

Connecting separate pieces of evidence clearly, persuasively

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For centuries, people have been aware that different methods of expression make the speaker's words more powerful, informative or persuasive. The ancient Greeks called it the art of rhetoric, and it was considered an important field of study well into the 19th century.

In the modern world, few people study rhetoric or consciously apply labels to their forms of speech. But rhetorical devices still exist, they remain effective, and many are commonly used in the courtroom. Here are three basic ones: lists, anaphora and rhetorical questions.

Lists

A simple and effective way to communicate information is to present it in the form of a list. In our professional and daily lives, we use lists constantly to organize information and to make it easier to understand and remember.

The courtroom is no different. Use verbal and written lists to organize and communicate your points.

Almost any kind of argument can be turned into a list:

There were seven key pieces of evidence found in the victim's bedroom. First, the defendant left a fingerprint on the door. Second, he left several hairs on the pillow. Third, ...

There are three things I want you to focus on as you listen to the evidence. First, ...

There are four things that the government must prove. First, ...

Lists can, and often should, also be turned into visual aids. If you want the jury to focus on seven pieces of evidence, make a chart listing them — one through seven — and then show it to the jury. No one will ever complain that you were too organized.

Anaphora

Anaphora (ah-NAF-uh-rah) is a rhetorical device that consists of repeating one or more words at the beginning of a series of related sentences or clauses. Countless examples can be found in law, literature and politics. Here are three famous ones:

Winston Churchill — "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 ..."

Abraham Lincoln — "But, in a larger sense, we cannot dedicate — we cannot consecrate — we cannot hallow this ground."

Martin Luther King Jr. — "I have a dream that one day this nation will rise up and live out the true meaning of its creed: 'We hold these truths to be self-evident, that all men are created equal.' I have a dream that one day on the red hills of Georgia, the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood ... I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character."

Anaphora is one of the most powerful and effective courtroom techniques. It adds emphasis, order and often an element of drama. Moreover, it is seductive; it draws the listener in.

It works in argument:

She did not mention that fact to the officer who responded to the scene. She did not mention it to the officer who interviewed her at the station an hour later. She did not mention it to anyone, anywhere, at any time over the next three months.

And in cross-examination:

Did you mention that fact to the officer who responded to the scene? Did you mention that fact to the officer who interviewed you at the station? Did you mention that fact to anyone, anywhere, at any time over the next three months?



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Rhetorical questions

Rhetorical questions are useful devices in both openings and closings. In fact, they are used so commonly that it is rare to hear an opening or closing without at least one.

In openings, they can set up issues or pique interest — or disguise argument:

How will we prove that the gun was his? Through four pieces of evidence ...

As you listen to the evidence, ask yourself: Why would someone knowingly sign a false document if he had nothing to gain? Why would he do it?

In closings, rhetorical questions add focus and interest:

Robert Jones was driving the automobile that hit the pedestrian that day. How do we know that? Because there are nine pieces of evidence ...

Jane Smith says she had to spend thousands of dollars to fix the damage. But where are the bills? Where are the receipts? Where are the cancelled checks? Where are the credit card statements?

Rhetorical questions are not, however, foolproof. Don't ask a question that invites a juror to supply a harmful answer:

Who would believe such a story?

[Juror, silently]: *I would. It sounded right to me.*

It's also dangerous to ask a rhetorical question if your opponent has a better answer than you do.

One of the great challenges for trial lawyers is to connect the separate pieces of evidence in a way that is both clear and persuasive. These rhetorical devices are among the most important tools for meeting that challenge.

Previous installments of Tried & True can be found at masslawyersweekly.com. Judge F. Dennis Saylor IV sits on the U.S. District Court in Boston. Prior to his appointment to the bench, he was a federal prosecutor and an attorney in private practice. Daniel I. Small is a partner in the Boston and Miami offices of Holland & Knight. He is a former federal prosecutor and teaches CLE programs across the country.