

TEN PROPOSALS FOR PERSUASIVE ADVOCACY

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Advocacy seems both to encourage and defy the preparation of lists. Having had the honour of being invited by ICCA Mauritius 2016 to participate on a panel entitled '*How to Prepare a Persuasive Case: 10 things to Do and Avoid when (i) Preparing Written Submissions, (ii) Examining Witnesses, and (iii) Presenting Oral Arguments*' I am tempted and obliged to provide my 10 proposals for persuasive advocacy. Here is my list:

1. Be Selective: Selection is the key skill of an advocate: selection of facts, law, evidence, witnesses, questions, arguments. The advocate constantly has to make choices and make them well. Selection means learning to say 'No'. Excise the irrelevant, the marginal, the collateral, the incomprehensible, the decorative, and the bright plumage of excessive erudition. If you have a large legal team and masses of data then use them, don't display them.

2. Be Simple: Never underestimate the power of simplicity. Even the most complicated arguments can be made simple.

3. Be Independent: The advocate must see the case as it is, and not as the client or the tribunal wish it to be. Sometimes a client is best served by scepticism, and a tribunal by insistence. The advocate is responsible for the quality of the advocacy, the best presentation consistent with fidelity to the facts and the law, but not for the outcome of the case.

4. Know your Case: Have a case theory and know how to use it. If you cannot explain your entire case in a paragraph you are not ready for a hearing. Such precision is an expression of mastery. The tribunal must be able to trust your understanding of the case.

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5. A Strong Structure: The case should be structured around strong propositions. Where so much is uncertain and disputed, beacons are needed to illuminate the obscurity. Documents are less exciting than witnesses, but a much stronger foundation for a persuasive case, particularly in international arbitration. The continental tradition was right all along.

6. Be Careful with Witnesses: Don't question witnesses unless you really need to. A rule that is constantly repeated, and constantly ignored. Unnecessary questioning is a pervasive form of forensic ill-discipline and, sometimes, cowardice.

7. Advocacy Requires Character, not Art: There is no art in advocacy; just a set of techniques of good presentation guided by wisdom, justice, courage and moderation. All art, as Oscar Wilde famously said, is quite useless (*The Portrait of Dorian Gray*, Preface). However, it is not easy to be artless; it is a form of excellence.

8. Know and Respect your Tribunal: A common sense precept of persuasion. Always remember and engage the tribunal. Enlighten the case for them; be their attentive guide. Be sensitive to the premises of the tribunal (even inside a standard procedure); in domestic litigation this might mean comfortable shared certainties; in international arbitration often concealed differences. Be particularly careful to respect a tribunal when it does not deserve it.

9. Concentrate Exclusively on the Tribunal: The use of advocacy is to persuade the tribunal and the tribunal only; not the client, the witnesses, the other side or oneself. We can forgive a person doing a useful thing as long as they do not admire it (Oscar Wilde, again). Ignore egos, particularly your own, except when you can turn the ego of the tribunal to advantage.

10. Sit down: There are many lists of 'Ten Commandments' in the literature of advocacy. This is number 10 from the best of the genre, John Davis's *The Argument of an Appeal* (The Journal of Appellate Practice and Process vol. 3, No. 2 (Fall 2001) 745). A simple way to avoid all sorts of errors and embarrassments.