

ORAL ADVOCACY (3): STATING A CASE THEORY

EN: Hi, welcome back. I'm Eric and this is the Quick Guide to Oral Advocacy. Today, we'll take a look at how to state a case theory, which allows judges to understand the essence of your case in a few sentences. You'll learn how to: portray the opponent's case in a negative light by showing a contrast and using emotive language; and maintain an assertive tone by avoiding modals such as *may* and *might*.

EN: When you are stating your case theory, there are two strategies that you can use to portray the opposing party's case in a negative light. The first is presenting a contrast. First, you let judges know what is supposed to happen ideally. Then, you tell them what the opponent has done in actual fact.

EN: Let's see how Lavesch makes use of this contrasting strategy. Here, he portrays the Respondent's case in a negative light as he states a case theory in relation to procedural issues:

LK: Mr President, members of the Tribunal, in any arbitration agreement, there are two key elements: one is consent and the other is good faith, both of which have been breached by the Respondent in this particular case. The Respondent is now using dilatory tactics in seeking to object to this Tribunal's jurisdiction and is also seeking to admit an amicus brief into these proceedings, neither of which should be allowed.

EN: If you were hearing this arbitration, you'd probably be thinking that the Respondent has been a bit remiss. That's because Lavesch first highlights the importance of consent and good faith in an arbitration agreement. Then, he immediately asserts that the Claimant has breached these two elements. This forms a sharp contrast and draws attention to the Respondent's flaws.

EN: The same strategy can be observed in another example featuring Harp:

HS: It takes two people to tango and the same goes for the performance of the contract. The Claimant had performed its obligations under the contract by delivering the tobacco products and the merchandise. But when the time came for the Respondent to perform its responsibilities under the contract, it conveniently shifted them to the Gondwandan government.

EN: Harp contrasts the exemplary conduct of the Claimant with the rather less desirable behaviour of the Respondent.

EN: In the same example, Harp makes use of a second strategy. He uses emotive language, which attempts to influence what judges think of the Respondent.

EN: Take another look at the last part of Harp's case theory and notice the way he uses the word *conveniently*:

HS: But when the time came for the Respondent to perform its responsibilities under the contract, it conveniently shifted them to the Gondwandan government.

EN: Here, the adverb *conveniently* clearly implies that the Respondent is simply acting out of self-interest, sidestepping its obligations for its own convenience. The Respondent is not portrayed as acting in any kind of responsible way.

EN: As you state your case theory, stay assertive. Never use modals such as *may* and *might* which lower the degree of certainty. If you watch the two examples again, you'll find that the tone remains assertive throughout.

EN: So remember, when you state your case theory: you can portray the opponent's case in a negative light by presenting a contrast and using emotive language; and you should stay assertive and avoid using words that make what you say less certain.

EN: In the next episode, we'll talk about how to present a road map. Stay with us and see you soon!