beginning any production, actors “block” scenes to get a sense of the flow of the whole production. Rather than “blocking” the scene, ask the students to “block” and think through each part of the oral argument process. Ask them: “Can you imagine walking into the room, setting down your things, standing at the podium, addressing the judges, beginning your argument, answering questions, weaving back to the argument, concluding, and sitting down?”

These steps should be visualized slowly with the avatar in place. I tell the students to move through each step like they are “moving through molasses” – in other words, as if they are moving in slowed-down time. They should first sit as still as possible and visualize the process, step by step, and then walk through the movements, similar to blocking a production in which an actor learns the space and surroundings needed to convey the piece.

This process is also similar to method acting techniques known as sense-memory exercises which take an actor to a particular place (often a childhood or everyday place, like a bedroom growing up or sitting somewhere for a morning cup of coffee) in order to explore it and observe it. The exercises take place without words, just exploratory movements (walking through the childhood room and touching the walls or picking up objects or breathing in the steam from the cup of coffee), and often initially start out with the actor sitting down in a chair, eyes closed, allowing for immersion before moving into the scene. The purpose of these exercises is to become familiar with the surroundings in a focused and mindful way, and although the acting version takes the student to a familiar place, the exercise of “blocking” an unfamiliar oral argument experience can be just as useful.

**c. Building in Fluidity:**

“By using improvisation and inventing scenarios, you develop a familiarity with a character.”<sup>69</sup>

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<sup>69</sup> Cohen, *supra* note 32, at 100.

Finally, and somewhat more in line with preparing for improvisation than traditional scripted theater techniques,<sup>70</sup> law students must prepare for questions and answers during their presentations. This can be stressful for many students, even those who are otherwise alright with public speaking or with presenting their main arguments.<sup>71</sup> Ask them to think about what might happen if they are asked a question. What is the natural response? Many students feel frightened or like they suddenly draw a blank.<sup>72</sup> Now, ask them to slow down and think about welcoming the question. Imagine this in stages as well. Listen, thank the judge, answer the question and weave back into the argument.

Students can even practice this without a substantive question at play – I like to ask them a nonsense question such as “Counselor, why is the sky blue?” and let them practice answering it. Since the answer does not require any recall (unless the student is going to rely upon 10<sup>th</sup> grade Earth Science), this is an easy way to practice answering a question and returning to an argument. Obviously, the substance of the question is key, as is the substance of the answer, but this stage

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<sup>70</sup> *Id.* at 100: “Improvisation is a theatrical art form as old as acting itself. In its earliest form, shamans may have acted out their dreams to the members of their clan or tribe. In the 16th Century, the *Commedia dell’arte* became one of the first professional acting companies to employ improvised scenarios on streets and in market places, using masks with exaggerated features to play a fixed scheme of action with basic stock characters and adapting specific qualities to their personas using traditional dialogue passed on through word of mouth. They sometimes broke through the fourth wall and addressed the audience directly while acting out unscripted scenes for a specific circumstance with references to local and topical events, all while staying true to their exaggerated personas.”

<sup>71</sup> For those students who struggle with public speaking anxiety, *see* Brown, *supra* note 51, this is bound to be particularly difficult. Professor Brown suggested that we offer the chance for students to practice their arguments and questions and answers in an individual setting (without “opposing counsel” or any other students present) so that they can hear themselves answer questions. Even though the ultimately stood at a podium for the argument, for my students who took the “individual setting” option, practicing while sitting down also seemed to help them build confidence before the actual arguments.

<sup>72</sup> Shailini J. George, *Oral Argument: Practice Makes (Nearly) Perfect*, The Second Draft (2015), in which Professor George notes when her students first stood up to field questions, that “suddenly, and with only one question before them, most students immediately learned an important lesson of public speaking: standing at a podium can magically erase everything that the students thought they knew.”

just asks students to think through the process of listening and being present while they are “under fire.” Once they have warmed up with some nonsense questions, begin weaving in questions with substance in them, which will likely not seem so difficult to answer once they have fielded the others.

Other simple improvisational techniques can be useful here as well, as long as they take something off of – rather than adding to – the learning curve or stress in the classroom. Among the important techniques that translate from improvisational theater training are to 1) practice active listening – let the other person (here, the judge, and in the acting context, a member of the troupe or audience) finish speaking and allow yourself to be present for the entire question, which allows you to give the most informed – and authentic – answer, 2) welcome the question by starting the answer with a “thank you,” or the most improvisational of all phrases, “yes, and” which sets up a collaborative atmosphere<sup>73</sup> by “accepting” the question and still giving yourself room to direct the answer, 3) create issue cue cards for yourself or others and pick a card out at random to practice answering on various themes, such as “fairness,” “our jurisdiction’s best case,” “matter of justice,” “why appropriate under the standard of review,” etc.

### **3. Know the “heart” of your story<sup>74</sup> (the theme)**

“As storytellers have understood for millennia,

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<sup>73</sup> From a description at CLE presentation at the 29<sup>th</sup> Annual Lavender Law Conference, San Francisco, California, on August 3, 2017, entitled: “Improv ... Yes, And! Using Improv Techniques to Facilitate Negotiations, Improve Public Speaking, and Manage Stress”, led by Paul Marchgiani and Jason Prussman; [https://lgbtbar.org/annual/concurrent\\_sessions/improves-using-improv-techniques-facilitate-negotiations-improve-public-speaking-manage-stress/](https://lgbtbar.org/annual/concurrent_sessions/improves-using-improv-techniques-facilitate-negotiations-improve-public-speaking-manage-stress/):

Led by two in-house attorneys who have studied and performed with Groundlings, Upright Citizens Brigade, Bovine Metropolis Theatre, Impro Theatre, the Denver Performing Arts Center, Studio ACT, and LA Theatresports, this interactive (and fun!) workshop will explore how improvisation techniques can make you a fearless public speaker, a better negotiator, a stronger team player, an expert networker, a nimble problem solver, and a happier person. Through a variety of on-your-feet games and exercises, you will learn the core improv philosophy of “yes, and”, and see how it can help transform your personal and professional lives for the better.

<sup>74</sup> Laura Collins-Hughes, *Using Shakespeare to Ease War’s Trauma*, N.Y. TIMES, Mar.12, 2017, Arts/ Theater at 7.

there *is* a powerful and well-defined narrative or structure in stories. There are clear principles that inform storytelling practice. This is no less true for the types of stories that lawyers tell.”<sup>75</sup>

“Working with the script isn’t merely memorizing the lines or blocking the action which is when and where you move to on stage. Initially you familiarize yourself with the narrative from which you thoroughly absorb the given circumstances with a sense-by-sense grasp of the who, what, why, when, and where of the story... It’s also essential to know the theme, purpose, or the central core of what the author’s trying to say to the audience.”<sup>76</sup>

Actors talk about the heart in terms of “motivation,” and it is no less important to animate, or bring blood-pumping life, to a legal argument. I talk about the heart or the theme in class as the core upon which your arguments rest. This helps students to position their arguments not simply in opposition to the other side, but from their side’s own core motivations. This also allows them to “build in fluidity,” as mentioned in the section above, and be able to both anticipate and answer questions from the judges.

In persuasive argument, lawyers rely upon the theory of the case, which is a statement of the facts and the law that succinctly but compellingly comes together to convey the heart of the case to a judge or jury. It is here that “facts and law fortuitously meet”<sup>77</sup> in order for the adjudicator to know why to find in your side’s favor. In appellate briefs, the law often becomes primary over the facts if the standard of review dictates it (unless the court is reviewing a lower court’s decision “de novo”), but that does not mean that the reasons to rule for your client have no emotive theme or “heart”, as the lawyer can still emphasize matters of fairness or justice within the theory.

Similarly, actors must also “inhabit” their roles and understand – deeply and authentically – what makes their

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<sup>75</sup> Philip N. Meyer, *STORYTELLING FOR LAWYERS 3* (Oxford University Press 2014).

<sup>76</sup> Cohen, *supra* note 32, at 96.

<sup>77</sup> Shapo, Walter, and Fajans, *supra* note 67, at 386.



characters (or, figuratively, their characters’ hearts) tick. It is no small task to understand motivations, and for the purposes of both acting and legal advocacy, there is also not a more important task. In method acting, an acting technique in America developed by Lee Strasberg, which he created based on the influential Russian “system” by Konstantin Stanislavski and other great Russian actors and directors,<sup>78</sup> the role of the “spine” becomes key. Although I choose to align this technique (no pun intended) with the heart instead, much of what has been written about the spine maps directly onto this theory as well. Stanislavski’s original Russian concept has been variously translated from the Russian into English as “super-objective”<sup>79</sup> and as “super-task”<sup>80</sup> or as a “through line of action,”<sup>81</sup> which is compatible with the core motivation of a story. Similarly, the term “spine” for the same concept suggests “the backbone of the skeleton being an analogy to the theme of the play.”<sup>82</sup> For our purposes, Elia Kazan captures what each student needs to distill as the “heart of the story”:

The study of the script should result in a simple formulation that sums up the play in one phrase, a phrase that will be a guide for everything the director does...begin[ning] with the simple words: “For me, this play is about...” The phrase should delineate the essence of the action that transpires on the stage; it should reflect what is happening, what the characters are doing. It must imply effort, progression, transition, movement. The concept

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<sup>78</sup> Including Vladimir Nemirovich-Danchenko, co-director with Stanislavski of the Moscow Art Theater (MAT), Yevgeny Vakhtangov, visionary actor and director known for the “fantastic realism” form and Vsevelov Meyerhold, who created a form called “biomechanics.” See Cohen, *supra* note 29, at 7.

<sup>79</sup> Cohen, *supra* note 32, at 109, quoting Elizabeth Reynolds Hapgood’s translation of *An Actor Prepares*, the 1936 work by Stanislavski. [Stanislavski, Konstantin. 1936. *An Actor Prepares*. London: Methuen, 1988.]

<sup>80</sup> *Id.*, quoting Jean Benedetti’s translation of *An Actor’s Work* (2008); [Stanislavski, Konstantin. 1938. *An Actor’s Work: A Student’s Diary*. Trans. and ed. Jean Benedetti. London and New York: Routledge (2008).]

<sup>81</sup> *Id.* at 109.

<sup>82</sup> *Id.*

must suggest not only the events, but the play’s mood and color, its emotional landscape and form. It is to serve as the key to the production, what will give it unity.<sup>83</sup>

**a. Show me your heart:**

For this concept, I introduce interlinked techniques. First, at around the time that the students are getting ready to draft their briefs, but before they have started writing, I hand out a single piece of paper to each student with only a large empty heart on it. I tell them that the space is reserved for their theory of the case, or, if they prefer to think of it this way, for the heart of their story. They have only this much space to write but they must be able to convey – in a way that would be legally accurate and sound but also be understandable to a layperson (I say “think of how you would explain this story to a grandparent or to a really smart 10 year old”) – the core of the story. This instruction means that I am expecting something that is clear and easy to understand from an emotive perspective, and that can be contained in a limited amount of space. I ask for volunteers to share their “hearts” with the class (they can also be emailed if students are shy), and then, I ask them to clip them to their book or a folder so that they are carrying them around for the rest of the semester. This is meant to be a reminder or touchstone of why the case is so important.

**b. “60, 30, 10, hashtag.”**

The next technique comes from theater and emphasizes a similar concept as the first. After the students have written their briefs, and are starting to prep for the oral argument phase, I ask them again to tell us the story in 60 seconds, 30 seconds, 10 seconds and in one sentence or even a fragment (which might be useful for students to envision as a hashtag on social media– one, punchy and theme-filled phrase, i.e., “#stolenartstolenrights”). The goal here is to take a 10 or 20 page brief and boil it back down to its essence. I often have the students compare their shortest theme to the “heart” they created earlier in the semester. Do they match up? Why or why

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<sup>83</sup> *Id.*, quoting Elia Kazan in *Style and Spine* (1938).

not? The second exercise offers a chance to reflect back on what they originally thought were the key motivations in the case. Often they find that they have to adjust the beating heart.

4. **Think in a 360° way (recognize the “round”)**

Once students understand the overall script, and then the heart (core motivations) of the story, the next technique comes into play. This is possibly the most important – and transferrable—skill to oral argument because this technique asks students to recognize the motivations of the other characters (particularly opposing counsel, but also judges) in the oral argument setting. The most helpful theater-based visual here is to think of theater “in the round,” meaning spanning all the way around the actors.<sup>84</sup> For an advocate to make the most compelling – and authentic—argument, she must be able to see what is behind her and to the side of her as well as to the front. Ask the student, “You know your script, but do you understand the other side?” A number of techniques in the legal writing classroom can help “step in the shoes” of the opposing side, including having students flip positions between the motion and related appellate brief assignments, or between two drafts of the same appellate assignment. If your students have written their drafts on the same side of the argument, which has the advantage of deepening their understanding of their own script and the “heart” of their story, they may miss motivations and subtleties that animate the other side.

a. **“Like lightning-fast Shakespeare.”**

In our class, Cush introduced a theater technique that she learned while learning Shakespeare plays at the Royal Central School of Speech and Drama in London. All the actors were required to learn all the lines for every character (not only their own), so to stand in their shoes and feel their motivations. Then, when the director was blocking the play for the cast, she had each person play each role at double (or triple) speed, so that each person could see from each character’s perspective and

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<sup>84</sup> [https://en.wikipedia.org/wiki/Theatre\\_in\\_the\\_round](https://en.wikipedia.org/wiki/Theatre_in_the_round). Not identical, but similar in the sense that the audience is seated circularly around the actors, is something like the old Globe theatre in London, where Shakespeare presented his plays. [https://en.wikipedia.org/wiki/Shakespeare%27s\\_Globe](https://en.wikipedia.org/wiki/Shakespeare%27s_Globe)

understand how that role fit into the big scheme of the piece.<sup>85</sup> This was exceptionally useful to show the entire “round” of the play.

While law students do not have as many points of view to consider as in *A Midsummer Night’s Dream*, they should be mindful of their audience and purpose<sup>86</sup>, as well as the motivating factors that drive their opposing counsel’s positions as well as what might drive the bench (a history of relying on particular precedents, a desire to settle the law, a desire not to be overturned by a higher court). For this exercise, the students can go round-robin, playing their own role, opposing counsel’s role, and a judge’s role in turn, so that they can understand the whole scene. Professors can guide the exercise in speeded-up time (like the Shakespeare exercise) or real time, but should make sure each student gets to try each role. Afterwards, let the students reflect upon whether they felt the exercise deepened their understanding of all the sides of the argument and the motivations at play.

**b. “Think of yourself as a 360° lawyer and learn to deflect arrows from all sides.”**

Cush also offered her personal insights about the challenges of transitioning from Shakespeare on the stage to playing an American lawyer on television, noting that the law students were already a few steps ahead of any actor since they understood the content of what they had to argue. When she started out on *The Good Wife*, she knew her learning curve would be steep since she had never been to law school, either in Britain or the U.S. At first, it was difficult to understand some of the court terminology<sup>87</sup>, even though the terms themselves were generally in English, and all the various levels of court (federal, state, specialty courts) and matters before them (hearings, trials, appeals). Then, as she became comfortable

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<sup>85</sup> Another thought – one that steps away from a formal script model entirely– is to again use improvisational theater techniques here to feel motivations. *See e.g.*, Marchgiani and Prussman materials, *supra* note 65; [see also Vicki Eastus, and her possible/forthcoming work on improvisation and the law.]

<sup>86</sup> *See* Shapo, Walter, and Fajans, *supra* note 67, at 279.

<sup>87</sup> For example, I recall receiving a text from Cush in the middle of the day asking what the term “summary judgment” meant.

with the courts and their settings and customs, she also found that she had to also familiarize herself with the whole case, and know her arguments as well as the other side’s arguments. She said that “even though it’s scripted, I didn’t want to reveal the results to the audience, and in the case of oral argument, where things aren’t a sure thing, you need to know both sides to anticipate what might come up.”<sup>88</sup>

Here, it becomes a key enterprise to help students to “not just survive” the oral argument process by getting through with a rudimentary understanding of their own side (which is often how they plan to present their forward-facing self), but to understand everything around them as well. One way to practice 360 degree lawyering is to understand that every question has two sides. If a student is asked a question, it is likely that the same question will be flipped around and asked again of the other side. Knowing this helps anticipate any arrows coming towards the back. Oftentimes, counsel might be tempted to agree when a judge asked a question to their opponent earlier, but the judges will likely push both sides equally. All the while, the students should still think about audience, purpose, and appropriate tone<sup>89</sup> (for example, Cush reminded the students that in an appellate argument, it is not necessary to be as theatrical as in a trial setting, but “you DO want to be interesting, and a little more formal”<sup>90</sup>). Here, too, they should remind themselves of their avatar protection so that they are remembering the characteristics they want to emulate, and envision this armor going all the way around the body.

##### **5. Understand the power of projection (the voice)**

It is important to examine the usefulness of breathing and voice exercises, relaxation techniques, exercises to promote focus, techniques to combat stage fright/anxiety, methods to bolster confidence, ways to encourage active listening, and methods to humanize situations. These contribute to a more effective courtroom performance, and

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<sup>88</sup> March 20, 2017 Class Video, *supra* note 3, at minute 22.

<sup>89</sup> See Shapo, Walter, and Fajans, *supra* note 67, at 279.

<sup>90</sup> March 20, 2017 Class Video, *supra* note 3, at minute 26.

acts as better preparation for the unpredictability of trial.<sup>91</sup>

The final two techniques transition the student from preparing the mind to preparing the body for argument. This section will go over breathing techniques to help calm nerves and strengthen the voice. Cush shared these techniques in class and also talked, separately, about the pitch and quality of a voice, including student concerns about accents.<sup>92</sup>

**a. First, the breath.**

“Breathing normally, deeply and consistently gets your brain the oxygen it needs to work properly. 98 percent of our oxygen receptors are located in our lungs’ lower lobes, so in order to meaningfully trigger the brain’s relaxation response, we actually need to breathe into our bellies, much more deeply than we’re used to doing. Conversely, the shallow and quick breathing we often do can often trigger stress responses.”<sup>93</sup>

There is no question that deep breathing can help just about anyone facing a stressful situation, whether an actor, lawyer or law student. In developing his “system”, Konstantin Stanislavski employed both Yogic breathing and meditation techniques into his preparation with his actors at the Moscow Arts Theater. Yoga, a practice that hails from India, and was collected sometime between 200 B.C. and 300 A.D. into the Yoga Sutra by the sage Patanjali<sup>94</sup>, is also incorporated into many

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<sup>91</sup> See Tow, *supra* note 5, at 70.

<sup>92</sup> See Brown, *supra* note 51, at 20 (accents and cultural introversion); see also Michael J. Higdon, *Oral Advocacy and Vocal Fry: The Unseemly, Sexist Side of Nonverbal Persuasion*, Legal Communication & Rhetoric: JALWD (Fall 2016/ Vol. 13).

<sup>93</sup> Alison Monahan, *Managing Stress and Anxiety While Studying for the Bar Exam*, the National Jurist, May 30, 2018: <http://www.nationaljurist.com/national-jurist-magazine/managing-stress-and-anxiety-while-studying-bar-exam>.

<sup>94</sup> Yoga was part of an “oral tradition where teaching was transmitted directly from teacher to student. The Indian sage Patanjali is credited with the summation of this oral tradition into his classical work, the Yoga Sutra, a 2,000-year-old treatise on yogic philosophy. Containing a collection of 195 sutra (or statements), the Yoga Sutra provides a kind of philosophical guidebook for dealing with the challenges of being human.

acting practices.<sup>95</sup> Legal scholars have also noted the connection between mindfulness techniques and effective decision-making among lawyers and law students.<sup>96</sup>

**i. Catch your Breath (and the Choo-choo Train).**

Before any of the other physical techniques in this paper can work, one needs to catch a breath – or many, many deep ones. In class, Cush captured this concept as “your lungs need to give you all the energy you need to speak!”<sup>97</sup> She recommended that each student slowly rest a hand on the torso and “breathe for a minute before you begin to speak, because [otherwise] you think you are speaking at a higher volume and a lower speed than you really are [because of] the adrenaline.”

As an actor, bringing attention to the breath comes before using the voice at all, which would additionally benefit from voice warm ups and staying hydrated.<sup>98</sup> She suggested speaking from the diaphragm (testing it by keeping your hand over the torso) and, then to bring energy to the voice by trying what she called the “choochoo train” exercise. In this exercise, the actor puts the backs of the fingers against one another, bends the knuckles and uses the fingertips to find the spot in the abdomen where the ribs join together. The actor then takes in as big a breath as possible and bends at the waist and pushes the fingertips into the abdomen while making the “choo-choo”

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The discipline of hatha yoga—the physical aspect of yoga—was originally developed as a vehicle for meditation. This system of hatha yoga prepared the body, particularly the nervous system, for stillness, creating the necessary physical strength and stamina that allowed the mind to remain calm during meditation.”  
<http://method.vtheatre.net/yoga.html>.

<sup>95</sup> See *id.*, referencing the work of the great Polish director, Jerzy Grotowski, in using modified yoga “asanas” in his work.

<sup>96</sup> See generally Peter H. Huang, *Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership?* (January 28, 2017). *Houston Law Review*, Vol. 55, No. 1, 63-154 (2017); U of Colorado Law Legal Studies Research Paper No. 17-15.; Shailini J. George, *The Cure for the Distracted Mind: Why Law Schools Should Teach Mindfulness* (July 30, 2014). *Duquesne University Law Review*, Vol. 53, 2015; *Suffolk University Law School Research Paper No. 14-23*.

<sup>97</sup> March 20, 2017 Class Video, *supra* note 3, at minute 61.

<sup>98</sup> March 20, 2017 Class Video, *supra* note 3, at minute 62.

sounds (like a steam engine chugging along), pushing out air little by little. All the air should come out of the body, and then the actor should slowly bring the body up to standing, taking in a second big breath. This exercise opens up the lungs and simultaneously warms up the voice.<sup>99</sup>

**ii. The “Method” Relaxation Exercise.**

Lee Strasberg also developed a set of “relaxation techniques”<sup>100</sup> in his method acting training which use many of the yogic practices, and can be very useful for law students getting ready for oral argument as well. Both the mind and breath are involved in this technique, and I was able to see it modeled in Professor Lola Cohen’s class this year.

“The Relaxation Exercise will strengthen your concentration and is a major preparation for the work by eliminating tension, which can stop the mind and body from responding and functioning fully. Think of the Relaxation Exercise as taking control of yourself physically and emotionally, which every actor must do. When you are fully relaxed, you can nourish your mind and soul, because both are open, calm, and receptive. You are able to regain your focus whenever distractions or unwanted feelings arise.”<sup>101</sup>

Strasberg’s relaxation exercise teaches actors to learn to “relax at will.” The idea behind the relaxation exercise is that when external worries and frustrations can be set aside, it

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<sup>99</sup> March 20, 2017 Class Video, *supra* note 3, at minute 78.

<sup>100</sup> Karina Castro, Interview and Essay, July 5, 2018, as a reflection after Professor Lola Cohen’s Intensive Communication Skills course, which uses the Method Techniques: “The relaxation exercise is the most important exercise we learned throughout this course. Professor Cohen described it as learning how to ‘relax at will,’ which for some of us was not the easiest task. I feel that after learning the relaxation exercise, I am more aware of when I fidget or make hand gestures. I could have benefited from this skill before oral argument, and presented myself more confidently and not have fidgeted during it because I would be more aware of myself during it.” Materials on file with author.

<sup>101</sup> Cohen, *supra* note 32, at 17.



becomes easier to recite lines as an actor, and in the legal context, it can help prepare students for the legal presentations they have to make. To perform the relaxation exercise, the students sit in chairs (straightback, if possible) with their legs spread apart and their feet planted firmly on the floor. Their arms should either be hanging down alongside their bodies or their hands can be resting on their thighs. The students are asked not to cross their legs or arms, and asked to try not to fidget. They are asked to be still, breathe slowly and normally, but not audibly, and see if they can pinpoint any nervous habits they may have come up for them.<sup>102</sup> If anything comes up (tapping a foot, twirling hair), they are to acknowledge these habits but try to let them go.

Another part of the relaxation exercise involves the elimination of physical and emotional tension. After sitting in the relaxed position, the students are then asked to isolate each body part, one by one, in an attempt to eliminate tension from them. To start, they flex and relax one foot, and then slowly move up the leg, only moving the part of the body being isolated. The exercise ends when the students have worked through the whole body. If a particular student is too agitated to sit, it is okay for that student to stand up and say what is going on out loud (I am just “so-so” today, I am feeling tired, I am overwhelmed, and if it helps “unblock” the tension, they may let out air with a “Ha!” or “Ah!” which serves a similar purpose as the “choo-choo” train intake and exhaling of sounds and air) and then try the exercise again.

Next, to eliminate emotional tension, the students focus on the five primary areas that carry this kind of tension. Four of these areas are in the head and neck, and the fifth is in the back. The first are what Strasberg called the “blue nerves,” the area around the eyes and temples where a lot of tension builds up. The second area is the bridge of the nose between the eyes. The third are the thick muscles, the area that connects the mouth and chin, including the jaw. The fourth area is the back of the neck. In order to relax these areas, the students are asked

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<sup>102</sup> Castro Interview, *supra* note 100: Discussing the relaxation exercise, she notes that:

“an important part of oral argument involves body language. Swaying, pacing, or gesturing too much with our arms is not looked at positively, so it is important to be in control of our bodies during oral argument so we do not make unnecessary movements that will make our arguments less successful.”

to stretch them slowly and try to relax their faces, so that the eyebrows and jaws are relaxed. The neck is an especially important area to relax because if that area is tense, according to Professor Cohen, “relaxation at will” not be possible, leading to the unconscious act of fidgeting and forgetting lines during the monologues. The fifth area of emotional tension is the muscles in our back. Professor Cohen described tension in this area as the retention of emotional trauma from childhood, which can be the most difficult to relax and often brings up emotions in the process of relaxation. Here, too, if the students can be mindful and let the tension come up and go, they are ready to move to the next step.

**b. Second, the voice.**

“If the way you speak makes people uncomfortable, it doesn’t matter how good you are. You have to trust the melody.”<sup>103</sup>

Along with having enough breath to open the lungs and bring energy into the body, and being relaxed enough to speak, the “way” in which an advocate speaks matters as well. Both actors and advocates must learn the power of projection, and its impact on their audiences. Both must speak clearly and at an appropriate volume and speed for the setting – for example, actors employ a different volume on television or in movies, where microphones are present, rather than on stage, where their voices must carry, and which is a lot more like presenting in a courtroom setting. Similarly, a trial appearance in front of a real or fictional jury can be more theatrical, while an appellate argument in front of real or fictional judges should be more formal. In all cases, first impressions are everything, and the inability to control one’s voice can obscure important substantive points in the presentation.

**i. Clarity and Emphasis**

Actors know that the script is the place to get grounded. Similarly, law students have a chance to get settled in with their opening lines (“Good afternoon, Your Honors. May it please the

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<sup>103</sup> March 20, 2017 Class Video, *supra* note 3, at minute 39.

Court, my name is...and we respectfully request that..., etc.), and use these lines to check the quality of their voices. Ask: are you raspy (like you need to clear your throat?), monotone (or dual tone – using only two notes as most newscasters do?), or going up in pitch at the end of the sentences, as if you are unsure about the statement? The most important technique of all is to be able to speak clearly, with energy and with emphasis on the words that matter so that the audience understands what is important. For example, the actor William Shatner of Star Trek fame was famous for speaking clearly, but for placing dramatic emphasis on the wrong words.<sup>104</sup>

## ii. Volume

Actors and law students must judge the space they are in to determine the proper volume to use. Importantly, students often misjudge themselves as speaking too loudly when they are simply easy to hear. In large spaces, sound can get swallowed up, so it may be important to use a full voice to project the message. But if the presentation space is small, the student should modulate volume accordingly. There is no reason to “pin the judges” to the wall. Earlier, we emphasized blocking the space like an actor or director would do with a production, and walking through the whole legal presentation mentally, avatar intact. If permitted, walk the oral argument room physically as well and try out various levels of volume to see what “fills the room,” but still sounds conversational.

## iii. Pacing

Actors often film themselves to hear their speed and cadence.<sup>105</sup> This is a technique that is undeniably useful for law students, both to hear their voices and to see their movements.

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<sup>104</sup> See, e.g., <https://en.wikipedia.org/wiki/Overacting>; see also Karen K. Porter, Nancy L. Schultz, Lauren Scott, Louis J. Sirico, Jr. and Annemiek N. Young, INTRODUCTION TO LEGAL WRITING AND ORAL ADVOCACY, Matthew Bender and Co., 1989, *supra* note 39, at 176 (“We are not suggesting that you try to try to be dramatic and flamboyant, but merely that you modulate your voice appropriately for the point you are making.”)

<sup>105</sup> See Jennifer M. Romig, <https://listenlikealawyer.com/2015/09/24/speed-of-speech-speed-of-thought/> (noting that the human brain can generate 1,000 words of thought for every 100 words it hears).

Along with volume, the speed of the delivery should be appropriate for a court room setting. Often, because of either habit or adrenaline, law students end up speaking too fast and without the requisite emphasis on important words. Seeing a recorded version of a themselves at a practice presentation helps students correct their pacing so that the words have a chance to connect across the podium.

#### iv. A Few Notes on Vocal Style

For law students, a few special considerations arise. First, they may not know how to proceed with speaking while waiting for (or dreading) questions from the bench. Just as an actor would do with an audience she may or may not be able to see, students should stay engaged and energetic on their own materials, scanning the bench and speaking to the judges directly rather than to the paper on the podium. Even if the judges are not yet asking questions, students should keep a consistent style as they will when the questions (inevitably) come.

Second, while students worry about not knowing how to address or transition into answering the questions (will I freeze up?), which can be addressed with some techniques mentioned earlier in section III.2.c, they also worry about using too many filler words (um, ah, like, you know), known as discourse markers<sup>106</sup>, in their answers. Filler words are a natural part of speaking like an American (as Cush pointed out in class, as she has had to learn them), and they indicate the speaker is thinking about how to string the rest of the words together. Unlike up-speak (raising pitch at the end of a sentence)<sup>107</sup> or vocal fry (speaking in a guttural growl),<sup>108</sup> which have been

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<sup>106</sup> See generally Barbara Gotthelf, *A Lawyer’s Guide to Um*, Legal Communication & Rhetoric: JALWD (Fall 2014/ Vol. 11) at 1.

<sup>107</sup> See Susie Salmon’s forthcoming article, *Reconstructing the Voice of Authority*: Akron Law Review, 2017, Forthcoming [Arizona Legal Studies Discussion Paper No. 16-38](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2854244)  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2854244](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2854244)

<sup>108</sup> See generally Michael J. Higdon, *Oral Advocacy and Vocal Fry: The Unseemly, Sexist Side of Nonverbal Persuasion*, Legal Communication & Rhetoric: JALWD (Fall 2016/ Vol. 13), *supra* note 47; Michael Higdon, *Oral Argument and Impression Management*, 57 U. KAN. L. REV. \_\_\_\_ (2008-2009)

recently addressed by legal scholars as possibly unfairly singled out for correction as patterns of speech in younger women<sup>109</sup>, filler words are used by most native American English speakers, as they are in most other languages.<sup>110</sup> Cutting them out entirely is not necessary, as they can also serve an important function by signaling that the user is taking the process of creating a thoughtful and responsive answer seriously.<sup>111</sup> But using them too frequently – or to start an answer (“Um, yes, your Honor”) can also signal something else – that the user is not confident in the answer itself. Using a pause or silence is just as effective to communicate emphasis between two sentences or that one is stopping to think about the answer.<sup>112</sup>

Finally, some students experience “cultural introversion”<sup>113</sup> or worry about their accents when speaking in English (this applies as much to a person with a “Southern” American accent from Georgia to a person with a “Southern” Indian accent from Bangalore). Here, like taking on an avatar, which enhances the qualities one wants to emphasize, there is no reason a lawyer or law student needs to dispense with a regional accent or take on one that is unfamiliar in order to fit some kind of norm. Cush’s takeaway: “The accent adds something to you, but you still have to bring energy to your performances.”

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<sup>109</sup> It is important to be thoughtful about these issues as well, especially when guiding law students about presentation techniques.

<sup>110</sup> See Gotthelf, *supra* note 106, at \_\_\_.

<sup>111</sup> See Gotthelf, *supra* note 106, at \_\_\_; see also Chris Rideout article mentioned in Jennifer M. Romig’s excellent blog: <https://listenlikealawyer.com/2013/11/19/mark-my-words-listening-to-discourse-markers-to-be-a-better-listener/>

<sup>112</sup> See Romig, *supra* note 106, at her blog post: <https://listenlikealawyer.com/2015/09/24/speed-of-speech-speed-of-thought/>; see also her post at <https://listenlikealawyer.com/2018/04/09/silence-for-lawyers/> (citing to Bret Rappaport, “Talk Less”: *Eloquent Silence in the Rhetoric of Lawyering*, 67 J. LEGAL EDUC. 286 (2017)).

<sup>113</sup> See Brown, *supra* note 51, at 20 (on accents and cultural introversion).

**6. Understand the power of body language (the stance)**

“Oral communication is not only auditory, but also visual. Your stance will work to attract, distract, shift or hold your audience’s attention.”<sup>114</sup>

“It can be difficult for you to recognize your own mannerisms and habits. The teacher is there to point them out. They may be verbal habits, breathing patterns, facial or body tics. The challenge is to remember all the different commands demanded by the exercise and implement them at the same time, which addresses the ability to concentrate at will, break your habits, and take control.”<sup>115</sup>

Finally, this last section will briefly go over physical stance, and ways to bring calmness, poise and energy to the oral advocacy. Since the avatar visualization and breathing and voice exercises up to this point should have activated a performative shield, centered the mind and warmed up the voice, the last piece is to actually present to the judges.

First, posture is key to presentation, whether on the stage, in the classroom or in the courtroom. Actors have long known that how one stands and gestures commands attention and conveys meaning and import. The postures relevant to acting and legal advocacy are not all the same, but they align in several ways. As an actor may draw upon a whole universe of character types to physically transform into a convincing role,<sup>116</sup> the student can draw upon the avatar or essence of the kind of lawyer he/she wants to embody. Physically, the ideal posture for a student standing behind a podium is to stand as straight as feels natural, diaphragm engaged, with shoulders rolled back, and in a balanced stance between both feet.<sup>117</sup> The breathing

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<sup>114</sup> <https://classroom.synonym.com/postures-during-oral-presentation-4500.html>

<sup>115</sup> Cohen, *supra* note 32, at 189.

<sup>116</sup> See *id.*, *supra* note 32, at 105-108, Table 4.1 (which outlines an extensive Method Acting character guide).

<sup>117</sup> See generally Brown, *supra* note 51, at 101 (while eschewing a “fake it ‘til you make it” mantra, finding that “a person’s physical stance and confidence level are linked.”).

techniques employed up to this point should also help the student to feel centered and poised.

Along with taking note of stance, actors also try to neutralize physical habits that might be distracting on stage. (In the context of this advice, Cush told the students her natural habits include rhythmically using her hands to speak, and that characteristic did not often jibe with the roles she had to play). Some – in fact, many – physical tics are unconscious. Just as with judging pacing and cadence, recording oneself standing and speaking will also help the student to assess physical characteristics that might impact the message. For example, a student who did not realize that her neck was turning red during her oral advocacy performance saw herself in a video recording, and was able to adjust her performance to make that less obvious. This was also true for students who rocked back and forth or primarily looked down or in an upper corner in the room rather than making eye contact with the judges. But once the student is aware of these habits, she can decide which ones to activate and which to neutralize for the most effective performance. And, the idea of presenting with an avatar shield around her can give the student the extra confidence she needs to “be the lawyer she wants to be” at the outset. And, if the avatar serves her purpose, after a while, she will not need the shield at all.

### **III. Conclusion**

This article describes the “avatar” concept I created for my class, as well as other theater-based techniques, that can be helpful for students to transition into oral advocates, and ultimately, into holistic lawyers. I brought together six techniques which I hope will help law students at the point they are just about to prepare for their first oral advocacy presentations. My goal was to give the students tools that they can call upon whenever they need it, now or in the future. It is quite possible to teach all these techniques in the classroom without the use of particular visuals or an actor to impart them. And although I presented these ideas as six parts that flow together, they can also be considered more of a smorgasbord than a full course menu. Even choosing to think about one of these aspects in depth can bring a new perspective and energy

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to oral argument instruction, and can be a useful and inspiring  
lesson for our students.

*I ask again, “Who inspires you? What person or character  
can you take on to carry your message forward? It really can be  
anyone. And, at the end, it will be you.”*