

“Don’t Present Your Opening Statement to the Wrong Audience”

LEARN AS MUCH AS YOU CAN ABOUT YOUR AUDIENCE BEFORE YOU SPEAK

By Elliott Wilcox

One of the first and most important rules of effective advocacy is this: “Know Your Audience.” Before you walk into any advocacy situation, you should be able to answer three important questions:

1. Who are you speaking to?
2. Who are you trying to persuade?
3. Why?

Often, there are several audiences (not all of whom are physically in the courtroom): The judge, the jury, opposing counsel, your client, the opposing party, the appellate record, the press, yourself, the local bar, the general public, family or friends, your law partners, courtroom observers, etc.

But which audience will you be addressing? Which audience do you need to persuade? Many lawyers make the mistake of not understanding which audience they’re supposed to be addressing. Here are a few guidelines to help you evaluate your audience and ensure that you do your best to persuade them.

Learn as much as you can (ethically) about your audience. Google them. MySpace. Facebook. Talk to colleagues. Read the judge’s previous opinions. Know the appellate court’s composition and the direction they’ve been heading.

Look directly at the person you’re trying to persuade. Don’t make the mistake of talking to your notes or talking

to your flipchart. Make direct eye-contact with whoever you need to persuade. If the eyes are the “window to the soul,” you don’t want to shut the blinds.

Remember why you’re there. Don’t make the mistake of arguing to impress your client, so that it looks like you’ve put on a “good show.” You’re there to win. If that means you need to be understated, be understated. If that means you shouldn’t cross-examine a witness, say “No questions.” If that means you need to let your partner

handle a witness, sit silently and let him conduct the cross. At the end of the day, your client doesn’t want a show — they want to win.

Don’t argue to the press. When the cameras enter the courtroom, your ego can push aside your common sense. There’s nothing wrong with wanting your moment in the spotlight, but don’t let it happen at the detriment of your client’s wellbeing. If you need to argue to the judge or the jury, that’s who you need to address. Don’t fall into the trap of talking to the cameras or acting larger than life so that it will play well on the evening news. Keep your eyes and argument focused on the decision-maker in the case. (“Mr. Wilcox, can you speak up? The TV cameras can’t capture what you’re saying?” “With all due respect, your Honor, I don’t care — I’m not



Who are you directing your opening towards?

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talking to them. I'm talking to these folks in the jury box, and they can hear me just fine.")

Use language that includes everyone in your argument. For example, I like football analogies... but not everyone I'm trying to persuade enjoys (or understands) them. That doesn't mean I completely exclude them from my argument, it just means that I don't exclusively depend upon them. I find other arguments to include, so that there's something for everyone to use.

Don't make an ASS out of U and ME. We don't all rely upon the same assumptions, so make sure you understand which assumptions your audience will depend upon when making their decisions. It's dangerous to assume that your audience relies upon the same assumptions that you do. Are you assuming that the judge knows all the details and procedural history of the case? Are you assuming that the jurors know what an "element" is? Are you assuming they know who the "plaintiff" is? Don't assume they do.

Envision the conversations they'll have when the case is over. What groups do your audience members belong to? How strong an influence do those groups play upon the person's decision making? Will they face social ostracism if they decide the case a particular way? After the trial is over, the jurors will talk to their friends and family about what happened. They'll have to explain

their decision. Envision that discussion, and then imagine what arguments you can give them so they can defend their decision.

Know their reasons for deciding. What needs does your audience have? A judge wants to reach a fair decision; to be upheld on appeal; to follow the law. The jurors want to do their duty, to reach the right verdict, and to protect their preconceived thoughts and beliefs. The audience will change their opinion for *their* reasons, never for *your* reasons. They need to act consistently with their beliefs and attitudes. They don't want to appear incongruent or intellectually dishonest. Give them a reason to decide in your client's favor that also upholds their personal belief system, and they'll be more likely to vote for you than if they have to jump through loops of logic to justify their decision. ■

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