

Arguably Excellent

At the State Bar Convention this summer, I was fortunate enough to again participate in a wonderful program focused on “Greatest Closing Arguments.” Because of the hard work of Wendy Morton and Dan Martin, participants get to see a multimedia background piece for context, followed by one of our Arizona practitioners giving the famous argument.

Juries want common sense. They want help in putting the pieces together and in doing the right thing.

We had an auspicious beginning this year when Arizona Supreme Court Justice Scott Bales dropped by to wish us luck. Someone commented that it should be easy with these outstanding pieces to recite. Justice Bales replied, “Remember, though, that these are the greatest arguments, not necessarily the greatest arguers.”

But we recovered quickly. Judge Maurice Portley was convincing as John Quincy Adams, arguing before the U.S. Supreme Court on

Amistad. Ed Novak persuaded that one last senator not to vote for the impeachment of President Andrew Johnson. José Rivera talked in commonsense terms about the new South to get a conviction in the Mississippi Burning case. Barbara LaWall showed how an argument could be turned on its head and a chauvinist emasculated with a closing argument from Clara Foltz. And Larry Hammond, the consummate defense attorney, put on the prosecutor’s hat in a detailed, devastating closing to ensure the fate of Timothy McVeigh. They all were extraordinary.


I have been lucky in these things to draw two beautiful assignments. At the first session in Tucson, I gave the closing argument of Justice for the prosecution in the Nuremberg Trials. It was emotional and compelling. This year, I was allowed to give the sentencing argument of Clarence Darrow in the Leopold and Loeb case, the gripping prosecution of two brilliant rich boys in the 1920s who killed a small boy in pursuit of pulling off the perfect crime. Darrow’s argument was essentially one against the death penalty, as timely today as it was then. He was brilliant:

Do I need argue that cruelty only breeds cruelty; that hatred only causes hatred; that if there is any way to soften this human heart, which is hard enough at its best, if there is any way to kill evil and hatred and all that goes with it, it is not through evil and hatred and cruelty? It is through charity, love and understanding. How often do people need to be told this? Look back at the world.

There is not a philosopher, not a religious leader, not a creed, that has not taught it.

How important is the art of argument to a lawyer today? Some say it is all show and really doesn’t affect the outcome very often. I believe this is true in the appellate courts, where an argument might provide case-specific facts or context, but generally not much else to truly persuade the judges. But I know that it makes a huge difference in front of juries. Mainly juries are interested in the facts as established by the evidence presented at trial. It is difficult to get around those pesky facts. But the lawyers’ presentations—their demeanor, their credibility and their ability to persuade—often are the deciding factors in jury trials.

So what do people want to hear? They want common sense. They want help in putting the pieces together. They want to hear from someone who has thought through all of this evidence and put it together in a believable fashion. They want help in doing the right thing.

If you listened closely to all of the arguments at the Bar Convention this summer, you would have noticed that they all did each of these things. And one more thing: They did it with passion and with flair. Idealism is not dead in this country. Cynicism wins the day-to-day battles. But when we shine the spotlight on an issue and Americans are asked to make a decision, they will be studied and fair and compassionate and idealistic. Our system assumes it, and if today’s orators give it a chance, they will generally find that jurors will respond. 



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