

REMEMBER YOUR AUDIENCE: It's Not About You by Tim Hallahan

Good courtroom lawyers, like any performers, know to play to the audience. They focus on the people they need to persuade rather than on themselves. They research the judge before they argue their motions so they know the kinds of arguments and language that will appeal to that person; they tailor their presentations to the jurors they've *voir dire*d during jury selection. And they follow some general principles based on what we all learned in Psych 1A about how most of our minds work: We can handle only a limited amount of information at a time, we crave clarity, and in the end we like to think that we are doing the right thing.

Focus

The healthy human brain is particularly adept at filtering. (One of the hallmarks of severe mental illnesses like schizophrenia is an *inability* to filter thoughts and sensations.) Knowing that our brains allow us to attend to only a limited amount of data, the successful advocates distill relevant information to the essentials. So limit and edit the documents you offer, such as medical records. Use summaries of business records whenever you can.

Be concise when you speak and write. People will tune out a long-winded speaker or writer and miss what's most important. Jurors and judges especially hate it when lawyers are repetitive. Don't dwell on details, e.g., dates and inessential names and events. Don't tell people things they already know. "Your Honor, search warrants are mandated by the Fourth Amendment to the U.S. Constitution" Remember: Your goal is not to demonstrate how much you know, but to assure that your audience pays attention to your message and retains it.

Psychologists tell us that most people are visual learners – most of us attend to, understand, and retain visual information up to five times better than aural information. So use visuals to provide focus for your points during motions and trials.

Make sure your audience is paying attention to the message, not the messenger. Flamboyant trial lawyers are usually ineffective because jurors are focusing on the person instead of the information. As Emerson said: "Who you are is so loud, I cannot hear what you are saying."

Finally, memories are strongest when they have emotional content. Wrapping your main points into stories and emotional themes ("The Broken Promise", "The Empty Chair") will ensure they are remembered when a decision is to be made.

Clarity

The brain hates ambiguity. Therefore, your job is to be a teacher, to show your audience that your way is the only way that makes sense. Effective teachers begin with an outline – they start with the essence of their presentation in the form of a memorable theme, then follow with a short list of bullet points to preview what will follow. Put your outline in the affirmative. "Pacific Railroad was negligent in 3 ways that proved deadly: Wrong track, wrong time, wrong engineer. Let's start with the wrong track evidence...."

As you go through your presentation make sure everyone knows where you are at any particular time. Transitions are essential. "Let's turn to January 14th of this year. Were you on duty that morning, officer?" "Your Honor, the second reason this injunction should be granted is that we're going to win this case on the merits at trial."

A coherent structure is especially important in a long presentation like a closing argument. Use a flip chart or software like POWERPOINT to keep the judge and jury in the loop as you go.

Speaking of keeping your audience in the loop, make sure you show your fact finder whatever exhibit you are examining your witnesses about **as** you do the examination. Don't hold a private conversation about a document with your witness while your judge and jury are kept in the dark.

Make sure your message fits your audience's world view. Appeals to common sense are particularly effective: someone, for example, who lies about little things is likely to lie about important things. If you make points that defy common sense, the brain will reject them. And most people will not accept a proposition just because you or your expert says it's so. If they don't understand it or can't see that it's backed up by facts, they won't believe it.

Justice

People want to think they are doing the right thing. Your first job is to make your fact finder feel that ruling your way will bring about the most just result. Frame your case so the equities are clear from the beginning. "Your Honor, the issue in this case is whether or not a small businesswoman will lose that business over a \$15,000 debt." "Ladies and gentlemen, this case is about a 12-year-old child who was seriously injured because the defendant was too busy to be careful." Stories and analogies are particularly helpful in demonstrating the equities of the situation.

Your next job is to show them that they are legally justified in doing what they'd like to do. Focus on the facts, logic and common sense. Use the jury instructions. Some attorneys use the instructions or verdict form to structure their entire closing argument. Most fact finders take their job seriously and want to do both what's just and what they've taken their oath to do. Your task is to show them that both goals are met by voting with you, not because it's *you* that's doing the asking, but because you've focused them on your key points and made it clear that those points compel them to support your side.