

# Keeping up appearances: a skills guide for the new lawyer

As the GFC recedes into a dip on a line graph, this column was occasioned by an epiphany: the result of attending an Admissions Ceremony in the Victorian splendour of the Banco Court. From the Greek ΕΠΙΦΩΝΕΙΟ (epiphaneia) meaning “appearance”, the multitude of counsel who moved the admission of the newest lawyers made plain the need for this edition’s theme – the lost art of advocacy.



## Talk Talk

While it is widely known that glossophobia<sup>1</sup> is pre-eminent among the social phobias (beating bromidrophobia,<sup>2</sup> eurotophobia<sup>3</sup> and phobophobia<sup>4</sup>), new lawyers need to immunise themselves against this potentially career-stopping disease. In the practice of law, doing it in public is hard to avoid. Other than advocacy *sensu stricto* – before the benches of courts, tribunals and other quasi-judicial bodies – appearing before and persuading clients in conference, partners in meetings, and colleagues at lunch (or wherever else

you may end up with them) is equally as critical to your professional success.

In each situation, the skills possessed and techniques employed by the stellar advocate are the same: they apply from the Magistrates’ Court to the Privy Council.<sup>5</sup> There is a vast amount of literature offering guidance on first appearances. These texts usually deal with practical examples and provide “how-to” guides for bail applications, injunctions, adjournments and trials; they are a useful compass when even finding the starting line is a challenge. Other texts deal with client interview and career management

skills. Common to all these situations is the need to communicate in a manner that wins your audience to your point of view. Master that skill and I guarantee you advancement to the partners’ boardroom within 12 months.<sup>6</sup>

### How to be a communicator

Being an exceptional advocate is not a mystery: it is a skill. Skills can be acquired. The essential skills to be acquired by the new lawyer are those of the professional communicator – think Tony Robbins (without the teeth bleaching).

Here are the skills *seriatim*.<sup>7</sup>

**A good voice and command of language.** This includes tone, timbre and pitch as well as modulation. This keeps your speech interesting, and while one doesn’t need to imitate Winston Churchill

or Martin Luther King Jr, one should avoid sounding like Pee Wee Herman or Hyacinth Bucket. Choose interesting words from the beautiful English lexicon to hold your audience, but keep the meaning clear.

**Firmness, and when required, fearlessness.** In making your point, whether it is an application for bail, providing advice to a client about prospects of success in litigation, or with your employer about your prospects of success in avoiding termination, sometimes it is necessary to call it as you see it.

**Dignity and courtesy.** A caveat to the last skill, in any submission, advice or professional discussion, no matter what position you are taking, always remember that it is strengthened by a cool, calm, polite and dignified exterior.

**Persistence.** Best explained by Thomas Carlyle, Scottish essayist: “Permanence, perseverance and persistence in spite of all obstacles, discouragement, and impossibilities: It is this, that in all things distinguishes the strong soul from the weak”.

**Practical judgment.** What not to say is sometimes as important as what to say. Remember the apocryphal stories about one question too many, and the importance of getting to the heart of an issue.

**A sound knowledge of the subject matter.** Is it the client’s business structure, the elements of a criminal charge, the grounds upon which the court will grant interlocutory relief? The Latin motto holds true: *Sapienter ac Viriliter* (Strength Through Knowledge).

**Insight into human behaviour.** The better your understanding, the more likely you can help the court with the eternal question: Why?

**A logical, rational, reasoning mind.** Averroes defined logic as “the tool for distinguishing between the true and the false”. This is an indispensable aid in any setting.

These skills are, however, of little value in isolation:

*Mere words are not enough. What you say is irrelevant, unless it has an effect on the tribunal. Too many mediocre advocates concentrate upon themselves as the transmitters of the message, instead of focusing upon the far more important receivers of the message, who will ultimately make the decisions.*<sup>8</sup>

What this means in practice is that a little bit of judicial performance can go a long way to getting your way.



## How to be an orator

It has been said that advocacy is like lion-taming. There are many books on how to do it, but there is no substitute for going in among them.<sup>9</sup> Thus, the best way to learn how to advocate effectively is to assess the impact of your skills on your audience; that is, did you get what you wanted? But human oratorical experience, extending from classical Greece and Rome to the French Revolution and Houses of Parliament at Westminster, has provided an enduring framework on which to build an argument. Persuasion, said Aristotle, is the result of determining *kairos* (the opportune moment) and employing decorum (fitting a speech to audience and context).<sup>10</sup> Advocating a position can then proceed by using the tools of the persuasive communicator: Logos, the appeal to reason; Pathos, the appeal to emotion; Ethos, the persuasive appeal of one’s character. Classically, these were known as the intrinsic proofs, being independent of any extrinsic supportive evidence (such as a contract or witness statement). Apply this theory to your practice by following these five Golden Rules of Advocacy:

**Use gestures.** If the medium is the message, then the message is you – we remember what we see more readily than what we hear.

**Use wit.** Courtrooms and interviews can be stern, daunting and sometimes tragic. Try

a humane and self-deprecating humour to lighten the mood.

**Use your voice.** Like an instrument, you can create the mood by how you sound.

**Use notes.** The psychological safety net of the written word is comforting, but forbear slavish reliance on a script, whatever the setting.

**Develop a relationship with your audience.** Magistrates, judges, clients and colleagues respond to persuasion by responding to the person.

So should you find yourself in front of the Chief Justice moving an admission, or in front of an irate managing partner who is moving your bowels, remember these skills and techniques, and you will have no difficulty keeping up appearances.

“Be like a duck. Calm on the surface, but always paddling like the dickens underneath.” Michael Caine, actor. ●

### THEO ALEXANDER

*Barrister, Victorian Bar*

1. The fear of public speaking.
2. The fear of body smells.
3. The fear of female genitalia.
4. The fear of fear.
5. Before the letters-to-the-editor roll in, s74 of the Constitution remains in force, notwithstanding High Court policy.
6. Mere puff: see contra *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256.
7. Tronc and Dearden, *Advocacy Basics for Solicitors*, LBC, North Ryde, NSW, 1993.
8. As above, page 5.
9. J Davies, *The Criminal Advocates’ Survival Guide*, Carbollic Smoke Ball Co Publishing, Farnham, England, 2007, page 1.
10. Aristotle, *The Art of Rhetoric*. Trans. John Henry Freese. Loeb Classical Library, 1982, 1.2.2-3.