



## A reasoned approach to effective advocacy

THERE IS A FINE LINE BETWEEN ZEALOUS ADVOCACY AND BEING A ZEALOT

Legal advocacy is a cornerstone of justice that uses the law and facts to champion your client's cause. A reasoned approach to legal advocacy marries counsel's expertise together with strategic thinking, empathy, passion and a commitment to justice. This multifaceted approach starts before entering the courtroom by encompassing meticulous planning, ethical considerations and collaboration to effect meaningful impact within the legal arena.

Advocacy begins with a profound understanding of the legal intricacies surrounding the issue that you face. It involves in-depth research, analysis of case law, statutes and legal precedents relevant to your client's case. A reasoned legal advocate delves into the nuances of the law, identifying potential loopholes and comprehending the broader context to craft effective strategies. At its core, advocacy involves the art of influencing the decision maker. Passion must be the driving force.

Crafting a compelling argument is essential. A seasoned advocate marshals evidence, legal precedents and persuasive reasoning to support their case. This involves meticulous preparation, gathering documentation, witnesses, experts and effective legal strategies.

Empathy plays a vital role in legal advocacy. A reasoned approach by the advocate empathizes with and truly understands their client's needs, loss, concerns and experiences. This empathetic understanding not only strengthens the attorney-client relationship, but also ensures that the legal strategies align with your client's goals and values. Empathy involves an emotional connection with your client's cause, which is pivotal when you advocate on their behalf. Presenting your client's case in the form of a story helps create a bridge between the issue and your audience that can be compelling. Some might feel that we are speaking about passion.

Passion often translates into persuasive advocacy. When an advocate genuinely believes in the righteousness of

their client's cause, it can be conveyed effectively to the fact finder. Passion can be contagious, influencing others to empathize or align with the advocate's perspective.

However, it's crucial for passion to be balanced with reason and professionalism in legal advocacy. There is no doubt that passion is a powerful motivator; however, effective advocacy also requires sound legal reasoning, strategic thinking and respect for the legal process as well as your opponent. In the end, with all things being equal, passion for your client's cause is what will enable you to prevail on their behalf.

Notwithstanding all of the above, the less-experienced lawyer often fails to appreciate their audience. Do you address a jury the same as you would another lawyer or even a judge? Of course not! It is critical that an advocate understands their audience. As an analogy, this can happen with experts in a trial. The purpose of an expert is to assist a jury or judge with understanding complex technical or scientific issues. However, if an expert only speaks with technical terminology, which is not properly explained in layman's terminology, their testimony will not be understood, nor as effective. Similarly, an advocate needs to carefully address the fact finder so that they make a connection with the listener.

The effective advocate pays close attention to the decision makers by constantly making eye contact with them and, if necessary, modifies their strategy to ensure that your message continues to resonate with the listener. "Sincere" eye contact can indirectly assure the advocate that your message is being followed and understood.

However, there is a fine line between zealous advocacy and being a zealot. Too often the advocate crosses that line.

### Gentle persuasion of the decision makers

Always assume your opposition is smarter than you, and that the judge is not, and prepare accordingly. Your presentation should always politely pull

the judge or jury along with you in a sensible manner. Your goal is to gently persuade the decision maker to embrace your conclusion.

To paraphrase the late great attorney, Darryl DeCuir, "Legal advocacy is the study of words and how those words are woven together to make sense out of life, society and your case."

In conclusion, one last important judicial perspective is that of bias. No matter how much a jury is instructed that they are not to be biased "in favor of or against any party or witness," our biases nonetheless affect the decision maker. To quote a paragraph from CACI 113... "Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions." If the advocate carefully prepares, is persuasive, is reasonable and presents their client's claim with empathy you will have mastered a reasoned approach to effective advocacy.

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