

OPINION

■ LITIGATORS' ORATORY

Learn from Obama

By *Michael D. Jones* Special to The National Law Journal

Plato described rhetoric as “the art of enchanting the soul.” Barack Obama’s oratory has enchanted the American soul. His closing argument was a classic: “One week—one week—after decades of broken politics in Washington, after eight years of failed policies from George Bush, and after 21 months of a campaign that has taken us from the Rocky Coast of Maine to the sunny coasts of California—we are one week away from changing America.” And on Nov. 4, his jury, the American electorate, returned its verdict in Obama’s favor.

Corporate litigators should power down their PowerPoint presentations long enough to see the value of this kind of old-fashioned oratory. While technology is important, we should remember what lies at the heart of any jury trial—the emotions and judgments of ordinary citizens. We should not be afraid to use words that capture the core human elements of our cause.

When I stood before an Oxford, Miss., jury, Dr. King’s cadenced words came to mind, so I began:

“Yesterday, there was a discussion among some of the lawyers on the other side about what they call a different lifestyle in the Delta, what they call a different culture among the plaintiffs. But whether it is the Delta, the red hills of Georgia, or the smoky mountains of Tennessee, there are some principles that are basic, that are fundamental, that are universal, and it is this: If you train up a child in the way that they should go, when he is old, he will not depart from it.”

For years, I have urged young litigators to employ the full power of language and to study great oratory. Now I would urge them to study Obama’s speeches, including one to a New Orleans church audience:

“Getting ready to talk to you today, I recall what Jesus said at the end of the Sermon on the

Mount....He said, ‘whoever hears these sayings of mine and does them, I will liken him to a wise man who built his house on a rock.’...The rains descended, the floods came, and the winds blew and beat on that house. But it did not fall, because it was founded on the rock,” he continued. That rock, he said, was a principal of brotherhood exemplified by the church during Hurricane Katrina—but not the federal government. “Something was wrong in America. Our foundation wasn’t built on the rock.”

Such dramatic language stirs souls, whether seated in church pews or the jury box. Indeed, before a New Orleans jury I introduced a passage from the book of Proverbs using words that came to me during a break in the trial, as I sat overlooking the Mississippi River:

“There is a book that begins in the beginning, and ends in the end, and in the middle it has words that we can live by. Among the words to be found there are these. ‘A good name is greater to have than riches,’ and that is in the book of Proverbs.”

For more than two hours I reasoned with those 12 citizens with references to Proverbs, Shakespeare’s *Othello* and other classics. I implored them to give my corporate representative his good name back, and in less than 45 minutes they did so.

Before a different jury in the northern city of Milwaukee, oratory helped make the hard case that a young plaintiff’s low IQ shouldn’t make him unemployable.

“There is a great American whose name you would recognize in an instant were I to call it. He said, ‘it’s not your aptitude, but your attitude that determines your altitude.’ That’s just a rhythmic way of saying it’s not how smart you are. It’s your attitude that determines your success in America.”

One juror caught herself just before bursting into applause.

Strong oratory: hard to dismiss

But in court, as in Obama’s political campaign, lawyers sometimes dismiss strong oratory as “just words.” My opponent in a Baltimore trial countered:

“We lawyers learn that when you have the facts, argue the facts. When you have the law, argue the law. But when you have neither the facts nor the law, pound the table. [That’s what Mr. Jones did.]”

Pound the table, no. Paint a vivid image, yes:

“No man born, or yet to be born, does not have a mother. Yet we have heard nothing about the words of the plaintiff’s mother and his grandmother....So we have here two generations of mothers and their words do not support this lawsuit.”

What jury would want to return a verdict against two generations of saintly mothers?

David and Goliath themes course through most corporate litigation. The defense must create the same narratives and emotions that plaintiffs’ attorneys use to appeal to jurors’ core beliefs of right and wrong.

Laptops and PowerPoint are great, but every so often, litigators should pause, look out at their drowsy jurors and ask themselves—what would Barack Obama say? No doubt it would be something logical, something inspirational; yes, something to “enchant the soul.” **NLJ**

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