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Oratory Techniques for Effective Opening Statements and Summations

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Without question, the ultimate goal of every trial lawyer is to win. To accomplish this goal, the lawyer must find a way to capture the jurors' attention with an impression that will last beyond summations and well into deliberations. To this end, the manner in which an argument is communicated can be as important as the content of the argument itself.

In every trial there are key facts and positions that must be emphasized. While the trial lawyer can certainly emphasize a key fact, position or argument by raising or lowering his or her voice, that technique, by itself, is not nearly as powerful as other rhetorical devices available to the trial advocate. Certain techniques in speaking to the jury can and should be utilized to bring forth your points in the strongest possible fashion.

The Rule of Threes

The "Rule of Threes" is a powerful communication device that we have all seen while growing up—even if we have not noticed it as such in everyday life. A simple look at stories, phrases and slogans with which we are all familiar proves the point. It is hard to find anyone who is not familiar with "The Three Little Pigs," "Three Blind Mice," "Goldilocks and the Three Bears," The Three Musketeers or The Three Stooges. It is equally hard to find someone who is not familiar with the sayings and phrases "I came, I saw, I conquered," "Go, fight, win" or even "Three strikes and you're out." It is these titles, sayings and phrases that are easy to remember and should serve as a guide for the trial lawyer.

Indeed, throughout history, powerful public speakers have used so-called triads to bring home a lasting image. Martin Luther King Jr., for instance, in his speech "Non-Violence and Racial Justice," utilized the phrase "insult, injustice and exploitation" followed a few lines later by "justice, good and brotherhood." To the opposite effect, Alabama governor George Wallace, during his 1963 inaugural address, stated his position in harsh and ugly terms: "Segregation now, segregation tomorrow, segregation forever."

For the trial lawyer's summation, this device allows you to emphasize a point and then instantly reemphasize that same point by repeating some of the language just used, adding to that language for emphasis, and then stating that same point or theme with a change in voice. If used properly, this technique will drive the point home for the jury and leave little

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doubt as to the importance of the point or position taken by the advocate.

Imagine, for example, the scenario in which a lawyer represents a man in a wrongful death case. That man was driving with his child when his car was struck at an intersection by a truck. As a result of the severity of the impact the man's child—his daughter—was killed. In this example, the trial lawyer could begin the summation by presenting a bare bones statement of his position:

A man was driving a car. His daughter was a passenger in the car. A truck went through a light, struck the man's car and, unfortunately, the little girl was injured and later died. The truck driver was negligent."

Compare and contrast that beginning of the summation to one with use of the "Rule of Threes:"

When John Smith got into his car that morning he could not have imagined what was about to take place.

He could not have imagined that a truck would not stop at a light. (louder)

And he could never have imagined that he would lose his daughter that day.

Through no fault of his own an accident took place.

Through no fault of his own his daughter was injured. (louder)

Through no fault of his own his daughter died.

There is one reason this accident took place.

There is one reason a little girl was injured.

And there is one reason a little girl died.

That one reason is negligence.

Negligence on the part of a truck driver. (louder)

Negligence on the part of a truck driver for failing to stop for a red light.

Negligence on the part of the truck driver for causing this horrible accident.

The use of this device is equally available to the defense of a case. Imagine the same scenario with one additional fact. The little girl's father was texting at the time of the accident. Rather than simply stating this crucial fact in one sentence, appropriate emphasis can serve to clarify comparative fault.

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To understand when this accident took place.

To understand why this accident took place.

To understand how this accident occurred.

You must first understand what this little girl's father was doing.

And you must understand what he was not doing.

He was not looking at the road.

He was not looking at the lights.

He was not keeping a reasonable and proper lookout.

He was looking at his phone.

He was staring at his phone. (louder)

He was texting on his phone.

The reason a little girl was injured,

The reason a little girl was hurt and,

The reason a little girl lost her life is not easy to speak about.

But the reason is that one man was careless,

One man was inattentive,

And one man was negligent.

Providing a Point of View

Another important aspect of effective oration involves having your audience view the situation from a particular point of view. Just as authors must decide if a book should be presented as a first-person account of the events as told by one of the characters as opposed to the third-person account of a narrator, the skilled trial lawyer must choose the perspective from which the facts should be viewed by the jury.

While a trial lawyer typically wants the jury to view the case from the point of view of his

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own client, when introducing the topic of liability, it can be advantageous to focus on the point of view of the opposing party for the purpose of explaining and detailing its improper conduct.

Imagine a products liability case in which an automobile manufacturer produced a car with a propensity to roll over. The accident in question caused deaths and serious injury to different family members. In giving an opening statement to a jury, it may seem natural, and even powerful, to begin the opening statement by describing the life that this family was leading up until this horrible accident. Before offering that description, however, it may be useful to focus the jury's attention on the conduct of the defendants:

Three years ago, 16 men and women sat in a boardroom no bigger than this courtroom. They were some of the most powerful and wealthy men and women in this country, and had been entrusted with the responsibility to serve as the Board of Directors for ABC Car Company. An issue came before them—the SUVs which they were manufacturing had a tendency to roll over in an accident, endangering the lives of the very people who were buying their product. A solution to this dangerous problem was available, and they were told it could be implemented with a cost of just \$200 per vehicle. That day, the representatives of that car company had a choice: spend a little money and make their product safe, or save a few bucks, and put a dangerous vehicle on the roads of our country. They were faced with a clear choice, and they made a clear decision: Don't worry about the dangers, don't think about the horrible accidents that will occur, forget about the lives that will be lost, and instead let's save some money. That decision is why we are here today.

The respective viewpoints of the parties can be compared and contrasted in order to bring home the stark difference in circumstances between your client and your adversary. After laying out the negligence of the defendants, the description of the plaintiff's family will be much more powerful:

While the men and women of ABC Corp. made their fateful business decision, Mr. and Mrs. Smith went about the business of raising a family. They worked hard, bought a house and were blessed with three happy, healthy children. Everything they had worked for changed in an instant on the day of this accident.

Using the Present Tense

By definition, at any trial the events that the attorneys are discussing occurred in the past. Accordingly, it seems proper and natural to describe the events in the past tense. The use of the present tense, however, has the effect of bringing the listener into the story and allowing the jurors to feel the immediacy of the action.

For example, imagine a straightforward drunken driving case in which a driver and bar are being faulted for causing an accident. A present tense "grabber" is used to start the opening:

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A man sits in a bar. He orders a drink. He is celebrating his birthday. The bartender not only sees how much he is drinking but when he finds out it's his birthday he offers him a drink on the house. When the bartender sees that he has had too much to drink he doesn't say stop. He doesn't say take it easy. He doesn't say let me order a cab for you. Instead he pours another drink. The man finishes that drink, pays his tab and gets in his car. And that is why we are here today.

Defusing by Comparison

One of the most important things the skilled trial lawyer must remember is to think outside the box, or in this case, outside the record. No matter how strong a particular argument raised by your adversary may be on a particular point, you can always conjure facts that would give rise to a stronger argument. You can defuse the impact of an adversary's strongest points this way:

The defendants have made much of the fact that an eyewitness who was standing a block away from the accident says that my client went through a red light prior to the accident. Ladies and gentlemen, this is not a case where multiple witnesses saw the accident and reported the same thing. It's not even a case where a witness who was right at the intersection has described what he has seen. Instead, the defendants here are relying solely on the word of a single person, who was hundreds of feet away from the scene at the time of the accident, in an attempt to convince you that the plaintiff is lying about how this accident occurred. That is no basis to throw away the plaintiff's testimony in this case—he told the police that he had a green light right after the accident, and he told you the same thing in court at this trial. He is telling the truth.

Conclusion

These techniques can be used throughout different portions of your opening statements and summations, and can, of course, be combined (such as by utilizing the rule of threes while speaking in the present tense). Use of these methods will undoubtedly lead to a stronger presentation and increase your chances of achieving a successful verdict.

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