

ORAL ADVOCACY

ORAL ADVOCACY

Style and Substance

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CAROLINA ACADEMIC PRESS

Durham, North Carolina

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Library of Congress Cataloging-in-Publication Data

Names: Colesanti, J. Scott, author.

Title: Oral advocacy : style and substance / J. Scott Colesanti.

Description: Durham, North Carolina : Carolina Academic Press, LLC, [2017] |

Includes bibliographical references and index.

Identifiers: LCCN 2017045924 | ISBN 9781531005627 (alk. paper)

Subjects: LCSH: Oral pleading--United States. | Forensic oratory. |

Law--United States--Language. | Trial practice--United States.

Classification: LCC KF8870 .C65 2017 | DDC 347.73/72--dc23

LC record available at <https://lcn.loc.gov/2017045924>

e-ISBN 978-1-53100-563-4

Carolina Academic Press, LLC
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America.

*For James and Giovanni, and the countless
smiles your thoughts bring ...*

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PREFACE: FIND YOUR THREE VOICES ...

The Style

I was 14 years old and a freshman in high school. At 4-foot-8 and 88 pounds, I resembled an advertisement for endangered children. I was too small for the sports teams and too adamant on glory for the chess club. The Speech & Debate Team had papered the hallways with flyers which collectively convinced me that some form of distinction could result from competitions including a cryptic category called “Declamation.”

At its first meeting, the Team greeted me warmly. I was assigned a screed delivered in 1945 by a priest ranting against man’s wartime inhumanity to man. The piece was a dated, smoldering prayer, replete with exclamations and culminating with the condemnation of an entire generation. My goal for my first year of “forensic competition” was novel but easily explained: Prepare for contests by memorizing this semi-famous bit of oratory. Eventually join my teammates from other categories on bus trips to competing schools for the Saturday events. Deliver the speech to a roomful of other freshman/sophomore contestants. Progress through each of the morning’s preliminary rounds, and then hopefully advance through the quarterfinals, semifinals, and finals after lunch. Finish in the top eight students within the category, collect a trophy, and get back on the bus and come home.

I thought I was months away from actual competition form; in early October, the coaches said, “Just try it.” After but two weeks of

practice, one Saturday I offered the speech, morosely titled “Without A Song.” At that initial tournament, I delivered the maudlin requiem six times, and finished seventh for the day. I was handed a sizeable statue and later told I helped my team win the tournament.

I was shocked at how quickly the spoils had come. It was akin to learning that a science fair project or a poem could earn a teenager money. I was told I had a “style.” I was hooked.

What was the strange power of this thing called oratory? And how could it turn a shy, diminutive boy into an interesting focal point? The answer was the insightful coaching of Sister Woods, our school’s equally small of stature nun. Sister Woods was blessed with a generous heart and knowledge of a lesson I have never heard repeated—*learn to speak in three tones*. The first tone is your conversational voice, used to deliver the essential information. The second tone is your voice of hope or despair, full of proclamations and pauses. And your third voice (rarely invoked) lets them know the depth of your feelings.

Armed with this tri-fold secret, I committed the remainder of my Freshman year to the task of becoming a true “forensic speaker.” Four days a week, after school, in an empty biology lab or English classroom, Sister Woods would listen to me sharpen my historic anti-war rant. The two of us completely forgot my inexperience, my lack of physical presence, and my shrieking adolescent voice. After locating the ideal spots for my trio of voices, we worked on diction, found the high point of each sentence, discussed sincerity, and ensured that my eye contact never wavered from someone in the (invisible) audience—indeed, quite often the climax of my presentation was delivered with my eyes glued to the boxes featuring the elements Titanium and Bismuth on the classroom’s periodic chart.

I practiced in that manner before an audience of nun for months. I competed nearly every Saturday, cheerfully accepting critique that I was getting better at the craft, collecting small Catholic Forensic League trophies along the way. The following spring, with a new presentation (a famed Clarence Darrow summation), I was named 1st in the State. By May, our team was crowned Champions at a national tournament where I finished 5th in the country in my category. I had obtained the glory and friends I had thought were meant for athletes and the more gifted.

Years later, I would (regrettably) learn of the many legal skills wholly unaffected by this teenage success in extra-curricular weekend oratory. But I still firmly recall the enormous contribution of those Saturday morning jousts to both my confidence and ability to form an oral presentation.

And I lost track of Sister Woods but never her simple truisms. Avoid monotone. Always maintain eye contact. Be sincere. Use pauses to show command. If a gesture does not appear natural, discard it. If a line adds nothing, bypass it. Practice is vital, but actual experience makes you better. Above all else, have a plan, and be heard.

The Substance

I am now 54 years old. As a law professor, I have been fortunate enough to introduce hundreds of 1L students to the skill of oral advocacy. Specifically, for the past 10 years, I have taught approximately 40 first year law students per annum how to overcome the fear attending that first oral argument. Contemporaneously I have coached high school mock trial teams and judged regional law school and college tournaments. And my duties as a contributor to scholarship require unconventional “panel presentations” that nearly always go off script and defy planning.

My experiences have combined to remind me of the unique value of oral presentation. However, three tones and an unobjectionable delivery go only so far in front of the most critical audience the lawyer or law student shall ever face. Hence, I have come to treasure the more substantive traits of the disciplined oral advocate.

Those traits are astonishingly diverse. The successful oral advocate must read every bit of relevant research—especially the footnotes. The oralist must next design a plan that utilizes law, facts, and policy. A syllogism appears and then disappears without warning. Countless practices help to fine tune a message. Ultimately, the young speaker must deliver that message in under 10 minutes amidst interruptions stemming from skepticism to inattention.

Yet, all these efforts—and the unique skills they impart—garner scant attention in law school. Oral Advocacy is normally an add-on item to the first year curriculum, often tucked neatly within one

of the Legal Writing classes. Such a subordinate role counters the experience of practitioners: The written Brief may take hundreds of hours of work and be forgotten in a minute, while a 10-minute presentation can win adherents by contributing a memorable fact, a sound bite, or a penetrating rule of law.

Thus, I have come to believe that there is a universal need for *all* attorneys both budding and bloomed to focus on communicating orally in meaningful fashion—not in simple abstracts of submitted papers, or quotes from historic speeches, or emotional revelations that go viral. Rather, the foremost aim of the oralist is an organized, pointed delivery that, with little written prodding, both anticipates and satisfies the needs of the particular audience.

For lawyers need to speak clearly and succinctly on new subjects to their first supervisors, their prospective clients, to cantankerous adversaries, to intellectually curious colleagues, and, of course, to demanding judges. Initially, the “speeches” take the form of communicating research results (“I looked at all the New York cases on adverse possession. The five principles are dated but remain surprisingly consistent . . .”). On rare occasions, those presentations take the form of regally adorned appellate arguments. They often present the challenge of time limitations, dogged questions, and/or disinterest. The presentations always require tireless preparation, outlining, confidence, and a stylized poise.

While the student endeavors to find that poise, the varied lessons of this book should emerge. Or vice versa. Either way, it is incumbent to recognize that stature and visual significance matter little—whether the message sounds in a thunderous voice or via an impeccably charming appearance is inconsequential. In conceptualizing an oral presentation in its entirety, the 1L student will no doubt come round to the formulaic method of legal writing espoused in countless texts. Young oralists should similarly be counseled to remain patient but eager. Like the small boy who grinned ear to ear that wonderful October morning, the student shall learn that it is shocking what spoils shall come.

J. Scott Colesanti
October 15, 2017

USING THIS BOOK

This “how to” book was designed to provide both newcomers and more experienced students with the means of fashioning successful oral arguments. The frequent examples and Exercises integrate advice with practice, hopefully in more comprehensive design than heretofore provided on the subject. Civil and criminal cases, statutes and regulations, real-life dramas and hypotheticals are all utilized towards these ends.

The overarching structure outlines a progression from the physical considerations of oral advocacy to the substantive remarks, to the management of interruptions, to the effective handling of all types of questions. In each Chapter, both initial and concluding “bullets” emphasize the takeaways in expedient fashion. One or more examples precede the call to action by the student (i.e., the “Oralist,” or “Speaker”). Over a dozen rules of law are presented within the 50 sets of examples and the 17 Exercises. Ideally, the Oralist shall come to study the art of Oral Advocacy like any other law school subject area (i.e., by reading, practicing, and applying).

In terms of research, some Exercises are drawn from contemporary issues and enabled by links to Internet documents. Throughout the Book, interruption is posed by a fictitious listener (the “Listener,” or “Audience,” when plural). The Listener could be a judge, a lawyer, a client, or a colleague, depending on the fact pattern.

In terms of written prompts, the Book endorses and repeats a modest 2-sided folder containing a short list of triggers (“the Manila folder”).

Finally, all Exercises seek to reinforce the formulaic analysis universally taught in law school s (i.e., the rule—rule application pro-

gression) and are answered in the accompanying Teacher's Manual, which also provides follow-up and further means of practice. Hopefully, the work should both supplement and complement the first year curriculum.

ABOUT THE AUTHOR

J. Scott Colesanti is a Professor of Legal Writing at the Hofstra University Maurice A. Deane School of Law, where he has additionally taught Securities Regulation, Administrative Law, Appellate Advocacy and other courses for 15 years. As a teenager, he was a state and national speaking champion. As an attorney, he represented the New York Stock Exchange in appeals before, among others, the Securities and Exchange Commission and the New York State Division of Human Rights. Professor Colesanti was subsequently an arbitrator for various organizations. He has advised/judged moot court and mock trial teams/competitions at the high school, college, and law school levels for nearly two decades.

Oral Advocacy: Style and Substance is Professor Colesanti's third book. He previously released *Legal Writing, All Business*, which was based on his decade teaching Legal Writing. Separately, based upon his 11 years as a securities regulator and his 17 years teaching Securities Regulation thereafter, he shall release *Fairness Inc.: The Origins and Excesses of the Rule 10b-5 Insider Trading Prohibition* in 2018. As of August 2017, he is rated among the top 10% of authors ranked by downloads on the Social Science Research Network.

