

# Son of a Preacher Man—What Homiletics Can Teach Us About Oral Advocacy

By Jan M. Baker

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*The only one who could ever reach me was the son of a preacher man.*<sup>1</sup>

We can debate whether Dusty Springfield or Aretha Franklin sang it best, but there is no debating that preacher men—and their sons, apparently—move us. In the last few years, I have enjoyed the unusual good fortune of having two former clergy members in my first-year legal writing classes. It was not until I completed this past year with the second of my theology-trained students that I noticed one key skill these two students had in common—a mastery of oral advocacy.

Upon further reflection, I settled on the belief that their homiletical training set these two apart from other first-year students in terms of oral argument delivery. Homiletics is simply defined as the “art of preaching.”<sup>2</sup> But homiletics goes beyond the presentation of theology and enfolds skills that we all preach about in legal writing: research, storytelling, organization, rhetoric, persuasion, and advocacy.

Ask any congregant what makes a good sermon, and you are likely to hear that the best sermons are those that grip our attention, challenge us to reflect, and invite us to consider a change for the good. However, before the patient congregants hear the sermon, the pastor has taken great care to research, organize, and practice the sermon so that the point

of the homily floats from the pulpit to the pew and blankets its intended audience with such subtle persuasiveness that we nod along in agreement and appreciation. Preachers and lawyers alike must “choose the words that best translate their message and arrange them in the most persuasive order.”<sup>3</sup>

In the case of my two students, each delivered a first-year oral argument that had all the makings of a good sermon. In addition to demonstrating exceptional organization and mastery of the substantive material, both had mastered the delivery. Both had mastered the use of the pause to allow their points to settle on the minds of the panel members or to enter a second of careful reflection before answering a question. Both had mastered the art of storytelling to engage the judges from the first “may it please the court” to the final “thank you.” Both had mastered the use of appropriate body language and employed well-timed hand motions to emphasize points in a directive but not distracting manner. Both had mastered the art of lingering eye contact, sweeping their eyes to meet those of every member of the judicial panel and engaging each judge individually.<sup>4</sup>

After observing oral arguments from these two students, I realized that a homiletical approach to oral advocacy can put judicial doubts to rest and help allay judicial aggression.<sup>5</sup> For example, one of my two students argued the complex issue of whether a defendant in a strict products liability

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<sup>1</sup> Aretha Franklin, *Son of a Preacher Man*, on *The Girl’s in Love with You* (Atlantic Records 1970); Dusty Springfield, *Son of a Preacher Man*, on *Dusty in Memphis* (4 Men with Beards 1969).

<sup>2</sup> *Webster’s Third New International Dictionary* 1083 (2002).

<sup>3</sup> Herbert A. Eastman, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 *Yale L.J.* 763, 823 (1995).

<sup>4</sup> See Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* 139–206 (2008) (discussing 61 points for effective oral advocacy, including “the pause”).

<sup>5</sup> *Id.* at 140 (noting that oral argument is an opportunity to “lay ... judicial doubts to rest”).

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action could raise comparative negligence as an affirmative defense. The student represented the not-so-pitiful plaintiff, who became injured when his truck, which he exited while it was parked but still running, rolled onto him when he got out of it to open his farm gate. The student began his argument by explaining that the plaintiff was not a negligent or reckless vehicle operator, but simply a “hard-working farmer without a remote-controlled gate.” He continued with a retelling of the facts so compelling that all of the judges on the panel just nodded along, without interruption.

Later, in the heart of the legal argument, one judge tried to get the student to concede that because the underlying theories of comparative negligence and strict products liability are similar, the defendant

should be allowed to assert comparative negligence as a defense. Unshaken, the student patiently and politely counseled the court, responding that merging the two tort theories would be, at best, a short-lived “marriage of convenience.” The student further emphasized his point by noting, in a pastoral tone, that while apples and oranges are both fruits, they do not taste the same and are not often paired together. The judges nodded a silent “amen.”

The next time I have students struggling with oral advocacy, I might suggest that they visit a pew for a lesson in delivery. Who knows, they might even pick up something more meaningful.

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#### Additional Resources

Mark Osler, *Two Preachers, A Trial Lawyer, and Aristotle*, 29 *Relig. & Educ.* 78–89 (2002) (the experiences of an attorney and two ministers teaching oral advocacy at Baylor Law School)

G. Robert Jacks, *Just Say the Word! Writing for the Ear* (1996) (a workbook for preachers that focuses on using and telling stories that hold an audience)

Steven A. Beebe & Susan J. Beebe, *Public Speaking: An Audience-Centered Approach* (7th ed. 2008) (lessons learned from great speakers)

Calvin Miller, *Preaching: The Art of Narrative Exposition* (2006) (insights on compelling storytelling)