

BELL-RINGING OPENERS WIN AT TRIAL

LEE ROBERTS

Weinberg Wheeler Hudgins Gunn & Dial

ROCK-SOLID LITIGATION MANAGEMENT

OPENING STATEMENTS

D. Lee Roberts, Jr.
Weinberg, Wheeler, Hudgins, Gunn & Dial
Las Vegas, NV

\$7.8 Million

Cost of 90 Seconds
2008 Super Bowl

Don't Waste The Most Valuable Time in Opening Convincing the Jury You are a Lawyer

The First 90 Seconds Are the Most Important

THEME

Utilize Primacy

Convey Your Theme
Strongly and Quickly



Lizzie Borden took an axe,
And gave her mother forty whacks,
When she saw what she had done,
She gave her father forty-one.

Opening Statement by A. J. Jennings for the Defense
in the Trial of Lizzie Borden
June 15, 1893

There are two kinds of evidence, direct evidence and circumstantial evidence. Direct evidence is the testimony of persons who have seen, heard or felt the thing or things about which they are testifying. They are telling you something, which they have observed or perceived by their senses. For instance, if this was a case of murder by stabbing, and a man should come before you and testify that he saw the prisoner strike the murdered person with a knife, that is direct evidence; that tends directly to connect the prisoner with the crime itself. Circumstantial evidence is entirely different, and I want to say right here, Mr. Foreman and gentlemen-I call your attention to it now, and I do not think that the Commonwealth will question the statement when I make it-that there is not one particle of direct evidence in this case, from beginning to end, against Lizzie Andrew Borden. There is not a spot of blood, there is not a weapon that they have connected with her in any way, shape or fashion. They have not had her hand touch it or her eye see it or her ear hear of it. There is not, I say, a particle of direct testimony in the case connecting her with this crime. It is wholly and absolutely circumstantial.

Not Guilty

"It will be a certain relief to every right-minded man or woman who has followed the case to learn that the jury at New Bedford has not only acquitted Miss Lizzie Borden of the atrocious crime with which she was charged, but has done so with a promptness that was very significant."

The New York Times

POWERFUL THEMES

- Choice
- Personal Responsibility
- Avoidable Consequences
- Unfair Blame
- Lack of Evidence
- No Legal Basis For Liability
- Oath of Juror

PERSUASION

Your job as a trial lawyer is to Persuade.
Persuasion, according to Aristotle, is brought about through three kinds of proof (pistis):

PERSUASION

Logos

The appeal to reason.

Pathos

The appeal to emotion.

Ethos

The persuasive appeal of one's character.

PERSUASION

Aristotle calls these "artistic" or "intrinsic" proofs in contrast to "nonartistic" or "extrinsic" proofs such as witnesses or contracts that are simply used by the speaker, not found through rhetoric.

- Sources: Arist. Rhet. 1.2.2-3

PERSUASION

- All these three appeals must work together in combination to maximum persuasion.

Logos

The appeal to reason

Combine:

Legal- Deductive Approach with

Narrative Approach

Opening Statement by A. J. Jennings for the Defense
in the Trial of Lizzie Borden
June 15, 1893

Circumstantial evidence has often been likened to a chain. These facts, which have to be proven in order to allow you to draw the inference as to her guilt or innocence, have been called links in the chain, and every essential fact, Mr. Foreman and gentlemen, every essential fact in that chain must be proved beyond a reasonable doubt-everyone of them. You cannot have it tied together by weak links and strong links. You cannot have certain facts in there, which you believe and tie them to some other facts of which you have a reasonable doubt. You cannot put them together. You must throw aside every fact about which you have any reasonable doubt, and unless with the links, which you have left, you can tie this defendant to the body of Andrew J. Borden and Abby Durfee Borden, you must acquit her. That is the law, and that is the law you have sworn to apply to the evidence.

Pathos

The appeal to emotion

- **Make the story vivid.**
 - **Re-create the incident.**
 - **Make it emotional and dramatic (jurors love drama!)**

Pathos

The appeal to emotion

Make your client likeable

Call by name; personal history; skilled; loyal; devoted. What do you like about you client. If you like your client so will the jury.

Make the Plaintiff unlikable

Innocent Victim or whiner who cannot deal with the ups and downs of life

Ethos

The persuasive appeal of one's character

Eye Contact

Don't use Lawyer Talk

Use Movement as a Tool

Be Conscious of Presentation and Appearance

Ethos

The persuasive appeal of one's character

Promise what you will prove

Include Statements of Fact that Demonstrate you Credibility

Don't Overstate!

Don't Try Opposing Counsel

USE RHETORICAL DEVICES

- REPEAT THEMES AND ANCHOR WORDS
- Use Simply, Powerful Concepts
- Use Three Times in Opening
- Use Three Times In Cross Examination
- Use Three Times in Direct
- Use in Closing

USE RHETORICAL DEVICES

Help the jury remember your themes

"If it doesn't fit, you must acquit"

USE RHETORICAL DEVICES

Anaphora: the repetition of a word or phrase at the beginning of successive phrases, clauses or lines.

***We shall not flag or fail. We shall go on to the end. We shall fight in France, we shall fight on the seas and oceans, we shall fight with growing confidence and growing strength in the air, we shall defend our island, whatever the cost may be, we shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills. We shall never surrender.**

Churchill.

REAL SECRET TO SELECTING
A POWERFUL THEME

**BELIEVE IN
YOUR CASE**



**WEINBERG WHEELER
HUDGINS GUNN & DIAL**
ATTORNEYS AT LAW **LLC**
ATLANTA LAS VEGAS MIAMI



D. Lee Roberts, Jr.

Practice focuses in the areas of construction litigation, tort litigation and contract litigation, including the defense of claims arising out of product liability and negligence. Has litigated hundreds of cases in 37 states, the Virgin Islands and Puerto Rico.

Representative Cases/Experience

- Served as lead counsel for renowned Las Vegas casino and resort in the longest civil jury trial in Nevada history; defended against thousands of individual claims. Jury verdict was \$58 million less than final pre-trial demand. Defense verdict on construction manager's claims for delay damages, extended home office overhead and punitive damages.
- Served as lead counsel for internationally acclaimed circus troupe following a catastrophic injury resulting from alleged product liability at Las Vegas venue; five-week jury trial resulted in favorable settlement after closing arguments of \$18 million less than final pre-trial demand.
- Extensive arbitration experience, including limiting a construction manager to less than \$7 million on more than \$34 million in claims.
- Settled \$20 million trade contractor claim after start of trial for less than 20 percent of claim.
- Recovery of \$3.3 million on \$4 million in affirmative claims on Denver 10th Circuit Courthouse historic renovation.
- Obtained policy limits of over \$2 million in professional negligence lawsuit against architect and consulting engineers.
- Obtained \$300,000 settlement of matter in Court of Federal Claims case in which the federal government sought \$9 million in procurement costs and liquidated damages following termination for default.

Lee Roberts

Partner

Las Vegas

702.938.3809

lroberts@wwhgd.com

Practice Areas

Government Contracts

Products Liability

Transportation

Education

B.A., University of Virginia,
1983; Echols Scholar

J.D., College of William and
Mary, 1986

Publications/Speeches

