

THE
AM LAW LITIGATION DAILYAn Advocate's Voice: Are You Stuck With the Voice
You Were Born With? Or Can It Be Trained?

By Ross Todd

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Is a trial advocate blessed (or cursed) with the voice he or she is born with? Or is the voice a tool that can be honed through training for better advocacy?

I chewed on those questions a bit last week with Morrison & Foerster trial legend James Brosnahan and **Sean Berkowitz** of **Latham & Watkins** while recording an upcoming episode of the Legal Speak podcast.

The idea for the session came together pretty quickly. Over the past year, Brosnahan has produced a series of short LinkedIn videos specifically geared to lawyers called "The Voice." The series breaks down the elements of vocal characteristics and techniques covering topics such as tone, emphasis, volume, clarity, tempo, and the strategic use of pauses. When one of those videos popped up in my feed a few weeks ago, I immediately thought of **Berkowitz**.

If you've ever talked to **Berkowitz** or heard him speak, you probably understand why he came to mind. **Berkowitz** has one of those voices. Think Morgan Freeman or James Earl Jones or Orson Welles. It's calm, deliberate and authoritative.



Courtesy photos

Sean Berkowitz, left, of Latham & Watkins, and James Brosnahan, right, of Morrison & Foerster.

When I got them in my virtual recording booth last week, I started by asking about their relationship with their voices. Jim, after all, has said that about 40% of the students he worked with back when he was teaching at UC Berkeley School of Law didn't like some aspect of their voice.

Berkowitz said he loves his voice and thinks it's one of his best features. But he said that he had been practicing about five or six years before he realized he had a voice that appealed

to people in some special way. Since making that realization, he's tried to use his voice strategically. "I have found it to be something I think has probably helped me professionally in ways that I wouldn't even have known," he said.

That said, a strong voice cannot plow through all weaknesses. **Berkowitz** stressed that credibility is key in advocacy. He recounted a recent mock jury exercise where jurors were asked to say one thing they liked about the presentation and offer one piece of advice. One juror's like for **Berkowitz** was: "Loved your voice."

The piece of advice?

"You should switch sides."

"Whatever one's voice is, if you don't use it for good, it can come back to haunt you," **Berkowitz** said.

Brosnahan started his answer by noting that it's hard to hear your own voice. But he said he's had at least a half-dozen times in his career where he's given an opening statement only to come back to counsel's table to have his client tell him he sounded "just like Jimmy Stewart." Since it came from people who had never talked to each other, Brosnahan said he had to accept it. It wasn't a bad thing, after all. Jimmy Stewart almost always played the good guy. He "went back to Washington and told them off, which was very successful—and still is," Brosnahan said.

"It certainly wasn't imitating him. I was just talking," said Brosnahan, in a voice that still has a healthy dose of Stewart. "When I'm teaching—and this is the important part—I'm not

trying to teach them to talk like me. I'm trying to have them take their voice as it is."

Brosnahan said he's seen his students improve by practicing, recording, listening to, and analyzing speech.

"As far as I'm concerned, any student I ever had and any practicing lawyer I ever had could improve in some kind of a range," he said. "The 10 years that I taught at Berkeley Law I never had a student that didn't improve. It may not have gotten to what I would consider the mesmerizing level that I've been talking about. But they all improved."

Berkowitz said that anybody, whatever their voice sounds like, can be an effective advocate. "Having said that, I believe that nature plays a tremendous role in how you communicate, in what your voice sounds like," he said. "I think you can, within a band, change it. That's why you've got to work with what you've got."

The Legal Speak episode featuring my discussion with Jim and Sean—which has some fun instances of them practicing some of the techniques we talked about on each other—is set to go live on Friday. I'll be sure to include a link in the "What I'm Reading Section" next week.

Not all my Legal Speak pitches come about this spontaneously. Do you have an idea for a conversation with a litigator or two that might have listening appeal for a broader legal audience? If you have ideas for topics or potential interview subjects, I'm all ears at rtodd@alm.com.