



“Pro”-tips: Professional Athlete Principles for Trial Players from a Sports Counselor

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“I was 354-0 as a wrestler. But the crippling anxiety kept me from enjoying it.” After years of success as a Division I wrestler, Jeff Miner turned his focus to helping athletes from Olympians to youth sports phenoms navigate high performance anxieties. His Triumph Performance Institute strategies are drawn from his years of experience with the US Olympic Committee, the Utah Jazz and many individual professional athletes. Learning from, coaching and counseling, athletes of all personalities, motivations and drives, Jeff works with high performers in a variety of fields to navigate the fears and anxieties that can limit performance and impair rational decision making during critical phases of performance.

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In creating Turney LG, Chris assembled a team of trial attorneys who tackle technical engineering, scientific and medical issues involving products, premises and professionals. Although his trial experience has centered in large metropolitan venues across the country, he also enjoys litigating cases in smaller counties, having handled litigation in nearly half of Missouri’s judicial circuits. In addition to serving as local and lead counsel in Missouri, Chris is experienced in Kansas District and Appellate Courts, as well as federal District Courts and Courts of Appeals. Outside of work, Chris enjoys every minute with his wife and two children and leads Wings 4 Water, a nonprofit that turns chicken wings into clean water for our global neighbors.

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“These steps were not this wobbly two weeks ago.” Kelly’s words were audible to nobody but her.

It seemed like yesterday that she gracefully walked down these courthouse steps after her pre-trial conference. Confident, poised, looking forward to the two-week battle that would finally put an end to this case, she convinced her client that this case needed to go to verdict. On that day, her voice was as strong and sturdy as the courthouse steps that were placed a century ago.

And today, just two weeks later, the courthouse steps wobbled. She felt a twisting in her gut. Her heart was racing and she was simply unable to slow it. A high performer her whole life, Kelly could not admit that she felt a sense of fear. She could not use that “F” word. She is a performer. She can’t feel fear. Her clients depend on her to ignore that fear. She has to fix her eyes on the door handle just climb up the courthouse steps. But she feels an urge to tell her client that it should double its last offer to get out of this case.

Fortunately, Kelly skillfully finds her anchor, visualizes the success she had in the last major hearing and within seconds drops her heart rate to her comfortable sweet spot. Now she’s ready to roll.

There are probably unique trial attorneys who do not feel this pre-trial anxiety. A vast majority of honest lawyers, however, can feel the wobbly courthouse steps described above. A trial attorney walking to the courtroom well for an opening statement is similar to a major league baseball player who turns a crucial game-ending double play or a goalie who lays out for a game winning save during PKs.

As a logical extension, then, trial attorneys can learn from the in-game experiences from professional athletes and apply their calming strategies to their in-trial performance.

The Sweet Spot Analysis

Understanding in trial performance requires evaluating and understanding the trial lawyer’s sweet spot. Most people who have swung a golf club several times will know the feeling of hitting the ball with the “sweet spot” of the club head. Excellent golfers know that hitting the ball with the club’s sweet spot significantly increases the likelihood that the ball will go where it is “supposed” to go. Notably, different golf clubs will have different sweet spots. To find the correct sweet spot, a golfer needs to reflect on prior experience with the club. But beyond merely having experience, the golfer needs to have an intentional observation of the swing, the club head, the ball and the outcome on many occasions.

Just as different golf clubs have different sweet spots, different athletes have different attitude-based sweet spots that are reflected in how the athlete interacts internally and externally. For example, a particular gymnast is known by her friends as being a compassionate, kind-hearted

person. But on the day of her competition, her focus turns solely to the match. A person interacting with her on the day of her meet will assume she's a self-focused, self-absorbed and heartless person. Her sweet spot is outlined by an attitude of complete focus to the exclusion of all others. On the other hand, a retired professional football player reflects on his career remembering many cracked jokes, hi-jinks and lighthearted conversations right before kickoff. His sweet spot was one of letting go and embracing the relaxation within the moment.

Which of these athletes had the "right" sweet spot? Both. They were operating within themselves at the attitudinal sweet spot that fit their best past performances.

Trial attorneys can identify their sweet spot by deeply recalling prior litigation battles. In identifying your sweet spot, begin with reflection:

- Which battles were exhausting and soul crushing?
- Which battles were exhilarating and enjoyable?
- In which days of trial did the jury seem particularly engaged in the cross-examination?
- When did the jury appropriately laugh?
- When did the jury appropriately cry?
- When did the judge look down from the bench with an approving grin?

In short, when were you most comfortable in the courtroom? Once each of those moments is defined, think about your personality and attitude (a) the morning of that day, (b) minutes before the best moment, and (c) during the best moment. Was the attitude lighthearted or was it intensely focused? What would your team say? When you had your best performance, did your paralegal believe you were approachable? Once you identify your most comfortable attitudinal sweet spot, develop your pre-trial routine to maximize your ability to consistently maintain that attitude throughout trial.

Relaxation on Command

Learning to relax on command is a different skill than learning how to control your anxiety overall. Learning to relax on command allows you to lower your heart rate almost instantly which controls all the physical responses to stress such as sweating, turning red or pressured speech. Being able to relax on command is the key to controlling your emotional responses in pressure situations.

One baseball player, for example, discovered that he hits his very best when his heart rate is exactly 52 beats per minute stepping into the batter's box. There are several skills that he had to learn and implement to be able to control it to that level. He had a specific routine that he would do every single time that included behaviors such as breathing, visualizing, touch his anchor (relaxation on command) and pulling his gloves up and looking at the left field foul ball pole. These behaviors got him into the zone, flow, moment where he performed at his peak.

If you miss the conference, contact the author to obtain a relaxation on command drill.

Implementing the I-F-R Strategy (REFOCUS); Recovering after a bad break

When facing in-game unknowns, athletes often implement the “Identify-Feel-Refocus” strategy. This “I-F-R” strategy involves identifying the immediate fear, doubt or worry and then feeling the resulting emotion *without judgment* and refocusing that emotion to the game.

Athletes are sometimes taught to focus on something other than the feeling that they were experiencing at that moment. To try pushing it out of mind and focusing on the positive. Wellllll, that doesn't work! That doubt or fear doesn't go away when we just push it down and try to avoid it. We actually have to practice feel that emotion, for two minutes without judging, trying to fix it or change it.

This skill is crucial in day-to-day life, as well. Most people are afraid to feel BAD emotions. They tend to do everything in their power to avoid feeling feelings like loneliness, shame, fear, rejection, or the dreaded imposter syndrome. So, many of our friends today deal with difficult feelings, anger, drinking, drugs, high risk behaviors and avoidance. We all want to feel better and most of us inherently believe that escaping these feelings is the answer. And it is.... For the moment.

Let's try it. Think of a situation that was uncomfortable for you in the court room. Ok, now locate where you feel that in your body. Focus your attention on what that feels like in your body.

When your mind wanders, simply bring it back without judging. The more you practice this skill, the faster you will be able to do it.

After focusing your attention on where in the body you feel the discomfort, you can identify it earlier and address it faster in the heat of a moment. Then, refocusing the anxiety will complete the cycle.

As an example, a hockey player practiced for three years to master the I-F-R skill. Initially overwhelmed with fears, doubts and anxiety, he would literally freeze on the ice during the game, while in practice he was unstoppable! Upon allowing himself to feel his fears (which included the fear of -----, he was able to slow down his fear-based reactions and re-focus on the game. He went on to play D-1 hockey and, more importantly, still loves the game. He's now in control of his fears because he knows he has a technique to deal with them when they do come back around.

Practically applying the I-F-R strategy to a live trial setting requires practice. A part of this practice goes back to pre-trial preparation. Foreseeing potential hiccups in the trial and having an action plan in place is the best confidence building tool a trial attorney can possess. But, just as a sprained ankle can unexpectedly hit a critical teammate on the field, a surprise witness or unexpected cross-examination question can cause a courtroom panic.

When the unforeseen happens, trial counsel can respond like a pro by:

- **Identifying** the emotional response that is caused by the event;

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- **Feeling** that emotion without being critical about the feeling; then
- **Refocusing** that emotion into the “sweet spot” visualization of the comfortable trial attorney reasonably responding with the available resources in the moment.

As a practical example, opposing counsel hands you an unpublished and previously undisclosed testing document about a product that is similar to client’s product. According to that paper, the product releases material that plaintiff’s counsel argues caused his client’s disease. An untrained initial response is likely fear-based, and time wasting:

- “I’ve never seen this document before!”
- “How did I never see this document before?”
- “How am I going to explain to my client that I’ve never seen this document before?”
- “How is my expert going to respond to the cross-examination when she’s never seen the document before?”
- “Will this expert ever agree to work with me on a case again?”
- “Where did opposing counsel find this document?”
- “What else does he have that I don’t know about?”
- “The judge can’t let this in. Is the judge *really* letting this in?”

Notice that all of these reactions share a few things in common. First, they are all unhelpful to the present predicament. An exhibit is being offered, the judge is considering your objection and the jury is looking at you. None of the questions above are helpful to the situation. Secondly, each of these questions take less than a second to pop into your mind.

By implementing the I-F-R strategy, a disciplined trial attorney may respond with the following:

- “So this came out of left field. I’m a bit embarrassed that I didn’t see this coming. I am also a bit concerned that my client will not forgive me for being unprepared to handle this specific document. The jury could very well see my lack of preparedness on this specific document as a weak spot in my defense. I also have some concern that the jury will think I lied to them when I said in opening statement that there is no evidence that our product released this type of material.”
- “I certainly can understand that I feel these emotions about the situation. It’s out of left field and these emotions logically flow out of the situation.”

Tucking those emotions and trying to move on without taking a little time to feel them is going to cause a response out of fear. Instead, take 30 seconds to a minute to feel those fears and doubts.

Then, refocus time begins. This is where the relaxation on command comes in and where you think about a solid prior success. That one trial where you crushed that expert witness because he brought that article into the trial without having thoroughly read it. Remember that critical sentence that he did not read closely enough? That’s why your client hired you for this case.

So, take a look at the document opposing counsel handed you and see what's missing. There's probably a really good reason this article has not been used in the last 20 years of litigation about this product.

Indeed, your clear mind sees a footnote in that testing document that very clearly states the reported material was detected with an inferior type of microscope that actually cannot distinguish the purported material from other inert materials. When the judge overruled your objection and allowed opposing counsel to publish the document onto the projector, you calmly notice that he fails to show the jury that footnote.

Back to your comfortable sweet spot, you prepare to expose opposing counsel's "oversight" in your re-direct.

Nonverbal Messaging

An important aspect of working within your "sweet spot" is the nonverbal messaging that results. Teammates on the field will know when their leader is despondent. They will be able to tell from an attitudinal perspective when their leader is down.

As your client, your team, the jurors, the judge and the witness see your consistent personality, they will also be able to notice when you are outside of that sweet spot. At times, this may be appropriate for emphasis. The laid-back attorney may occasionally become incredulous with an obstinate witness. But on balance, the courtroom eyes will evaluate the credibility of consistent behaviors.

Give your teammates permission to politely give you feedback about your trial attitude. Use that feedback to check yourself on whether you are applying the Relaxation on Command and I-F-R strategies in real time.

A Closing Word About Focus

The Identify-Feel-Refocus strategy begs a question. How can we re-focus if we don't know what our focus is? One helpful tool for ensuring our focus is spot-on is to ask one key question then several "power questions".

Key Question: "For what am I grateful?"

This question may yield different responses for different professionals. Before going into a game, a professional athlete will often think about these things to bring a peaceful demeanor. Likewise, trial counsel can speed up their in-trial refocus stage by starting the day with reflection on their gratefulness.

- I am grateful for my family.
- I am grateful for my opportunity to try this case.
- I am grateful for my reliable teammates.
- I am grateful for my intelligence.
- I am grateful for my relationship with God.

- I am grateful for my education.

After identifying a few things for which they are grateful, many high-powered athletes will ask a couple of power questions before the game. Answering these power questions helps the athlete's mind to more quickly relate back to some positive refocusing thoughts when things go awry during the game.

- Why am I confident in who I am?
- Why do I tend to win?
- Why do I see past failures as key factors in my success?
- Why do my friends or family see me as a strong person?
- Why do I love what I do?

Just like the professional athlete, trial counsel can start every day of trial thinking about these focusing questions. By entering the courtroom with the answers fresh on the brain, the object of re-focus is more quickly accessible during the heat of the battle.

Conclusion

As self-doubt, lack of client confidence, imposter syndrome, or fear of failure erode the foundation of each courthouse step, know that other lawyers have felt the same wobble. However, also know that you are well equipped to be right where you are. By trying the case in your sweet spot and appropriately responding to in-trial surprises, the judge, the jury, your team and your clients will know that they can trust not only your work ethic, but your response to the pressures of trial.

With each trial success and failure, each step in this process will become more and more comfortable.