



## Resources

# Top 10 Tips for Effective Oral Advocacy

### 1. Tell a story that conveys your theory of the case

- Use admissible evidence to craft a persuasive story that is clear, simple, and believable.
- A good theory of the case adapts your client's story to the legal issues in the case. To develop a theory, ask these three questions:
  - (1) What happened?
  - (2) Why did it happen? and
  - (3) Why does that mean that my client should win?
- This is the most fundamental rule of good advocacy, and it applies to every stage of a case, from trial, to sentencing, to appeal.

### 2. Be prepared

- Defence Lawyers: Speak to your client well in advance of trial. Know his defense and conduct necessary investigation to support it. In death penalty cases, interview him in depth about his life so that you know what mitigation evidence you need to gather.
- Talk to the witnesses. Often, their stories are different from what is reported in the police file.
- Try to put yourself in the place of the judge and think about what questions s/he might ask. Prepare short, clear accurate answers to all of them.
- Rehearse your direct examinations, cross-examinations, opening and closing argument and practice out loud. Become comfortable enough with the language of your case to be able to speak fluidly without looking at your notes.
- For legal questions and on appeal, be able to articulate the standard of review applicable to the questions presented.
- Anticipate jurisdictional questions, and know the court's procedural options for resolving the case.

### 3. Begin and end on a strong note.

- Lead with your strongest argument rather than building up to it.
- Memorize your opening so you maintain eye contact with the judge as you make your argument.
- Your conclusion should be short and powerful. In one sentence, tell the court what you want it to do and why it should do it.
- Memorize your closing statement.
- Construct your argument around ultimate conclusions, supporting them with facts and law.

### 4. Humanize your client

- In homicide cases, the defence must persuade the judge and jury that your client is not dangerous. You can do this effectively by showing that you are comfortable around him. Consult with your client during trial. Lean close to him. Show your respect for him.



- In sentencing proceedings, you will need to give the judge a reason to impose a lesser sentence. Refer to Rule 1: you must tell a compelling story that explains *why* your client was led to commit a crime. Mitigation is not a legal defence, but you can rely on facts of the case and the background of your client's life to provide an explanation for his behavior.

## **5. Organize and headline each section of your direct examination, cross-examination, opening and closing arguments**

- Each point in your outline should begin with a “headline” – a simple sentence that captures the conclusion of that section.
- Keep the outline of your arguments short with a few key words on different points and maybe a phrase you want to repeat as the theme of the case.
- Your theme should be repeated throughout your questioning of the witnesses. Prepare your examinations in advance so that they are consistent with your theme.
- You should try not to read your notes during your argument. Instead, memorize them. Include only a few, useful “trigger” words that will help you remember the flow of your argument.

## **6. Listen to the witnesses and be prepared to object.**

- Know the rules of evidence. In Malawi, impermissible hearsay evidence is often admitted at trial without objection. You must object to such evidence and ask that it be excluded.
- Listen carefully to the witness' answer. **DO NOT ASK A FOLLOW UP QUESTION IF THE ANSWER DOES NOT DAMAGE YOUR THEORY OF THE CASE.** One of the most common mistakes that lawyers make is asking “one question too many.” (Example: Q: It was dark? A: Yes. Q: There were no lights? A: Yes. Q: You were standing 50 meters away? A: Yes. Q: So you really couldn't see what happened, could you? A: Yes, I could, because I had a torch and a pair of binoculars.)

## **7. Anticipate weaknesses in your argument**

- Brainstorm a list of potential questions. What are the weak points in your case? What are the key disagreements?
- Consider how you will address any weaknesses and be prepared to answer them.

## **8. Maintain credibility**

- Don't overstate your case or make unsupported assertions.
- Always maintain proper courtroom decorum and be aware of everything that you do in the courtroom, including the way you look, act, react, speak, move, stand, and sit.

## **9. Vary your pitch, cadence and rhythm**

- Do not only resort to loud rhetoric; create contrast and slow down for important points.
- Speak clearly and slowly enough to allow the judge or jury to process your argument.

## **10. Answer questions directly**

- Listen carefully to the judge's questions, and when possible start your answer with a yes or no.



## Avoid common pitfalls:

- Don't make the mistake of thinking you can discover all of the important facts simply by reading the police file. It is essential that you talk to the accused well before trial (for the defence) and to the witnesses (defence and prosecution).
- Don't be afraid to object. It is your job to ensure the court does not consider inadmissible evidence.
- Don't be afraid to try something new that other attorneys don't do. Sometimes you may need to take risks in order to make your point effectively. Think creatively about how you can best persuade your decisionmaker. Use demonstrative aids like diagrams, charts, and other props.