

The Lawyer's Mind: Flow

ROBERT A. CREO practiced as an in-house corporate lawyer and a solo and small firm general practitioner before becoming a full-time neutral. He has acted as a mediator and arbitrator in thousands of cases, including as a salary arbitrator for Major League Baseball, a grievance arbitrator for the National Football League, and a hearing officer for the US Senate Select Committee on Ethics. He has been on the mediator roster of the Court of Arbitration for Sports, Lausanne, Switzerland, which provides ADR services for international sports, including the Olympics. He serves as adjunct professor at Duquesne University School of Law and was an adjunct for many years at the University of Pittsburgh School of Law. He is the 2018 recipient of the PBA ADR Committee Sir Francis Bacon Alternative Dispute Resolution Award. He is annually named as a Super Lawyer and included in Best Lawyers in America where he was recognized as the mediator of the year in 2014 and 2017, and for arbitration for 2021 for Pittsburgh. He has a passion for storytelling and is the principal of Steel City Storytellers, LLC (www.steelcitystorytellers.com). He is also the principal of Happy! Effective Lawyer LLC (happyeffectivelawyer.org). His website is www.robertcreo.com.

This article was originally published in The Pennsylvania Lawyer

Arriba, Arriba, Arriba! -Roberto Clemente

Growing up in Pittsburgh in the 1960s, I idolized Roberto Clemente. One of my prized possessions is the polaroid my sister took of him standing at Forbes Field with the University of Pittsburgh Cathedral of Learning in the background. When he spoke to us that day at the railing before the game, I was awestruck. I nodded or moved my head in some manner. He smiled. I marveled at not only his hitting, base running, ability to throw a runner out from right field, but also at his seemingly effortless catches and running at various speeds — and of the tiny white sphere falling from the sky. Years later, while playing in the Allegheny County Bar Association softball league on a team that could go a whole season without winning a game, I had an insight catching a deep fly ball. Once I heard the smack of the ball against the bat and saw it heading my way, my whole being, my life itself, was concentrated on catching that ball. As I moved automatically and effortlessly into position, nothing else in the universe existed in my mind, soul or body, as all of my energy, my very being, knew that ball was going into my glove.

Athletes commonly refer to this state of optimal confidence and performance as being in “the zone.” This phenomenon is now well-known after being studied and written about in academic journals and the popular press. This dynamic, coined “flow” in 1970 by psychologist Mihály Csikszentmihályi of the University of Chicago, has been recognized in other forms and labels in recorded history across the globe. Flow has been extensively researched with well-documented correlations with high performance in the fields of artistic and scientific creativity, teaching, learning and sports.

Central to contemplative Eastern philosophies and many religious and spiritual practices is focusing the mind and body on the moment, physical attribute, visualization or harmonizing

intent, awareness and effortless actions for peak performance and outcomes. In 1690, the English philosopher John Locke published “An Essay Concerning Human Understanding,” writing about the different states of thinking ranging from deep reflection (earnest study) to an absence of thoughts, noting that everyone has experienced these differences in attention. William James, credited with founding the discipline of psychology, referred to the “stream of consciousness” as a stream of thoughts and emotions transversing our awareness as our mind responds to stimuli or simply wanders through our memories.

My challenge, often in the nature of a quest, is how to master our craft, our chosen business, to achieve flow — to visit the zone — as frequently as possible. This personal gauntlet entered my own consciousness when I started my first job as a lawyer as in-house counsel for a manufacturing company to form a legal department consisting of myself and general counsel. My first day on the job he explained that we were highly educated technicians of law who should undertake any task, no matter how big or small, with full dedication to excellence. When lawyering, I hoped to snag that dropping ball with confidence. Over the years, I integrated, first on a subconscious level and recently, purposefully, contentment as a platform for competency and effectiveness.

Minds have limited capacity and endurance. Just being alive, our biology, the five senses and automatic muscle functions demand a significant portion of our brain and energy. In microseconds, our body can spring into fight, flight or freeze modalities. We all have a fast brain that is on autopilot with defaults and shortcuts dictating our initial thoughts and reactions to our environment and stimuli. When we are awake, this data flow is constant and, in the current digital age, often fast and furious. Athletes, artists, trades, craftspeople, widget makers, drivers and others doing primarily physical actions, attain proficiency from repetition which encodes the neural

network into what laypeople call muscle memory. These workers are differentiated from knowledge workers where communication, based on primary skills of reading, writing or arithmetic, is how clients and customers are serviced. Knowledge workers deliver thought products.

Effective legal representation only comes from actions based on critical thinking after interactive engagement and communication with the client based upon the specific issues and rules at play in the realm of the legal system. Lawyers engage in advocacy, transactions, counseling, planning, regulating, negotiating and an array of other activities integral to our chosen profession. As knowledge workers operating in a system of uncertainty and risk in the age of information overload, can lawyers achieve flow and be in the zone? Yes.

The Nature of Flow

When in the flow state, people are immersed in the task at hand such that they lose awareness of all the outside environment, including time, distractions and even basic bodily needs, as all attention is only on the task being performed. There is a total engagement from energized concentration and full involvement as the words come to mind and leap to the page or from the lips. This complete surrender to the moment may result in a distortion of the sense of time. Flow blurs action and consciousness in an effortless way. In a litigation or negotiation, the words flow without pause and are spoken without premeditation. When drafting documents, the thesaurus of the years of lawyering finds the best word or phrase as it magically appears on the screen.

Research has identified some key benefits resulting from flow. The Csíkszentmihályi flow theory may be summarized as including these common aspects:

- Intense and focused concentration on the present moment
- Clarity of goals
- Merging of action and awareness
- Loss of reflective self-consciousness
- Control over the situation or activity; paradoxically since task is inherently challenging
- Immediate and unambiguous feedback; confidence in deliverable
- Distortion or transformation of temporal experience
- The activity is experienced as intrinsically rewarding

This last factor is referred to as autotelic experience. Some elements may occur independently, but may not be considered "state of flow" unless all elements are present. Nakamura, J. and Csíkszentmihályi M., "The Concept of Flow," 239-263, in Dordrecht, Ed., Flow and the Foundations of Positive Psychology (Springer, 2014).

Researchers generally agree that there is no identifiable zone for new activities. The first times people do tasks or are innovative, they are unlikely to find flow or identify a zone of peak performance. Getting in the zone requires activating the subconscious part of the brain after it has learned the nature of the activity. Flow involves not consciously thinking about how to perform but just doing it without struggling or it being challenging. The conscious brain is working full time to create the synapses and the permanent neural wiring to default to once the skill is mastered. Once you learn to ride a bicycle or other physical processes, the muscle memory becomes encoded, enabling autopilot. The same is true for knowledge workers or other intellectual pursuits. Writers, presenters or advocates are not going to shine and feel inner calm during the early runs but should improve with each outing.

While serving as an arbitrator and mediator, I have experienced and observed flow. You have, too, at points in your own career as an advocate and counselor. Litigation training advises advocates to create a rhythm while conducting examinations and have the hostile witness sway to your music. Opposing counsel attempts to disrupt this momentum with an objection or other tactic. In bargaining, narrative points are articulated with authenticity, clarity and confidence in a compelling voice and tone. There are no pauses, filler words, distracting preambles or wasted gestures or facial expressions. The punch points are usually met with silence or slogans (we disagree) rather than substantive rebuttals. Pleadings and briefs are uncluttered with verbiage with a masterful use of analogy, similes and metaphors as the reader is persuaded by the writer. The contract clause comes together to address the interests of all stakeholders with all risks being appropriately allocated and acceptable. You feel the impact during drafting mode or while observing a colleague read it. An affirmation and the joy of our chosen profession.

Be the flow.
-Jay-Z, Musician

What To Do

Slow your roll. Lawyers are creatures of experience and fall into habits and routines that can be traps that sap creativity and critical thinking. All of us face the common enemies of cognitive fatigue, episodic burnout, being overwhelmed by the volume of work, inability to bill for the time it really takes to excel and anxiety that we may lack the skills and judgment for the unique circumstances or client exigencies.

In a 2013 article, "Crafting Fun User Experiences: A Method to Facilitate Flow," in Human Factors International, Professor O. Schaffer proposed seven conditions for a state of flow to be created:

1. Knowing what to do
2. Knowing how to do it

3. Knowing how well one is doing
4. Knowing where to go if navigation is involved
5. High perceived challenges
6. High perceived skills
7. Freedom from distractions

His research shows correlations between the focus required in playing games and the ability to create flow. This is consistent with Csikszentmihályi's story of his time as a child during World War II when he and his father, a Hungarian diplomat, were interned in a concentration camp. He spent his time playing chess so that he would be immersed in an activity to be distracted from the horrors of imprisonment. Research has shown that learning a new activity, especially music and arts, sharpens focus and creativity.

Maya Angelou wrote *I Know Why the Caged Bird Sings* and her other works in a hotel room she rented where she would arrive daily at 6:30 a.m. and go home early in the afternoon. She would add to the above list what I term "controllable" distractions, including playing cards, crossword puzzles, a bottle of sherry and a Bible. In her preteen years, she formulated the concepts of Big Mind, (engaging in deep thought) and Little Mind, which are activities to occupy but not disrupt. During a 1990 interview, she described her writing process as engaging in concentrated attention but not necessarily being frequently in a state of flow.

In a 2012 Harvard Business Review article, "How to Get into Your Zone," the approach advocated by James Allworth can be paraphrased in the following summary.

1. Utilize the best working space and tools. Figure out which types of environments are most conducive to finding your flow. Headphones may minimize nuisance sounds or music may create a safe cocoon. Everyone differs and your optimal environment may change on any given day based on external factors or the particular tasks.
2. Listen to your body. If you need rest, caffeine, glucose, get it.
3. Exercise both body and mind. The nature of the zone is that it is neither purely physical nor purely mental. Having both parts of your body functioning well helps you get there.
4. Work during your personal best time of day. An understanding of your unique circadian rhythms is important, so schedule tasks during your [word missing?] periods.
5. Address necessary distractions during break- or downtimes. Bunch tasks that can wait and that may prevent or disrupt flow, such as emails, phone calls, online ordering or completing forms, eating, housekeeping, laundry and other chores.

Lawyer work habits evolve with technological improvements and the impact of cultural changes such as "work from anywhere." How we worked as young lawyers and the tenets taught by our early mentors are likely obsolete in the fast-paced information age.

To thine own self be true.

-William Shakespeare, Hamlet, Act 1, Scene 3

Entering a busy coffee shop, I am astounded by the number of people leaning intently over their screens amidst the cacophony of preparing beverages, coffee conversations and the kaleidoscopic movement of customers and staff. Disorientation would expel me in a state of exhaustion if forced to function in that messy milieu. I have a colleague who annually writes a book or major article on mediation by going to a lake in Idaho with his wife, with connectivity limited to a few times per day. When I was aspiring to be a mystery writer, Scott Turow encouraged me by explaining how he wrote the masterful *Presumed Innocent* mostly during his weekday commute to Chicago. Lacking his discipline and talent, chapters 7 to 15 of my legal thriller are still stuck upstream, likely permanently lodged in the recesses of a cluttered and distracted mind!

Summary

Arriba translates from Spanish to English as upward, higher. When the flow comes, go with it. Arriba, Arriba, Arriba.

Takeaways

- No flow for new activities.
- Flow operates subconsciously.
- Slow your roll to tee-up flow.
- Respect physical and mental needs.

Notes

Chavez, E., "Flow in Sport: A Study of College Athletes," 28 *Imagination, Cognition and Personality*, No. 1, 69 (2008).

Csikszentmihályi M., *Flow: The Psychology of Optimal Experience* (Harper and Row, 1990) and *Finding Flow: The Psychology of Engagement With Everyday Life* (Basic Books, 1997).

Jackson S., Thomas, P., Marsh H., and Smethurst C., "Relationship Between Flow, Self-Concept, Psychological Skills, and Performance," 13 *Journal of Applied Sport Psychology*, No. 2 129 (2001).

James, W., *Pragmatism: A New Name for Old Ways of Thinking* (1907).

Plimpton, G., "Maya Angelou, the Art of fiction," *The Paris Review*, No. 119, 116 (1990).

Sanderson, C., *Sport Psychology*, 164 (Oxford U. Press. 2016).

Sansonese, J., "The Body of Myth: Mythology, Shamanic Trance, and the Sacred Geography of the Body," *Inner Traditions* 26. (1994).

Shultz, S. and Creo, R., "Harnessing the Power of Mindfulness in Mediation," *The Pennsylvania Lawyer* (March/April 2017).