

Oral appellate advocacy

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Tip no. 1

Know your court.

The UK Supreme Court



Research

- Judgments
- Extra-judicial writing
- Judicial reputations

Pre-Raphaelites v Impressionists



The Daily Telegraph

“Lord Neuberger, Britain’s most senior judge,
admits he doesn’t read all the papers in a
case”



International courts



Tip no. 2

Think hard about how
to frame the key
question in the appeal.

ADI v UK: an example

- This case concerns the UK's blanket ban on political advertising in the broadcast media.
- The Court had previously held similar bans in Norway and Switzerland to be incompatible with Article 10 ECHR.

The applicant's view

The question for the Court is whether the UK's ban, which forbids *any* speech in the broadcast media designed to change minds on an issue of public controversy, is a permissible restriction on the freedom of expression.

The Government's view

- This case concerns the rule in force in the UK and in several other Council of Europe States concerning political expression in the broadcast media.
- The question is whether this rule, viewed in the light of the other mechanisms for maintaining a free flow of political ideas, exceeds the margin of appreciation to be accorded to Contracting States under Article 10.

The Government's view

- This case concerns the rule in force in the UK and in several other Council of Europe States concerning political expression in the broadcast media.
- The question is whether this rule, viewed in the light of the other mechanisms for maintaining a free flow of political ideas, exceeds the margin of appreciation to be accorded to Contracting States under Article 10.

Tip no. 3

Say what the
case is *not* about.

An example: wheelchairs on buses



This appeal has attracted some public interest, so it is important to be clear about the issue. It is not about whether non-wheelchair users should move out of the wheelchair space on a bus in order to accommodate a passenger in a wheelchair. Of course they should if that is possible.

Nor is it about whether mothers standing in the wheelchair space with a child in a folding buggy should fold their buggies in order to make way for a wheelchair user. Of course they should if that is possible. Non-wheelchair users, unlike wheelchair users, will normally have a choice about which part of the bus to sit or stand in. Common decency and respect for wheelchair users should mean that other passengers make way for them.

What is at issue is whether the bus company must have a policy to compel all other passengers to vacate the wheelchair space irrespective of the reason why they are in it, on pain of being made to leave the bus if they do not, leaving no discretion to the driver.

Tip no. 4

Tell the court where
you are going.

I propose to make submissions under four heads:

- First, some preliminary observations about the statutory scheme.
- Second, our answer to the common law claim.
- Third, our answer to the claim under the European Convention on Human Rights.
- Fourth, our submissions on remedy.

Tip no. 5

- Ask yourself: What is the biggest problem with my case?
- Make clear you've understood it.
- Answer it.

Example: The death penalty case

- Claimant was a British woman on death row in Indonesia.
- She asked the UK Government for money to pay for a lawyer.
- The Government said no, because it never pays legal expenses.

The United Kingdom opposes the death penalty in all circumstances as a matter of principle. The Government's Strategy includes a commitment to working for its abolition and – where that is not possible – restricting its use and ensuring that the EU minimum standards are met in those countries that retain it.

The question in this appeal is whether, in the context of those strategic aims, it is lawful for the Government to adopt a bright line rule that the help it gives to British nationals facing the risk of the death penalty abroad will not include payment of legal fees or expenses.

We say it is, both at common law
and under the Convention.

Tip no. 6

- It's easy to caricature or ridicule your opponent's case.
- Don't.
- Take your opponent's case at its highest.

How to annoy judges



Tip no. 7

Work out in advance the logical consequences of your argument for other cases.

Example: The death penalty case

Would the “bright line” rule apply
even to a British soldier or
diplomat subject to prosecution
in a foreign country for a capital
offence?

What not to say

- That is hypothetical.
- That is not this case.
- That is a matter for another day.

Answer

- *As a citizen*, he would not be no more entitled that the Appellant to assistance under the policy.
- Whether he would be entitled to assistance *as a soldier or diplomat* depends on the employment terms applicable to soldiers or diplomats.

Tip no. 8

When asked a question,
answer it immediately.

Do not say

- I am coming to that later.
- That's totally irrelevant.
- With the greatest of respect, my Lord, that is totally irrelevant.

You can say

- I am going to deal with that under the fourth of my five heads of submissions. But in summary we say that the European Court of Justice has decided the issue and the answer is “No”.
- The short answer is “No” but, as I will show when I come to the fourth of my five heads of submissions, even if it were “Yes”, the outcome would be same.

Tip no. 9

When using humour,
always adhere to the
humour rules.

First humour rule

Never use humour.

Tip no. 10

Ask for feedback and
take it on board next
time.

- Everyone has a verbal tic or annoying mannerism.
- You have them too.
- Ask people what they are.
- If your oral advocacy is recorded on video, watch it and note down the best and worst things you did.