



Trial Practice, Practice, Practice

Tips on exercises to prepare for your courtroom performance – they really work!

BY KATHERINE JAMES

Prelude

There is an old show business fable about the famous violinist, Jascha Heifitz. He is briskly walking down a New York street. A lost tourist asks Heifitz, "How do you get to Carnegie Hall?" And Heifitz replies without breaking stride, "Practice, Practice, Practice!"

Trial Practice – The good old days

There was a time in the past – the quickly becoming long ago past – when a lawyer with a trial practice was ready at any given moment to get up and try a case. Practice didn't mean going to Carnegie Hall. Trial lawyers considered themselves living in Carnegie Hall. Why? Because attorneys who tried cases were trying cases all the time. The average trial lawyer was trying several cases a year. When a trial lawyer referred to his or her *trial practice*, that fact was a big part of the definition. If Webster's definition of *practice* is "skill gained or maintained through repeated exercise," then trial lawyers lived in a world where practice and performance were the same act.

I do not have to tell you if you are an older trial lawyer that those times are over. If you are a newer trial lawyer, you may long to be a part of those yearned for halcyon days of yore that you've heard

so much about from your mentors. The newer trial lawyer thinks, "I wish I was alive then so that I could be ready at any given moment to stand up and try a case today."

But what you may not realize is that the seasoned trial lawyer thinks, "Dang, I wonder if I could be as good on my feet today as I was back then since I just don't do it so much anymore?" A huge dilemma faces today's trial lawyer when it comes to trial practice: How can you *practice* when you are almost never in trial?

Trial Practice – A new definition

"So, if as a trial lawyer *trial practice* no longer means, 'I go to court all the time and try cases' what *does* it mean?" I find that question being asked more frequently than it ever has in the over 30 years that we have been conducting our trial skills workshops at ACT of Communication.[®]

A performer has a specific way to practice his or her art between daily performances and even on days when there is no show. Another of Heifitz's famous quotes is, "If I don't practice one day, I know it; two days, the critics know it; three days, the public knows it." A trial lawyer also needs a way to practice the art of standing up and trying a case during the long dry spells between trials. A trial lawyer needs to learn how to "Trial Practice, Practice, Practice."

How to develop your own "Trial practice, practice, practice"

Other than discipline and desire ("Well begun is half done," as Horace said in 30 BC)... you need three things:

- **A little time.** Daily time. Alone. Just like Heifitz. It does not need to be hours and hours and hours every day. Fifteen to thirty minutes (not always consecutive) each day should do the trick. Some days it will be in your home or office, some days in your car, some days perhaps as a part of your physical workout (depending how you like to work out.)
- **A series of practice exercises.** Several exercises. Examples of exercises and evaluation tips on where to go next with practice sessions are included in this article. You will try all the practice exercises at first. Then you will mix and match them and start to figure out "daily menus" that are right for you. Each daily menu will contain three parts: warm-up exercise, practice skill exercise, evaluation. You want to have lots of daily menus from which to choose and be open to creating new ones as with your Trial Practice, Practice, Practice you find areas you want to really work on and improve.
- **A video camera and way to play back what you record so you can watch and listen to it.** You might also want to invest in a little audio recorder that you can use for some of the days in which your practice is going to take place in your car.



Warm-up exercises

An actor warms up the body and the voice every day. A musician does a series of exercises to warm-up the fingers or the voice. A dancer carefully warms up the body.

A trial lawyer needs to also warm-up the voice and body as the start of the daily session. Why? Because you try your cases with your voice and your body. If you only had to send your brain waves to the judge and jurors you would win every time.

You want to warm-up your voice and/or your body for about five minutes. Choose from the following for now – eventually you may develop your own:

- Hum...and then sing your favorite song starting softly and then gradually getting fuller. Thinking “fuller” instead of “louder” keeps you warming up rather than blowing out your voice.
- Take in a deep breath...exhale all the air...take in a deep breath...exhale all the air while saying “may-ay-ay-ay”... repeat several times also riding out the breath on other vowels: “me-ee-ee-ee” “mah-ah-ah-ah” “moh-oh-oh” “moo-oo-oo.” Make sure your voice isn’t too high or too low but in your “middle.”
- Say, “My voice has many notes today” on a note in the middle of your voice (also called the middle of your vocal range). Now, go a half step lower and repeat, “My voice has many notes today.” A half step is the difference between a white key and a black key on the piano. Go down several half-steps (but not until it hurts!). Then build back up again from that lowest note of your vocal range today...past that middle note, and up several steps (but not until it hurts!) and then back down to the middle again.
- Slowly walk in place, swinging your arms...gradually get faster...faster...until you are jogging...get slower...slower... slower...until you are slowly walking in place.
- Do a “Shake Out” – shake out your hands over your head...then swing your arms around and around...then drop

your head to your chest and shake it from side to side...then shake out your torso...your hips...your legs...one foot...the other foot. Jump up and down a few times.

- Walk around the block; get on the treadmill or the exercise bike for five minutes.

Skill-building exercises

What skills do you need to have at your command when you go to court that you can practice without going to court? And what does that have to do with performers?

Trial lawyers have to talk with full, well-centered voices (so do actors and singers). They have to make sense when they read (so do actors). They have to be able to argue spontaneously out loud (actors need to be able to improvise when something unexpected happens). They have to have good posture (so do actors, musicians and dancers). They have to move well (so do actors and dancers). They have to use gestures that are helpful and not distracting (so do actors). And, perhaps most important of all, trial lawyers have to be as confident in court *as if* they went to court every day even though they have not been there for days or months and will not be back for days or months (like an actor, dancer or musician at an audition).

Here are some skill-building exercises that cover these needs:

- Read something out loud that you have never read before in your life (poetry, fiction, the newspaper) for five minutes. As you read, make mental notes of what words should be emphasized, where the emotion is, where the pauses should be – how to make it “make sense.” Now read the same piece again, incorporating all your “improvements.” The more days you do this exercise, the better your ability will be to make sense of something you need to read out loud, “cold,” in court.
- Listen to someone you hate on a talk show in your car. Turn on your portable audio recorder. Tape yourself giving a

short rebuttal. Play your rebuttal back again and listen for ways to improve it: vocally, word choices, content, theme, etc. Then turn on the recorder and do a new and improved rebuttal. Play it back for yourself again.

- Turn on the video camera. Stand up and do a brief opening or closing for a case in your office. Play it back and watch it without sound, paying attention to your posture, gestures and movement. Make notes on how to improve. Record it again. Now watch both takes “with sound.” Have your gestures, posture and movement improved? How about your voice and the content? Now, do a third take, incorporating what you have learned from the first two and see if you can improve all these elements.

- Put on a vocal warm-up CD in the car or follow a vocal warm-up exercise DVD or MP3 in your office or home (if you don’t have a favorite, please look at our Web site www.actofcommunication.com for such a tool). Tape yourself following along using your camera (office or home) or audio recorder (in the car). Now watch and/or listen to yourself doing the warm-up with the instructor. Are you looking like and/or sounding like the instructor? If not, where not? Try repeating the same part of the tape and try to match.

- Run outdoors, ride a bike, walk on the treadmill – whatever your regular workout entails. Give a closing argument in a case on which you are working while you are working out. When you stop exercising for the day at some point in your home or office, perform the closing as if you were giving it in court. Is your breath more connected? Your voice fuller? Your body more relaxed with gestures that feel more natural?

- Watch and/or listen to one of the great lawyers giving a classic argument (If you don’t already own “May It Please The Court,” you need to make an investment). Pick a favorite passage. Record your voice (if you are in the car) trying to emphasize the words, imitating the rises



and falls and intonations of that lawyer. If you are at home or in the office, turn on the video camera. Give the passage as if it is you who are in court – imitate the voice or find *better* ways to give the same words. Find the way to move, gesture – emphasize the brilliant argument with your body. Play it back. Do it again, and really make it your own.

Evaluation

You need to evaluate what you have done at the close of each one of your Trial Practice, Practice, Practice sessions. You notice, I said *evaluate* rather than *critique*. Trial lawyers, like performers, have horrid little critics in their heads who often are not helpful. An evaluator says, “I’m so glad I have a chance to work on my voice again tomorrow.” A critic says, “I sound like Minnie Mouse in a blender – I’m never going to work on my voice again!”

Ask yourself, “What’s next?” Plan out what you want the menu to be tomorrow. More work on voice? Or is tomorrow about reading out loud? Or taping yourself giving Thurgood Marshall’s argument in *Brown vs. Board of Education* before the Supreme Court? You may find yourself planning menus for a week at a time.

Solo to duet to trio

At some point in your individual Trial Practice, Practice, Practice sessions you may feel the need to rehearse with others. After all, how can you work on your eye contact without looking at someone else while delivering your opening? How can you tell if you are really being clear without some feedback from someone else? In our ACT of Communication® workshops, we find that trial lawyers eventually seek out the feedback of others to go to the next level, no matter how great their individual Trial Practice, Practice, Practice is going. Solo practitioners seek out and find other like-minded trial lawyers (many first become acquainted at our workshops) to meet with on a weekly to monthly basis to Trial Practice, Practice, Practice together. They give one another feedback on eye contact, demeanor, style – and use one another as sounding boards on how they are each doing with their individual Trial Practice, Practice, Practice goals. Larger firms have started a weekly Friday afternoon session starting at 4:00 p.m. where at the end of the week all the firm’s trial

lawyers get together for a group Trial Practice, Practice, Practice session.

Finale

What does all this Trial Practice, Practice, Practice really get you? It’s not like it is going to be over and you never have to do it again. You are going to have to do it tomorrow and tomorrow and tomorrow if you are to keep growing and improving. As Heifitz said, “There is no top. There are always further heights to reach.”

What it really gets you is the gift that all performers know...translated into your world. The most important gift of all – the gift of walking into the courtroom as relaxed, confident, and skilled *as if* you go to trial every day. You deserve that. And so do your clients. After all – isn’t that why they hired a trial lawyer?

Katherine James has been a trial consultant for 30 years and is the founder of ACT of Communication®. She is a member of the standards committee of the American Society of Trial Consultants.

