Aristotle's Methods for Outstanding Oral Arguments

by Lawrence D. Rosenberg

Oral argument can sometimes appear to be a daunting task. An advocate may experience pangs of self-doubt. What if the judge doesn't like me? What if the judge thinks my case is terrible? What if the judge is bored by what I say or, worse, falls asleep? These concerns are natural. Oral arguments are often difficult, even downright unpleasant. But if you understand what an effective presentation entails—and with some practice—an oral argument can both advance the client's position and be very rewarding for the advocate.

As college debaters and students of rhetoric will tell you, the original master of oral advocacy was the Greek philosopher Aristotle. Many of his works addressed effective methods for presenting arguments. Perhaps his most important work on the subject is his tome dedicated entirely to the subject, *Rhetoric*. That work goes into great detail about how a public or legal speaker can most effectively convey arguments and represent a client.

Three basic principles guide Aristotle's advice: *ethos, pathos*, and *logos. Ethos* is defined as "the speaker's power of evincing a personal character that will make his speech credible." *Pathos* is defined as the speaker's "power of stirring the emotions of his [audience]." *Logos* is defined as the speaker's "power of proving a truth, or an apparent truth, by means of persuasive arguments." *Aristotle's Rhetoric* (W. Rhys Roberts, trans., 1954). Conventional wisdom is that arguments to juries rely primarily on pathos, while logos is the key element of an argument to a court. Each element, however, is important for an effective oral argument, although the emphasis may vary with the audience. And each can be cultivated by the attentive oral advocate.

Ethos. Personal character and credibility are the result of a combination of likeability, preparedness, and, above all, honesty and forthrightness.

Likeability starts with the first impression. That means maintaining a professional appearance, decorum, and unfailing courtesy. Courtesy means more than good manners to both the court and your opponent. You must be even-tempered, responsive to questions, mindful of time limits, and respectful of the concerns of all present in the courtroom. Listen respectfully to the court's questions and answer them fully, even if you think that they are beside the point. One of the quickest ways to lose the quality of likeability is to be rude or abrupt to the court or your opponent. Failure to answer questions or answering them in an evasive manner can irritate the judges who are going to decide your case, and may undermine your credibility.

Ethos also requires preparedness. That means not only knowing the record and key authorities extremely well but also having all necessary materials available and neatly arranged so you are not fumbling through files. The court will very quickly determine if an advocate knows the facts and law well enough to be taken seriously.

The most critical element of ethos is honesty. Acknowledge the weaknesses in the record and any troublesome cases ahead of time, and be prepared with persuasive responses to questions that expose these problems. Credibility is paramount, and one of the worst ways to harm your credibility is to give the impression that you are being dishonest with the court or that you are playing fast and loose with the record or facts. If the court likes and trusts you, it will be more receptive to the emotional and logical elements of your argument.

Pathos. Because judges are human, the argument most likely to succeed is one that is emotionally compelling as well as legally sound. So focus on the equities and the human dimensions of your client's position. If the court wants to rule in your favor because it feels that the position is fundamentally fair, reasonable, and just, it will be more likely to adopt your interpretation of the applicable law. Of course, all legal

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Lawrence D. Rosenberg practices with Jones, Day in Washington, D.C.

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cases are rooted in their key facts. You must tell a compelling story. In most cases, however unsympathetic, there are at least some facts that favor your client's position or side of the story. Highlight the most helpful facts that make your client's position most sympathetic.

Aristotle explained that the concept of pathos also may require stirring the passions of your audience against your opponent's case. You must be very careful, however, about pushing this too far. The idea is not to make ad hominem attacks on your opponent or to blatantly state that your opponent did awful things. Rather, weave pejorative facts into your argument in a way that will lead the court to conclude on its own that your opponent has acted badly and should not prevail. Although oral arguments rarely permit time for lengthy factual recitations, the key facts must be packaged to provide the essential emotional context that presents a compelling, consistent, and reasonable explanation for the actions taken by your client. If the court wants to rule in your favor because it feels that it is the right thing to do, it will be open to the logical power of your argument.

Logos. Although ethos and pathos are important and may be determinative before a jury, attempts to rely primarily on either of these elements may backfire badly. Particularly before a court, which is bound to apply legal principles, logos is usually most important. It is critical to present organized and logical argument that flows naturally. The first step in preparing for an oral argument is to select a few issues on which you will focus. Although there is no magic number, in most cases you should focus on no more than two to three issues. On rare occasions additional issues can be coherently presented, but that usually requires arguments in excess of 30 minutes per side. If you are limited to 20 minutes or less, it is almost impossible to present more than three key issues to the court.

Select the very best issue and present it first. If it is complex or particularly interesting to the court, it may be the only issue you will have time to address in any detail. Be careful not to let the best argument get muddled or lost amid a sea of less persuasive arguments. Selecting and organizing the issues is therefore critical.

Coherent structure begins with a preview that quickly introduces the theme or main thrust of your argument and lists your main points. Next, proceed quickly to your first main point, make a brief affirmative argument on that point, and respond to the court's questions as they arise. Then move on to your next important point or points, if possible. Also helpful, although not essential, is a quick summation before you conclude.

Each oral argument is designed to persuade the audience to do something. State at the outset the action you wish your audience to take (whether it be to rule in your client's favor, to affirm or reverse the judgment below, or to grant some specific form of relief); then provide the justification. For example, you may wish to urge as your theme in an appellate argument that the judgment below should be reversed because the trial court misconstrued the plain language of the contract at issue. Because logos is the primary factor when arguing to an adjudicatory tribunal, a theme such as "This stale, 20-year-old case should be dismissed under the statute of limitations" will generally be more effective than "This is a case about refusal to take responsibility for one's actions."

Just as you must limit the issues to argue, you must select the most persuasive authorities that support your position, because you will not have time to discuss more than a few key authorities in detail. Nevertheless, you must be prepared to address all cases cited in the briefs or other materials in case the court may consider them relevant. You should also be careful not to ignore or sidestep adverse authorities. Rather, you must directly address them when that issue is raised by the court or your opponent, or you may even acknowledge them first and explain why they are not controlling.

Thus, it is not enough to cite and discuss key authority. To make a compelling legal argument, you must carefully apply that authority to the case at hand to show why and how that authority requires a decision in your client's favor.

Lame-os. My college debate partner added a basic principle to Aristotle's three, which he dubbed *"lame-os"*: the speaker's power to make him- or herself look like an idiot. Clearly, lame-os is something to be avoided. It can take many guises in presenting an oral argument. A complete breakdown in front of the court or an inability to answer even fundamental questions about the case would be a severe episode, but there are many more subtle forms. Interrupting a judge's question is not a way to endear yourself to the court. Giving evasive answers or answers that simply make no sense will also dramatically undermine the persuasive value of your argument. If you do not understand the court's question, say so up front. The court will likely respect your honesty instead of believing you to be either dense or deceitful.

I recently attended an argument in a criminal case where both advocates managed to come up with bizarre answers to the court's questions. The defendant's lawyer argued that the police had not waited a sufficient period of time between "knocking and announcing" and breaking down the defendant's front door—a period of about four seconds. A particularly interesting colloquy between the court and the defense attorney went as follows:

Q: Is it typical for over 30 police officers to arrive in an attempt to arrest a criminal defendant?

A: Yes, that happens frequently.

Q: Are you serious?

A:. Sure.

Q: All right, let's talk about the rocket launcher. You concede that the police had credible information that your client possessed a rocket launcher capable of taking down large aircraft?

A: Yes. But the informant didn't mention the presence of any ammunition.

Q: No ammunition? What are we supposed to believe your client was doing with the rocket launcher: using it as a coffee table?

A: Possibly. He might have been a collector.

Q: Or maybe he was using it as an umbrella stand?

A: Sure. That's possible too.

Not surprisingly, the court was having difficulty accepting these answers. However, the prosecutor also decided to liven up the proceedings. The court's questions to him continued:

Q: So, are you saying that when the police have credible information that an individual possesses more weapons of mass destruction than we have found in Iraq, the police are justified in breaking a door down four seconds after "knocking and announcing"?

A: No. I'm not saying that at all. In this case we had other important facts.

Q: Really, the weapons of mass destruction aren't enough? What other facts should we be considering?

A: The dog.

Q: What are you talking about?

A: The police had been informed that the defendant had a dog. But when they arrived, the dog was nowhere to be seen. Thus, the police reasonably concluded that the dog may have been warning the defendant that the police had arrived.

Q: Really. Perhaps the dog was inside arming the rocket launcher.

These colloquies demonstrate that giving incredible answers to questions posed by the court is not likely to advance your client's case. They also show that a poor decision to give defensive answers to helpful "softball" questions equals squandered opportunities.

How do we implement Aristotle's fundamental concepts of ethos, pathos, and logos (and the associated concept of lameos) in preparing for an oral argument? Preparation is in many respects the most important element of a compelling delivery. Moreover, most excellent oral advocates practice their argument and answers many times before delivery. I suggest the steps outlined here to prepare for oral argument.

First, pare down the issues. Although in most circumstances there should be a maximum of three key issues for oral argument, there may and in some cases should be more at the beginning of the preparation process. After all, part of the preparation for an argument is to winnow out the issues to select the strongest. Editing the issues at this initial stage will improve the logos of your argument and make it easier to focus the remainder of your preparations.

Once you have selected the issues, carefully evaluate the record, particularly the facts relevant to those issues on which you have chosen to focus. You should know every relevant detail and where that detail can be found in the record. Obviously, the extent of this task will depend on the stage of the case at which your argument has arisen. Expect the tribunal to have questions about the facts of your case and how the key authorities should be applied to those facts, and be prepared to answer those questions.

The court will expect you to know every primary authority and to be able to discuss each at argument. It is better to be overinclusive rather than underinclusive in this part of your preparation so you are not caught off guard. If you are not sure what cases might become important at oral argument, become familiar with all of the cases cited in the briefs. And remember to update your research so you are prepared on new cases decided after the briefs were filed.

The real trick to building logos is to convey effectively how the primary authorities, when applied to the facts of your case, compel the result your client seeks. As Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit has put it:

> [T]here is a quaint notion out there that facts don't matter on appeal—that's where you argue about the law; facts are for sissies and trial courts. The truth is much different. The law doesn't matter a bit, except as it applies to a particular set of facts. So you will find that judges at oral argument often have a lot of questions about the record.

Alex Kozinski, "How You Too Can . . . Lose Your Appeal," 5 *Mont. Law.* *23-*24 (Oct. 1997). Judge Kozinski further emphasized: "Where the lawyer can really help the judges—and his client—is by knowing the record and explaining how it dovetails with the various precedents. Familiarity with the record is probably the most important aspect of appellate advocacy." *Id.* at *24.

In addition to preparing your own argument, it is important to anticipate the issues your opponent will emphasize and the authorities and facts on which she will rely. This is the best way to prepare how to respond—or, better still, to preempt your adversary—with your affirmative points. One way to approach this part of the preparation process is to pretend that you are delivering your opponent's argument. This will force you to focus on the best authorities and facts for the opponent's side of the case. Some advocates even go so far as to deliver what they see as their opponent's best arguments to colleagues who are familiar with the case, to get feedback on the best ways to counter the arguments.

Pretend that you are delivering your opponent's argument.

Another critical component of preparation, which also bolsters both ethos and logos, is determining what questions the tribunal will likely want answered. After all, your main objective is to satisfy the tribunal's concerns. One way to anticipate their questions is to focus on the weaknesses on both sides of the case. Then you can be prepared to explain why the apparent weaknesses in your case are not fatal to your client's position. Another useful tactic is to have colleagues familiar with your case draft possible questions that the tribunal may ask, and practice answering them. It also is helpful to examine any confusing or controversial aspects of your case, and of the primary authorities, and prepare clear answers to questions on these issues. U.S. Supreme Court Chief Justice John Roberts emphasized this point in an article he wrote while in private practice: "Given the prevalence of 'hot' benches and abbreviated argument times," he said, "your preparation should place a premium on making points concisely: you should have at your fingertips 30-second answers to the most likely questions." John G. Roberts Jr., "Thoughts on Presenting an Effective Oral Argument," 7 *School Law in Review 1997* at 7, www.nsba.org/site/docs/36400/36316.pdf.

It is also important to know your audience. As early as possible in the preparation process, investigate the proclivities of your judge or panel, and the composition of the latter. Learn how the argument will be conducted, the applicable time limits, where you will stand to present argument, and the order of presentation at argument. Find out whether your panelists have written any decisions relevant to your case, are likely to ask many questions or just a few, and have any particular academic or ideological philosophy. Also try to find out if any panelists are personally familiar with any of the lawyers who will attend the argument. If you are able to do so, observe

your judge or panel before the day of your argument to get a feel for how the proceedings are managed. Once you have acquired all the information possible about your panelists, reexamine the questions you believe are likely to arise to check that you did not overlook a concern.

Once you have completed these steps, prepare a concise outline or cheat sheet that includes the key points you want to address, along with the key authorities and citations to the record that you believe will likely arise. As part of this process, you likely will pare down your list of key issues even further. For each issue, list your primary authorities and record cites with a one-sentence description of the key points from each. From this, you can create either a one-page outline for each issue or a cheat sheet written on or fastened to a folder, with each surface corresponding to one of your main issues for argument. A tool like this is useful to synthesize the knowledge of your case you gained during preparation.

Once you have selected your issues and mastered the facts and law, you are ready to craft your introduction, conclusion, and argument structure. The introduction should briefly state the main theme as well as a preview of the points you wish to emphasize. Typically it should run 30 to 90 seconds, depending on your judge or panel and how likely you are to be able to speak uninterruptedly for a given period of time. Your theme can be something very simple: "Under the controlling law, plaintiffs have failed to state a claim for relief, and thus their complaint should be dismissed"; or "My client is entitled to summary judgment because the defendant has, as a matter of law, violated the federal antitrust laws in two independent ways." Your introduction should briefly identify the main two or three points you want to emphasize, in the order you intend to present them, along with a very brief statement of the relief you seek. Also craft a very short conclusion—perhaps ten to 15 seconds—that summarizes your argument and restates the relief you seek: "Accordingly, defendant's expert is unqualified and has not used an appropriate methodology in his analysis; his testimony should be excluded at trial."

Identify the main two or three points you want to emphasize.

You may also want to consider demonstrative aids. Experienced advocates disagree about the effectiveness of visual aids during oral arguments. Some (in my experience, a minority) believe that visual aids are critical for any oral communication and almost always attempt to use them in pretrial arguments and appellate courts. They may use boards with documents, charts, graphs, or argument points; complicated computer presentations; or even video clips where a tribunal permits. Other lawyers believe that oral argument primarily represents an opportunity to answer the questions that are troubling the judge or panel, and usually avoid visual aids except in compelling circumstances or very technical cases where one or two visual aids can demonstrate a complex machine, computer algorithm, chemical compound, or the like. My advice is to consider carefully your audience, the complexity of the case, and the focus of your argument. I have used visual aids and seen them effectively used in trial court arguments and presentations to ADR panels when the case involved complicated facts. On the other hand, I have also talked with and argued before a number of appellate judges who very much dislike visual aids, particularly in cases that involve only legal, not factual, issues. I have seen trial court judges refuse to permit lawyers to use visual aids, even after they were set up in the courtroom. And using any visual aids in the U.S. Supreme Court is almost unheard of. Although tools are often essential for presentations to juries, and may be very useful in certain oral arguments before judges or ADR panels, an advocate must make a careful decision whether to use them at all at argument.

After you have put together your presentation, it is very helpful to practice. You could convene a formal moot court with a number of "judges," or simply perform a practice argument before one or two colleagues who are familiar with your case. Excellent oral advocates differ in how they perform practice arguments (some prefer to treat them much like an actual argument in court, others may prefer simply to have colleagues ask them questions), but most generally hold moot courts or practice sessions, at least before important or difficult oral arguments. Practice can be very important in further editing your issues for argument, examining the weaknesses of your case, and building your confidence. It can also help you tailor your arguments and your delivery in a manner that will likely achieve the most favorable response from the tribunal.

It is critical at this stage to reduce your issues to your best two or three. As explained by Justice Thomas R. Fitzgerald of the Illinois Supreme Court:

> The lawyers who seem to give the best arguments are [those] who are able to find the most important issues in the case and argue those issues. . . . I think there is a real art in identifying the issues that are the ones that give them the best chance of success.

Daniel C. Vock, "Appellate lawyers' version of high wire act: Oral argument," 150 *Chi. Daily L. Bull.* 81.

After you have revisited your issues, perhaps reworking some points as a result of your practice sessions, your final step is to practice some more. You can do this in a formal setting with one or more colleagues or at home before your spouse or child. You can also practice alone in front of a mirror. The idea is to become as verbally fluent as possible with your key points, authorities, and record cites, as well as with the structure of your argument, including your introduction and conclusion. You should not attempt to memorize a prepared speech because the most important part of your argument will be your responses to the questions you receive. Rather, you want to become as familiar as you can with your affirmative argument and the responses you want to give to the questions you anticipate.

When it is time to present your argument, use Aristotle's principles to make your presentation compelling. Establish ethos and logos by answering the judge's or panel's questions directly and honestly. The most important element of compelling oral advocacy is to be as responsive as possible to the questions. To borrow a principle from *Star Trek*, this is effectively the Prime Directive of oral advocacy. Evasive or incom-

plete answers damage the advocate's credibility or suggest he or she lacks persuasive answers to the questions the court or panel is concerned with. And the court or panel may become annoyed with the advocate, leading to an episode of lame-os. As Judge Richard A. Posner of the U.S. Court of Appeals for the Seventh Circuit has stated: "Some lawyers are terribly afraid of answering questions, because they're afraid it's a trap and that their answer is going to be treated as a fatal concession. So they fence and they evade, and that, of course, annoys the judges." Vock, *supra*. Similarly, Judge Kozinski has noted the dangers of interrupting a judge's question or evading it:

> Once the judge starts to ask a question, raise your hand in a peremptory fashion and say, "Excuse me, your honor, but I have just a few more sentences to complete my summation and I'll be happy to answer your questions." This will give the judge a chance to dwell on the question, roll it around in his mind and brood about it.

Kozinski, *supra* at *24.

You should also establish logos by delivering your introduction concisely and moving to your first point. You must determine when to transition to your second point. But answering the panel's questions must be your primary objective. Thus, it may sometimes be wise to abandon your planned structure and follow the tribunal's lead because the questions will focus on the issues that from the panel's point of view will likely determine the outcome. This process is more art than science. It is often very difficult to transition from one point to another when your tribunal is particularly interested in your first point. That may not be a bad thing, however, because your first point should be your strongest if you have structured your argument effectively. The best advice here is to be flexible. If the tribunal really wants to take up your entire argument time with your first point, let that happen. If you can skillfully move on to your next points, do so, but not to the exclusion of answering the tribunal's questions.

In fact, a skillful advocate can often use the tribunal's questions as an opportunity. An important tactic for delivering an outstanding oral argument is to weave your key theme, message, or points into the answers to the questions you are asked. As Judge Posner has stated, the "critical skill" for appellate lawyers is to build connections between your answers and your message: "If the lawyer, having answered the question briefly, then elaborates his answer in order to bring another point he wants to make, that's not going to bother the judge." Vock, *supra*. One technique for doing this is to respond to a question by saying, "I have two responses." The first response can directly answer the question, and the second can reiterate your theme or make an additional point you believe important. Another technique is to answer the question directly and then conclude by explaining that the question underscores the important point you made earlier—at which time you can then reiterate your theme.

Do not under any circumstance show disrespect for the court or belittle its questions. As a corollary to the prime rule of answering the judge's or panel's questions, you should never show disrespect by being dismissive of questions, even if you think they are misguided or irrelevant. Doing so will significantly reduce the ethos and dramatically increase the lame-os of your presentation. Judge Kozinski has noted that if you really want a seemingly insignificant question to take on

> monstrous significance, . . . [a] good way to start is by ridiculing the question: "I was afraid the court would get sidetracked down a blind alley by this red herring." Mixing metaphors by the way, is always a good idea; it makes it look like you're spinning your wheels after you've missed the boat because you went off on a wild goose chase.

Kozinski, *supra* at *24-*25. Judge Kozinski also warns of the dangers of "cutting off the judge in the middle of a question":

> First, it's rude . . . . [b]eyond that, cutting off the judge mid-question sends an important message: Look here your honor, you think you're so clever, but I know exactly what is going on inside that pointed little head of yours. Then again, cutting off the judge gives you an opportunity to answer the wrong question. When I pointed this out to a lawyer one time, he told me, "Well, if that's not the question you were asking, it should be."

Id. at *25. How's that for an advanced case of lame-os?

It is also critical to be direct, honest, and forthright with the tribunal. If the tribunal gets the sense that you are misstating the authority or the facts of your case, you will lose great credibility and your ethos will suffer. Moreover, the appeal of your argument to the audience's sense of justice (pathos) or logic (logos) will be dramatically reduced. It is also extremely unlikely that a misstatement will go unnoticed. Most judges prepare for oral argument and are relatively well versed in the key authorities and facts of your case by the time of the argument.

A corollary to the rule against misstatements is the principle that you should not exaggerate the strength of your case. As Judge Kozinski explained:

> A good way to improve your chances of losing is to overclaim the strength of your case. When it's your turn to speak, start off by explaining how miffed you are that this farce—this travesty of justice—has gone this far when it should have been clear to any dolt that your client's case is ironclad. If you overstate your case enough, pretty soon one of the judges will take the bait and ask you a question about the very weakest part of your case. And, of course, that's precisely what you want the judges to be focusing on—the flaws in your case.

Id. at *24.

Remember that arguing to a tribunal is not the time to make a jury speech. Oral argument presents a wonderful opportunity to focus the court or panel on the critical points, authorities, and record citations you wish to emphasize. Do not waste that opportunity by making an unbridled appeal to pathos, as an effective trial lawyer might do before a jury. Adjudicatory tribunals are much less likely to be swayed by bad conduct by one party, ad hominem attacks on the opposing party (even if justifiable), or blunt arguments that a certain outcome would just be "wrong." Such tribunals are usually much more interested in how the key authorities apply to the facts of your case and whether that application prescribes the outcome your client desires. As Judge Kozinski explained:

> When a lawyer resorts to a jury argument on appeal, you

> can just see the judges sit back and give a big sigh of relief. We understand that you have to say all these things to keep your client happy, but we also understand that you know, and we know, and you know we know, that your case doesn't amount to a hill of beans, so we can go back there in the conference room and flush it with an unpublished decision.

Id. at *25.

If you use analogies or maxims, choose them with care. Aristotle believed strongly that the use of analogies or maxims could be very persuasive. He was right. An analogy, maxim, or story that fits well can enhance your argument and help your chances of winning. One of my colleagues recently argued a statutory-interpretation case before the U.S. Supreme Court. He argued that his opponent's interpretation, while possibly supportable by the language of the main sentence itself, could not be reconciled with the language of the rest of the statutory provision in which it was located. To conclude his argument, my colleague referred to the parable of the blind man who came upon two thick trees, unable to understand that the soft tube between them was really the trunk of the elephant he stood before. My colleague's use of that parable was extremely effective, and he won his case. But an advocate must be very careful using such devices. It is very easy to have a seemingly excellent analogy fall apart under questioning or, worse, be turned around by your opponent. In an argument several years ago, an advocate used a baseball analogy to describe his case for the court, only to have his opponent quickly co-opt that analogy to describe how the advocate had swung and missed with each of his three major arguments and had "struck out" with his case. The point here is not that you can never use an analogy, but be judicious. If you think there is any risk that it could be turned against your position, do not use it.

Humor also must be used with care, if at all. As a character in a *Star Trek* movie once remarked, "Humor is a difficult concept." Most experienced oral advocates would likely advise never to use humor at oral argument. That may be too stringent. On rare occasions, a judge or panelist with a good sense of humor may make a joke that could effectively be responded to with a humorous statement. Also on rare occasions, a line of self-deprecating humor might be effective. In such circumstances, the use of humor can improve the ethos of your presentation by lightening the mood and showing that you have a sense of humor. But you do have to be very careful. The use of humor in an inappropriate circumstance or before a judge or panelist who does not appreciate the use of humor, or does not appreciate *your* sense of humor, can do great damage to your credibility.

Throughout your argument, speak clearly and at a moderate pace. When people get nervous, many of us speak very quickly, our voices rise, and we may garble certain words. Keep these possibilities in mind. Speak too quickly and you will lose your audience. Speak too slowly and you will annoy your audience. Enunciate clearly. Avoid monotones. But avoid excessive drama as well in your manner of speaking. Pauses are helpful to underscore important points. The goal is to have a conversation with the court. In doing so, an effective advocate may often use very short or clipped sentences. You may wish to answer a question by saying, "No, for two reasons"; or "Let's look at the legislative history." The point is to communicate effectively, not to produce a beautiful transcript. If you are comfortable doing so, you may wish to use slow, smooth (rather than hard, choppy) hand gestures to emphasize a point. But do so only if you naturally use such gestures. Use a conversational tone and approach, and you should be able to communicate with your audience.

It is also critical to your ethos to act as a professional at all times during an argument. To begin, always dress conservatively and consistent with local custom. Do not raise your voice. Do not show anger, even if legitimately provoked. When sitting at counsel table, speak in a quiet whisper if you must speak at all. Do not vigorously shake your head or make facial contortions during the proceedings. Treat your colleagues and opponents with respect. Be aware that when delivering an appellate argument, there will almost always be a number of law clerks present in the courtroom well before the judges arrive on the bench. They will watch and scrutinize everything you say or do in the courtroom. If you act professionally at all times, your behavior will never come back to haunt you.

The final piece of preparation is to pay attention to the arguments that precede yours. You can often learn a great deal about the approach and demeanor of the judge or panel by listening. You can also learn if there are any special procedures or courtroom etiquette of which you are unaware. If you are fortunate, you may also be able to determine whether your judge or panel has any special characteristics you should bear in mind: The judge hates to be interrupted or prefers to be called "Your Honor"; the judges seem to have a good sense of humor; the judge is exhausted and looks ready to fall asleep.

Oral argument presents a great opportunity to focus your audience on the key points of your case. By bearing in mind Aristotle's time-honored principles of ethos, pathos, logos, and the associated lame-os, you can deliver a credible, logical, and emotionally compelling argument. If you also prepare carefully and thoroughly, you can become an outstanding oral advocate and significantly advance your clients' interests. Speak up. The legal world is listening.