

THE 20 BASIC PRINCIPLES OF EFFECTIVE TRIAL ADVOCACY

1. Be brief. Long-winded lawyers are boring.
2. Be positive. Emphasize the strengths of your case, rather than the weaknesses of your opponent's. Take a firm stand and stick to it -- don't waffle. No whining.
3. Be clear about what you want. If you want the jury to give your client \$2 million dollars, you have to ask them for it. If you want them to ignore the alibi testimony given by the defendant's brother, you have to be clear. You can't just say, "Well, he's his brother"
4. Keep it simple. Concentrate on the five or ten most important facts in your case. If you can simplify your case, edit your presentations, and keep the jury focused on your main points, resisting the temptation to go off on less important tangents, you will present the jury with a case they can understand and remember. Use simple language rather than legalese.
5. Provide details. This is not inconsistent with simplicity. Simplicity means concentrating on the main issues and ignoring the rest. Being precise and detailed means going beyond the testimony that the defendant was drunk, and eliciting from your witness a full description of the defendant as belligerent, shouting, falling down, spilling his beer, having blood-shot eyes, reeking of alcohol, stumbling, dropping his car keys four time, and singing off-key Irish songs.
6. Provide motives. Don't just say that someone did something, say why. This is another kind of detail. It means that when a witness says she is pretty sure an accident happened at 2:55 pm, ask how she knows. Elicit that she had just checked her watch because she was caught in traffic and had to be at the school at 3:00 to pick up her daughter.
7. Use the rule of threes. If it's important, do it three times. The baby didn't just die, he suffocated, turned blue, and died. And it wasn't just a preventable tragedy, it was inexcusable, a preventable tragedy that wouldn't have happened if simple precautions had been taken. It's not just the breathalyzer that proves the defendant was drunk, the arresting officer and eyewitnesses corroborate it.
8. Start strong. Psychologists have confirmed what our mothers always told us: first impressions are important. Therefore, the first thirty seconds of each phase of your trial -- your opening statement, each direct and cross-examination, and your closing argument -- are critical times when you should focus on something you especially want the jury to remember.

9. End strong. The last thing jurors hear is also important. Have a big finish. The final thirty seconds of each phase of your trial -- opening statement, each direct and cross-examination, and your closing argument -- are also critical times in which you should focus on something you especially want the jury to remember.

10. Admit your weaknesses. Every case has weaknesses, e.g., witnesses with unsavory backgrounds or evidence that defies common sense. You cannot ignore these problems; weaknesses do not just go away. You cannot explain them away, but you can disclose them yourself in a way that makes them appear trivial. Psychologists have shown that you will usually be more persuasive if you bring out both sides of an issue yourself than if you adopt the "used-car-salesman" approach of trying to hide obvious points of vulnerability. But don't dwell on them.

11. Use themes. Find themes that relates to the elements of your case or the characteristics of your client that arouse natural sympathy or coincide with universally admired principles. It is especially helpful if you can come up with a clever title for your theme. E.g.,

- a. David and Goliath -- if you represent an individual against a large corporation.
- b. Fighting city hall -- if you represent a person who has been the victim of inflexible policies of government bureaucracies or the unreasonable decisions of faceless officials.
- c. Caught in a sea of red tape -- if you represent a small business trying to comply with contradictory and arbitrary regulations and laws.
- d. Law and order -- if your case is weak on sympathetic factors, but your client's actions were legally justified.

12. Use chronological order. It's going to be hard enough for the jury to follow your case without you jumping around from witness to witness, back and forth in time.

13. Use illustrations. Long recitations of facts and information are boring and hard to keep straight, so use both visual aids and literary allusions. Jurors may have trouble envisioning what the crime scene looked like if your detective just describes it, but they'll remember the crime scene photos (especially if the corpse is still lying there). They may not remember all the details of your argument that an opposing expert witness's opinions are purely subjective, but they'll remember the story of Goldilocks and the three bears. Anything that you can reduce to a drawing, chart, or computer simulation should be presented that way.

14. Use language carefully. Use words that personalize your witnesses and depersonalize your opponent's, e.g., you represent Jackie Reynolds, organist at the First Methodist Church, being sued by some doctor who got a dent in his Mercedes. Think whether what happened was an accident, a wreck, a rear-end collision, or a melee. Note that what is important here is the choice of noun, not adjective. A "horrible, tragic accident" is still just an accident.

15. Be professional. Wear a dark suit. Be formal rather than informal. Have good posture. Be respectful of others in the courtroom at all times, especially the judge and jurors. Stand when the judge or jury enters or leaves the room. Address the judge as "your honor" and all jurors and witnesses by their last names.

16. Have a personality. This is not inconsistent with professionalism. You can be professional and courteous of others without becoming a boring, wooden stick or a trial robot. Tell a story, recite a poem, wear a rose in your lapel, and laugh when something funny happens. Be human.

17. Use as few notes as possible. This is not the same thing as using no notes at all.

18. Watch your voice. Your voice is important -- try to be a good actor. Speak clearly. Vary your pace, pitch and loudness. Keep up the pace of your speech, without letting it get so fast the jury cannot follow you. Slow, dull, monotonous speech is boring.

19. Always remember that the case is about facts, not law. The jury doesn't care about the legal technicalities, and neither should you. A trial is about who did what to whom, why did they do it, what happened, and why it is unjust.

20. Always take the high road. Don't take cheap shots. Don't appeal to racial or ethnic prejudice. Avoid sarcasm. Don't attack the personal credibility of your opponent. Try not to be rude, abrasive, or obnoxious.

21. And never, ever, use a lectern. This isn't an appellate argument.

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