

DR RAJESH SHARMA:
THE ART AND SCIENCE OF ADVOCACY

Rajesh: You know, it's very interesting that in this forum, like lawyers and the linguists, they are sitting together. Even ten years ago, if you asked me, I never thought that there's any connection between law and language. I had no idea about it until I met Professor Bhatia who roped me in the legal English and then Christoph in the legal English work and we did couple of these works at that time. And I slowly started learning the power of linguist or power of language in law. And that's how I realized. And very recently, it was conformed.

There was a seminar like this going on and the question was asked that what is the difference between or is there any difference between 'complete' and 'finish.' Lawyers, as Janny said, they took out Oxford Dictionary because they are trained in Vienna convention, they know that plain ordinary meaning always comes from the dictionary. They open the dictionary, they find no difference. I said, 'After looking at, after following Article 31 of the Vienna Convention, looking at Oxford Dictionary, there is no difference.' Ordinary meaning – same. So lawyers they didn't answer, they asked the laymen. They said, 'There's nothing, no difference.' And then there was a linguist who came up and said that 'Well, I can tell you the difference. If you marry to a right woman, your life is complete. If you marry to a wrong woman, your life is finished. And if the right woman finds you with the wrong woman, your life is completely finished.' So that's the difference. That's the power of linguist.

And I'm now starting and I'm believing that there is something over there and that's how we did. And thankful to Christoph for this project and involving me. When we were involved, I was in CityU. So I was thinking that 'Okay, naturally I can be partner of him.' And that also happened by mistake in the middle of the night when he came to see our moot coaching training and he wanted to come and see. And our sessions were going longer and longer and he was sitting over there until midnight totally drowsy and still taking notes and recording and everything. So after few weeks, we asked him, 'Christoph, what is your view on that? What do you do?' And then he started saying that 'Oh, in the first draft you said this and this. And the first speech you said this and this. The student said this, you corrected like this, then the next time they wrote like this.' I said, 'Oh my god, you got all those things?' And we had no idea that we were doing it.

So then we come up with this idea... He came up with this idea, I joined. Then I left to Australia and still he was so kind to rope me in and still being there, so thank you very much. And thank you very much for inviting me for this half-day conference all the way travelling nine hours for this one, so thank you Christoph. Very generous of you.

Now, the topic which I'm going to talk about the oral advocacy is because we wanted to include in this project not only the legal writing but also the idea about how to speak. And there is a big difference. You can write in a different way, you can create a different impression by writing a different impact. But when you have to say the same thing in short time and directly, then it has a different technique, and that's what we learn from our own perspective.

And that's also like because my Dean... Er, no law Deans are here at this moment, they should be here to listen to that. When my Dean said that 'Rajesh, you have to coach a team to make them world champion.' And I was thinking that 'Wow, oh my god.' I looked at our students, I looked at Hong Kong students, everywhere, and I said that 'How I'm going to do that?' And then involving in the Vis Moot for fifteen years, I took out all those examples and the first example which came for me, from Hong Kong, was Jin Pao. You remember him? He was a brilliant speaker and natural speaker from Hong Kong University who did very well in Jessup and after that we didn't see any. So I remember that guy was somewhere. Then in Vienna, I met one girl from Monash University. She was so smooth that really impressed and the team won single-handedly. Then I met another student from NUS Singapore who came for the first time and he was fabulous over there and he won. So I had a couple of examples and I thought that 'How I'm going to train that to that kind of student?' And then I looked around and I said that 'What I need in my students to win that?' The first thing I need – the rigour, the content and the rigour of German students because they are very good of that. Then I need the smoothness and the structure of Australian students. Even in the heavy bombardment of question, they don't leave their structure and they stick to that. So I needed that kind of a thing. I needed an American team who can sell the idea like a marketing person. I needed the street smartness of Indian students who can answer any question, anywhere, like, you know, that kind of a thing. And then I needed somebody, looking at Hong Kong, the local effect, is that I wanted somebody of a Chinese face but the Singaporean perfect English. So basically, I was

looking for a super human. And we had the trust, we had the faith in our students and we wanted to do that. And we did find that. And we did achieve that. And I have a perfect example, and in this, you have seen the video, you will be seeing more video, and I have two students here who will be joining me on this one – Harp and Eric. They learned as a mooter. They were the champion. They brought the glory. And now, they are here with us like, you know, working on this one. So they will be also joining me on some part of it, okay? So that was the idea.

Now, when we started that, then we had to always find out that what is the good advocacy we are looking at. People have given different views about it. But what we were looking at from our perspective, I don't know, Audrey also has said – her video you can see that what do you mean by that. And I can also say that one thing is that our view is and we believe in that, not believe the way we don't believe like a barrister they say it, when we say that a good advocacy, you know, it may not win the case. It may not win the case because for that you need the evidence and all those things. If that's totally a weak case, you can't win. But a good advocacy can win the heart of the judges and the audience. And that may help you later and that can give you. So this is our idea. So what is this? This is a kind of a skill which we can teach, we can train. Some people are born natural speakers, some people can be made like that. So we found that there should be some kind of a common denominator, common set of a skill, which we can translate and instil into a student who can combine and who can do the perfect thing.

Because we are looking at the local and global part, the best part, the moot which we were doing in Vienna, three hundred teams coming from all over the world – civil law, continental law, common law, different kind of law, different kind of speaking, different languages – there's Spanish... And on the judge, we had like, you know, different people. So we wanted to have some kind of a common sense, some kind of a common speak, so that everybody can understand and the impact should be on everyone. So that kind of a thing we wanted to teach them another. What happened is that because of the mooting, some students got some kind of a skill but not everyone. And that's why we had a kind of a common course.

So it's that kind of a thing. So what we found that what is lacking in Hong Kong students or any

students – I'm not talking about only CityU students – I'm counting all Hong Kong students in that one. So we found that there is a lack of structure, the lack of style, some content part was there, question and answer there, time management was a problem, and how to engage the tribunal for forty minutes or sixty minutes that was also a kind of like, you know, big problem with that.

So we found that common problem. So those common problem – how we can address it? There is no shortcut to success. It is hard work. It is hard work. And that's why the preparation, practice and inspiration is needed for that. And that's why I gave you the example of those three students and four students which I told you they were my inspiration which I wanted to get it and club it together and put it there. Practice, we did quite a lot. And preparation, of course, is there.

So these are the like shortcomings you can have, this kind of thing. And that's why I asked Christoph to include in this project – audio part, the video part, and also the advocacy part – because I needed that. I wanted to teach our students in mooted class, but I had no perfect example of it. I had no example with video and explanation. So he was very happy and very good to put it together and we put this kind of thing together. And that's what we want. We want to have like, you know, natural speakers as well as other speakers to sharpen their skills and give them those common things which they need to in that one.

Many things like, you know, if you look at that, what are the things it includes? It includes in the oral advocacy in our part, many other things, but the main focus we are going to do it here is that a good advocacy is also like a good introduction, it involves in that one. Good start means we're talking about the case theory in that. It should have a good roadmap. It should have a good question and answer technique. A smart and creative use of facts and law. And rebuttal, surrebuttal and a good conclusion in that. So all these things are there, plus there are many other things which you can find in our video, but we are going to focus on couple of these things here.

The very first thing why we say introduction – everybody thought that in oral advocacy and introduction, what is the relationship? And I tell you that what was the relationship and what is there. Many times we have seen in Vienna, mooted starts at four o'clock in the evening and the

team comes and says, 'Good morning, Mr Arbitrator and members of the Tribunal.' The moment you say, 'Good morning,' everyone says, 'What? Good morning? You have no sense.' Then you see another team which starts at eleven o'clock, and the second team comes after twelve o'clock, and he comes and then says, 'Good afternoon, Madam President and members of the Tribunal.' Everybody remembers that 'Ah, he's watching his time. He knows it's AM or PM or morning or evening.' So this kind of a thing, we call it, we see that we have to start on the right foot and the saying goes, 'Well begun, half done.' And we say that introduction is that part. So we focus on that one also: How to address the tribunal? How to address the bench? It's very important that you start on that kind of a thing and that's how we did it. Even the simple thing whether you should call it 'Mr Chairman' or 'Mr President,' there is a discussion on that one. And we teach them. We teach them that in order to find out whether you should say 'Chairman' or 'President,' go and look at the rules. It says that you should say 'Chairman' or 'President.' It says over there and you can follow that one. So this is the introduction part, a small part but very important part of it. And the right footing, we say that, you must do that. That's the one thing.

Then the very start, this is the classic one-liner, we call it case theory. And we ask our students to work on that. How can you tell in one or two lines what is your case about? Why you are here? What do you get? That kind of a thing. And think about it, the students have worked for eight months, prepared many things, and we are asking them to tell me in two lines? It was a completely difficult task for them. But if you look at all these great lawyers, whenever we give them their example, we always quote the one-liners. And this is what we tell. We say that case theory should be there. And we ask our students to develop this case theory. Right from the beginning, we start thinking about it. But, the fact is, even till the date of moot, we don't have a perfect or we don't get the perfect case theory. We don't get the perfect opening. Then we go to the moot. We try one, we do it another, we modify it. All those things are there, and I'm very happy that our two students they were very good at creating this case theory and I didn't have to work too much on that one. So this is the starting point. It's very important. And I can just show you a little bit on that one that why this case theory is important and what is the impact of that.

[VIDEO]

This video like, you know, when we were making it, we wanted to emphasize that the case theory has a very important part to play in oral advocacy. And that's how we wanted to teach our students to learn and to understand that how they can summarize their case in one or two sentences. So that's the idea like, you know, and we didn't have any video of such kind in our bank. So this is the first one we have come up with this and with different examples, so we put in that. So that's why we find that this kind of like, you know, project is very valuable in teaching because now here we have a narrative, we have videos, we can show them, show the students that how it is done and how they can do it.

Now, if you look at after that, we have to do the roadmap. Everybody can say the roadmap. It's common. They remember, 'I have to argue three points: A, B, C.' They can say that. But the problem is they can't maintain that roadmap all the way through for twenty or thirty minutes. But when you are giving the roadmap, there are several things it happens. You have to give the signpost when you are moving from which argument to which argument, how we are going back or forward in that kind of a thing. You also have to cite the facts and law. Look, when you are writing the case's law, its facts, it's very different. You can create a different impact. But when you are speaking it, it's very different.

I can give you an example. In the case, when you're writing it, you can say that 'Case A versus B, All England Reports, page number this and this,' and you can just write and do it. It's a different thing. But when you are speaking it, how you can say that? When you are giving the facts, you can say that 'Line number one, paragraph five, page number fifteen,' that's the way you say it. But if you look at the practicality side of it, what we see, we have to make the life easier for the judges. If you think about it, we have only like, you know, if you say, 'Line one, paragraph five,' how can they reach to the line one, paragraph five? We have to say it in reverse order. You say, 'Page fifteen, paragraph five, line number one,' that's how he will open the page and go fifteen, paragraph five, and then line. What generally we do? We say it other way round. So these are the technique like, you know, we have to find – case theory, like cases which we are citing, we have to say quote party's name, quote name, year of judgment and then the page number.

Somebody argued that why we are using page number? It's too much. Why we have to say page number? But this was our strategy and we use it. And then when the video was uploaded of the Vienna moot, later on we saw that how many hits were there, and then next year when we went there, everybody was using page number. Please consider that gives authenticity to your work, research, it shows that what you can do, it is your real work. Page number this, you can find that. This is the impact which creates, that is what we say. When we have to argue, we develop our own local strategy. We call it 1-2-3 strategy or facts, law and policy. When you have to argue, which one you should say first? Facts or law or policy? We say that no, we will go for the facts first because the agreed first or facts or whatever the facts are there, it's very important and we can show them first. Then we can use the law, and then the policy is the last argument we can do. So these are the strategy we try to use in our roadmap and everything.

So far as the question is concerned, this is also another part of it, but I want the question aspect for Harp to explain it that how he has developed that. And the reason I invited them to be with me and sharing my time is one reason is that they learnt it and now they are barristers, they are using it in the court. So they are the perfect example of a student who is turning into a lawyer, a professional, and then how he is using that technique. So Harp, your turn.

Harp: Thank you for that. I'm just going to make a quick confession before I begin that Rajesh taught me mooting back in CityU, Vandana taught me advocacy in the PCLL, and Judge Moffat taught me on the bar course. So whatever I say is the combination of all three, so it has to be correct.

Questioning and answering. Typically when I started doing questioning and answering, my problem was I was a bit like going completely around the circle trying to protect my client's interests without actually answering the question. So the question would be like, 'Did your client do it?' I would say, 'Well, looking at the facts, you know, the other side did this, the other side did that.' I wouldn't really answer the question directly. And there was a tendency on my behalf to somehow protect my client's interests or somehow protect my case without actually answering the question to think somehow, you know, there might be an answer in there, we'll let the judge decide without actually pointing out the flaws in my case. So Rajesh taught me that when you're asked a question, you got

to answer it. 'So did your client do it?' 'Yes, he did.' Or, 'No, he didn't.' And then you give the answer if the judge wants the explanation or if he doesn't.

And I had a professor back in Oxford when I was studying there, and I tried to do the same technique of giving the run around and he's like, 'Well, my dear boy, this is not Mathematics. If I want the answer or the explanation, I'll ask for it. But if I want the answer, just give me the answer. Yes or no.' So that really struck a chord with me that sometimes it is in your beneficial interest to answer the question directly because the audience is the one deciding the ultimate issue or case. So the technique that we've learnt and Vandana also reinforced it, which actually works as well when I go to court is when you're asked a question: yes or no answer with a short explanation not more than a sentence or two, and if there's further inquiries, then you can certainly explain it by saying, 'This is the reference. This is where you can find more answers.'

And sometimes, there's also an interesting technique in the sense that there're two ways that you can approach a question from the bench. One is you can answer it then and there. So if you're like starting off with your case theory, and the judge is like, 'Well, you know, Counsel, I've read the case. I'm more interested in this aspect of the case which is somewhere down the road in your arguments.' And some counsels I've seen will say, 'Well, my learned Judge, that's a great question. You know what, I'll answer it in about fifteen minutes when I get there.' So I asked my pupil master and I was saying, 'Why didn't you answer the question then and there?' 'Well, I hadn't really thought about it. But if I postpone it for fifteen minutes, I can think about it and possibly he or she might either forget the question or we might get a fifteen minute adjournment or delay it until the next day, and then I might have an answer for her.' So I was like, 'Is that a good tactic?' And he said, 'That's the only thing I have. I mean if you decide to answer the question then and there and you don't really have an answer, you'd look like: A) a fool, or B) you haven't really done the preparation on your case.' But I said, 'Isn't there a counter problem with that, that the judge already has that impression if you fail to answer that question then and there?' He said, 'Well, that's the risk you have to roll with sometimes. You got to roll the dice and expect them not to have that impression.'

So he says the best you can do is prepare for the case. If you can answer the question, answer it. Be

direct and succinct. But if you can't answer it, at least somewhere down the line, you do end up answering the question and not just completely evading it. But you do find some judges, which I've found in my court experience, tend not to let me wiggle out and say, 'Well, I'm not really interested in the rest of it. I want the answer now.' So you do have that situation, you do your best.

So the approach we've seen is answer, give a short explanation, and if they want something more, give it to them, but if they don't, move on. And that is my view on Q and A, thank you.

Eric: Hi, I'm Eric. Welcome to the Quick Guide... Wait, no, sorry. Not doing the video.

I'm also one of Rajesh's students. I was a mooter in 2013 for the Vis Vienna Competition. I'm just going to give a quick overview of some of the other things that we've learnt. One of which is rebuttal.

Rebuttal and surrebuttal is one of the hardest things that we have to teach our students, that we have to teach anybody who is going through the mooting programme and any advocate.

Now, in the previous session, there had been some discussion about genres. How language tends to change depending on the genre or the type of what your audience is looking for. Now, in oral advocacy, that's the same. But in a submission or an argument, there're actually several sub-genres and rebuttal is one of those sub-genres. Rebuttal is something which has its very unique sort of style which is that it's the last chance for the claimant to make any argument or to leave any impression in the mind of an arbitrator or a judge. Rebuttal is also something which has to arise out of what the respondent has normally said. So it's something that people have to prepare, either prepare in advance or which they have to come up with during the argument. So for students and for specially people who are learning the art and science of oral advocacy, it's one of the hardest things that they have to do.

A lot of times, we'll see a student come in for the mooting programme, and we ask them to do a rebuttal, and they say, 'I'd like to spend ten minutes on my rebuttal. I have fifteen points I want to

address.’ And what always happens is by the time they get to point thirteen or fourteen or fifteen, the arbitrator or the judge is just snoozing because they’ve gone through thirteen points which don’t necessarily help the case.

And so what we always try to teach is that rebuttal should be short. It should be sharp. It should be ideally two points or three points at maximum and within a short period of time. And the reason for that is that if you do it that way, it creates a lasting impression.

And remember the toolset for oral advocacy is different from writing. Inflection, tone, language, all of which are now at your disposal. In rebuttal, that’s when you can put that into play. You know, we always give the analogy that we consider a moot match or any sort of dispute, oral hearing really, to be sort of a boxing match, you know. And your intro and your case theory are sort of your first couple of punches, your main arguments, your body of your arguments are your body blows. But your rebuttal and your surrebuttal, if you’re granted it, are simply your knockout punches, and like any knockout punch, it’s got to be short and sharp, and that’s how we teach our students to prepare rebuttal and surrebuttal.

Now, let me talk quickly about surrebuttal. Although it’s generally not available to respondent, this is also one of the hardest things, if not the hardest thing, to teach our students. Because not only does surrebuttal have to arise out of what came out of the claimant’s points in rebuttal, it’s usually not something which you can prepare very well in advance. And if a party is conducting rebuttal properly and they are only spending a minute or two minutes on their rebuttal, you don’t have a lot of time. And so, for students, this is one of the key parts to learn. It’s a skill and another sub-genre where if you learn that skill makes you a far, far more effective advocate. And again, keep it short and keep it sweet, just like I’m keeping this presentation.

Conclusion and closing. Always want to bookend things. Rajesh had talked about how you introduce the case, have a case theory, have an introduction. Well, you want to bookend that because by the end of the submission or the end of the argument, it’s possible that some of that key facts or key information has gone by the wayside. And so you want to create sort of a soft landing that helps

remind the arbitrator or the judge about the case theory. And Rajesh always uses the term 'big bang' and I like to say that it's, again, the chance to use the tools at your disposal. Using tone, using inflection, using timing, using pace, all of which you get with oral advocacy and not so much with written advocacy. And so you want something which will last and which will stay in the mind of whoever is deciding it.

And, you know, we also see a lot of teams who simply say, 'Oh, I've reached my time limit, I'm just going to stop there.' You know, always want to at least wrap things up and keep twenty to thirty seconds to yourself, so that you give a proper conclusion. And these are the skills and these are the certain sub-genres that we were talking about in preparing for oral advocacy.

And in conclusion, it's a lot of skills. It's a lot of skills but they are definitely teachable. I think Harp and myself are proof of that. I think Harp and I, I mean we both were native English speakers, but we didn't really have the skills. We didn't really know what we were doing, and you know, it was Rajesh and his skills and his teaching and his method which helped form us into advocates and these are skills which we are still using today as barristers. So thank you.

Rajesh: They are very nice to say that I taught them, but now they are far ahead than me like, you know. But the one thing we have to understand and at the end we tell our students that we can teach you everything, but it's like a football game. When you go to the field, we can tell you that you play for the right side, you play for the left side, left side you go from the centre and the ball will come here, here, and you will pass here, and then you will make the goal, then he will be the striker. But then at the end of the day, if my defender has an opportunity to kick the ball in the goal post, should he follow my instruction that 'No, no, no, I cannot kick, my coach said that somebody else will come and kick'? That's not and that's why we say once you are on your feet, you are on your own. You have to make your own judgment. Feel your instinct and go with that and do it. And that's the way you can do it.

We can teach you a skill, but finally, you have to kick the goal. You have to make the goal. And that any opportunity you get it, you do it. And that's the key point of it. And the classic example was that

rebuttal generally comes at the last, but the moot which we won and Harp was mooting here in Hong Kong, he started with the rebuttal. He started with the rebuttal and that was totally instinctive and that's the point we knew that 'Okay, we nailed the other side.' So it was done deal after that. So this was very instinctive, but he used it, and it worked for that. So that's why we have to understand that skills are there, but we also have to give the natural talent.

So the ultimate goal of this project is to share our experience – what we have learnt from our mistakes. We want to share with everyone. Not only the Hong Kong students, not only CityU students, but all the students of Hong Kong. And we also want to share with all other students around the world. What we have made the mistake, you don't have to make the same mistake. And you don't have to reinvent the wheel. Just follow. Just see that. And that's why the videos are so important. So thank you Christoph for your project and getting us involved. So you very much.