

Seven Trial Advocacy Lessons



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Lesson 1: Credibility Is Paramount

- ❖ “What I try to convey to the jury is sincerity, honesty, substance, and stature. They all add up to *credibility*, which I want to have with the jury above all else.”

-- Vincent Bugliosi, *Reclaiming History*,
Endnotes, p.13

Insincerity Is Death

- ❖ “[A] lawyer has to be himself before a jury. If he’s not, the jury will pick up on his phoniness just like that, and this can only hurt him in the jury’s eyes.”

-- Vincent Bugliosi, *Reclaiming History*,
Endnotes, p.12

Trial Is A Morality Play

- ❖ “All the studies show that trial is a morality play and lawyers are evaluated along with their clients. Juries see everything.”

-- David Beck, February 19, 2011

Demeanor Musts

- ❖ Confidence
- ❖ Sincerity / Genuineness
- ❖ Grace Under Fire
- ❖ Be passionate, but don't let it overtake you

Demeanor “Must Nots”

- ❖ Arrogance
- ❖ Fakery
- ❖ Intemperance
- ❖ Cockiness

Lesson 2: Thoroughly Prepare

- ❖ “By failing to prepare you are preparing to fail.”

-- Benjamin Franklin

- ❖ “A pint of sweat will save a gallon of blood”

-- General George S. Patton



William Jennings Bryan

- * “You shall not press down upon the brow of labor this crown of thorns. You shall not crucify mankind upon a cross of gold.”

-- William Jennings Bryan, 1896

The Real Story

- ❖ “Bryan delivered it without notes, and his apparent spontaneity, as much as what he had said, had swept the delegates off their feet and given him the nomination.”
- ❖ In truth, “Bryan had been delivering the same speech to Nebraska audiences for months, and he knew exactly which lines worked.”

Steven Ambrose, “Nixon: The Education of A Politician,” p. 285

How Do You Prepare?

- * Learn Evidence -- Most Lawyers Guess
- * Know Your Facts
- * Don't wing it

Lesson No. 3: Be Flexible

- ❖ “War is an art and as such is not susceptible of explanation by fixed formula”

-- General George S. Patton



Every Case is Different

- ❖ Know and read your judges
- ❖ Listen to the testimony -- be ready to take advantage of appropriate opportunities
- ❖ You have to have fun and enjoy the battle as it is being waged

Lesson 4: Nervousness is Natural

- * “a man ... learns not to worry when his muscles tense up, his breathing comes faster, his nerves tingle, his stomach churns, his temper becomes short, his nights are sleepless.” These are **“natural and healthy signs that his system is keyed up for battle.”**

-- Richard M. Nixon, *Six Crises* (1962)



Examples of Nerves

- ❖ Over objecting or making stupid objections
- ❖ Letting the judge control you
- ❖ Arguing with the other lawyer

Lesson 5: Play Offense

- ❖ “There is only one tactical principle which is not subject to change. It is to use the means at hand to inflict the maximum amount of wound, death, and destruction on the enemy in the minimum amount of time.”
- ❖ “Go forward until the last round is fired and the last drop of gas is expended...then go forward on foot.”

-- General George S. Patton

Examinations Must Advance The Argument

- ❖ Think your questions through - do not use “filler” questions
- ❖ Are they moving your case forward (as a corollary, are they hurting your opponent’s case)? If not - cut.

Lesson 6: Keep It Simple

- ❖ What is your strongest argument?
- ❖ Hit it over and over
- ❖ What is your opponent's weakest argument?
- ❖ Hit it over and over



Lesson 7: Flip Arguments

- ❖ “To succeed in advocacy, you must expect the question you are most afraid of and hit it out of the park.”

-- Professor Peter Linzer, 1995

Conclusion: Traits Of The Best Advocates

- ❖ Sound persuasive whenever they argue
- ❖ Read judges and are not frightened by them or their rulings
- ❖ Can flip any argument
- ❖ Think all arguments through to their logical conclusion, and are prepared for questions never asked

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