



Good Counsel

Lessons From Cicero

KURT ZANER

“**T**hink, moreover, of the power an orator possesses: power to rescue the supplicant, to raise up the afflicted, to bestow salvation, to dispel danger, to preserve citizens’ rights.” So echo the words of arguably one of the world’s most famous orators and greatest trial lawyers—Marcus Tullius Cicero. He identified four characteristics we must have to be great orators.

First, Cicero reminds us of what we know we should do—understand our cases intimately: all facts, arguments, medical records, expert opinions, obstacles, and our opponent’s tactics. Then arrange this material in a way that is captivating, compelling, and logical.

Second, find *your* style. Don’t try to be like your boss or your legal hero, and don’t try to follow experts’ advice to the letter. Just be *you*. Cicero advised finding “a style that is dignified . . . and well adapted to the feelings and intelligences of [your] audience.”

Third, without a good memory, you cannot deliver your opening or closing with confidence. Cicero explained that memory “has to be given the safe keeping of every single aspect of the speech one is going to make.” He discussed the “method

Exposing Defense Excuses

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The defense that “it would have happened anyway” is almost always nothing more than an excuse to escape responsibility. It’s like the rationalization that “accidents happen” or “it’s a risk of the procedure.” It is a claim that “even if I had done the right thing, it wouldn’t have mattered.” But you can counteract this argument so jurors aren’t swayed against your case.

Never ignore the defense’s excuse. Silence will be interpreted as weakness or tacit admission. The best way to respond is to take a commonsense approach. When dealing with the defense’s excuse, keep two principles about logic in mind: Occam’s razor (when there are several possible explanations, the simplest and most obvious is probably the right one) and the zebra principle in medicine (when you hear hoofbeats, it’s probably a horse and not a zebra).

When you address the excuse, don’t make it the central issue in the case, but frame it as the defendant refusing to accept responsibility and repeat that frame throughout trial. Start in jury selection—point out

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of loci,” also called the “memory palace” technique, to aid recall by associating ideas with memorable locations. For example, you could implant each section of your opening in a different room in your childhood home and represent it with an unforgettable or outrageous symbol. Then, when you walk through the house in your mind, you’ll easily recall your opening’s different parts and the order in which you want to present them. The book *Moonwalking with Einstein* is a great resource on memorization.

Finally, deliver your opening and closing passionately: “Without such a passion, no one is going to achieve anything outstanding in life.” Reading from a lectern will convey to jurors that you don’t believe in your case and are merely reading a carefully crafted script. Cicero noted that “the principal relevant factors include physical deportment, gestures of the arms, facial expressions, voice production and the avoidance of monotony.”

To dive deeper, pick up Cicero’s *On the Orator* or *On Invention*.

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the defendant’s excuse and start a discussion among jurors about the importance of taking responsibility for one’s actions. In your opening statement, describe the evidence you will offer about why the event happened and why it was the defendant’s responsibility.

Continue this theme with the evidence and testimony you offer, particularly through experts. In your closing, again attack the defendant’s refusal to accept responsibility. Point out that we teach our children to take responsibility for their actions instead of making excuses.

Exposing this defense tactic is like revealing the fake wizard at the end of “The Wizard of Oz.” When the curtain is pulled away, the wizard cries out, “Pay no attention to that man behind the curtain.” Defendants are no different—you need to expose their true intentions.

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