

Kluwer Arbitration Blog

Theater and Law: The Use of the Actor's Technique in Arbitration Advocacy

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A few days ago I had the fortune of attending the fourth webinar of the Young ITA Mentorship Program – Speaker Series, entitled *The (Sometimes Forgotten) Importance of the Arts and Psychology in Advocacy in International Arbitration*. Part of the dialogue focused on reviewing whether theatrical study could be useful to lawyers in enhancing their oral advocacy. I would like to expand on this topic further, based on my experience as a theater director training lawyers to be more persuasive before arbitral or judicial tribunals.

The first time I asked myself whether theater could have any relationship with law was eight years ago, when ICSID arbitrator [Alfredo Bullard](#) invited me to co-teach an advocacy course at PUCP. I found the answer when I realized that litigators tell live stories. And, that just like actors, lawyers also need to know how to manage their body, voice and emotions in a technical way to bring their written speeches (their dramaturgy) to life, catch the attention of the arbitrators and persuade them to rule in their favor. I also understood how useful it can be for lawyers to become aware that – during a hearing – they are immersed in a “staging”: a professional game with specific rules in on which they need to be trained to play a special role. This implies knowing how to project certain characteristics of their personality and having a high level of energy and concentration, because acting as if in any other daily or professional circumstance could be a mistake.

Having good actors is as important as having a good case theory

When we talk about how to enhance a lawyer's live performance, the first thing we need to be aware of is that writing and acting involve different skills. In theater, playwrights are aware of this. They know that the best way to stage their story is to entrust it to a good actor, capable of giving life and credibility to the words they have written on paper. Fortunately, the level of knowledge that exists today about the actor's technique makes it possible for almost anyone to train and develop stage skills. Achieving this is more a matter of work and conviction than just natural talent.

In the legal world, there is also some level of awareness of the difference between being able to write and having the ability to perform live in an engaging and persuasive manner before a tribunal. However, based on my experience, I can say that this awareness can be further enhanced

and better trained.

Unfortunately, I have witnessed many times how some lawyers use the hearing to merely read aloud their written pleadings or to just perform an impromptu and unappealing representation of their case theory. They trust that their body, voice and emotions will be projected to the members of the tribunal the way they have imagined it in their heads the night before or on their way to the hearing, but unfortunately that's not usually the case. They do not train in the development of their expressive skills, they rehearse little or nothing in the execution of their live pleading and probably do not give themselves time prior to the hearing to warm up their body, their voice nor to focus their emotional intelligence for this professional game. The result on many occasions is that they completely miss the opportunity to bring the case to life in front of their viewers: the adjudicators.

How should lawyers organize their body, voice and emotions to persuade?

Based on my research analyzing theatrical, legal and psychological experiences and studies, to be persuasive lawyers should organize their body language, voice and emotions so they always project conviction and empathy. This can make their presentations more memorable and exciting for the tribunal. Research shows that our decisions are more emotional than rational.

...he who leads men must know them and their motives for action. They are generally sentimental rather than rational. Beliefs and desires rule the world. To influence men is thus primarily to influence their feelings.” (Bousquie, p.5. Own translation).

Hence, to be persuasive it is essential to have the ability to emotionally influence people.

Following this logic, it makes sense that the methodology that lawyers use for their live presentations should be structured similarly to how it would be organized by an actor who must assume a persuasive role or character. In fact, many [institutions specialized in education or treatment of the voice](#) already have lawyers on their list of spoken word professionals. Therefore, the technique and training to enhance the performance of lawyers can be based on the following principles and components of live communication. First, in relation to body language, being aware of two basic principles: we are how we move and with the body we make actions (Adapted from [Stanislavski](#), pp. 25-105). These are articulated based on three components of body management: eye contact, posture and body placement. Second, in relation to the voice, based on principles similar to the previous ones: we are how we talk and with the words we make actions (Adapted from [Stanislavski](#), pp. 107-201). We naturally articulate these based on six variables of management of the spoken word: pitch, volume, speed, rhythm, direction and listening. Third, in relation to emotional management, using a principle of cognitive psychology: our emotions shape our behavior ([Keegan](#), p.64). A principle that in this case we should articulate by learning to channel self-confidence and empathy.

Although it is impossible to go in depth in these brief lines on everything that lawyers should do with respect to each element of their performance, allow me to give you a few suggestions, by way of example, on what we should do with our body language. Both theatrical tradition and [social psychology research](#) agree that, if we want to convey conviction, we should use open postures and

movements. Therefore, if you want to transmit solidity, security, and credibility, you should always stand or sit in such a way that you can project your face, neck and trunk widely towards your interlocutors. You will have the opposite effect if you shift your spine, shoulders or chest forward, closing them towards your stomach, or if you cross your arms and clasp your hands together, blocking your trunk or partially or totally covering your neck or face. These latter postures will make you look insecure, nervous, and defensive. And no matter how well your live words are flowing and sounding, you will convey contradictory information to the tribunal who will probably feel distrust, disinterest or rejection, without them being aware of the reason for their negative feelings.

This is why balancing all elements of performance in the right communicative direction can be a major challenge. Many times, lawyers find themselves at a crossroads where their body and voice are projecting contradictory information. Or worse, they have inadequate emotional reactions to the obstacles that arise during the hearing and end up projecting feelings that do not correspond to the action of persuasion, such as fear, anger, guilt, etc. That way their actions during the hearing, far from persuading, become something akin to justifying themselves, confronting, or pleading with the arbitrators.

For these reasons, I would recommend lawyers to train their stage skills so they can enjoy the game of arbitration even more and to obtain good results for their clients. This will happen naturally by having more expressive resources to bring their case theory to life during the hearing and enhance their ability to persuade the tribunal.

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