

PROFESSOR JOHANNES CHAN MAN-MUN (2): ADVICE ON ORAL ADVOCACY

What makes a good oral legal argument in English?

One is that it is very cultural as well. How to address, or put it the other way, a good argument in a particular jurisdiction may not necessarily be a good argument in another jurisdiction. Sometimes it depends on the way things are expressed and so on.

And apart from the essential, the basics, of course you have a point to make, you know your arguments, you know why you're making them, you know your weakness, you know your strength... And preparing your argument, the best way to start is to always ask yourself what is your weakest point because your weakest point will be the strongest point of the other side. And no matter how many good points you have, you lose on one weak point, you lose the case.

Some judges tend to focus more on the technical side. Other people may focus more on other things and there are cases which I think, if I can't get through the message in the first half hour, I'm doomed on that case. Or I need to convince the court to see the case from a particular perspective and I have to do it in the first hour, if I can't get it there, I will be in great trouble, no matter what good argument I would have. So I think in public law cases, this is probably more important, but even in private law cases sometimes, the first half hour and so, how you open the case, how you define the case for the court, is extremely important.

What are the main challenges of oral advocacy and how can they be overcome?

Having a good point is one thing, how to deliver it and deliver it effectively is quite another. And there is the time pressure there and even more so with oral advocacy because you're always given a period of time to finish. Even in court, the time is not unlimited. In mootings, we give you twenty minutes. In real life, you get more than that. But then, even that, there is a limit there. And I was once before a very senior judge, and the first thing he said was, 'You have to finish your arguments by twelve o'clock. If you can't finish, sit down and shut up.' Very hostile and before I said anything.

So how to deal with that? And sometimes oral argument has to deal with personality as well

because you are addressing a person and different persons will have different approaches and so on. You know your person sometimes helps.

What advice do you have for students who are learning oral advocacy?

The best way is still to do it and sometimes you watch yourself. Video yourself and then watch yourself how you do. A lot of people do not recognize how they speak. You can hear your voice, but you can't see your facial expression, you can't see some of your minor things, how your hands are working, your body language etc. It helps with this and you have to spend time on that. And spend time to think about the effectiveness. Oral argument is not — you're not there just to make the argument for the sake of argument. You're trying to persuade, to convince people. So there's always a sort of interactive element there. You have to follow that person's reactions: why he's asking this question, what is troubling him, so that I can address his concern.

One last thing I tell students is, 'You go to court, see some great advocates. What you've seen is probably two or three hours of work. What you have not seen is the thirty or fifty hours of work behind that. And the more natural they appear, the more preparation it is'. And Winston Churchill is this: no such thing as natural. Natural is practice and practise until you reach the point that you become natural.