Seven Ways to Persuade the Court
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Submissions are written arguments delivered to the Court in support of, or in opposition to, a case. The purpose of submissions is not to argue with your opponent but to convince the Court why your case is better than the opponent's.

1. Precise Introductions
The introduction is for the benefit of the judge for it helps the Court know what the battle is about before they wrestle with deciding the case. The introduction is usually broken into three parts: a preliminary statement, a statement of the case, and a statement of the issues. The three parts should work together in rhythm. In all, an effective introduction should be precise and as brief as the nature of the case permits, but it should be compelling.
The introduction should contain the pith of the whole case by capturing the case in a single relevant line. For example, the preliminary statement can state "Parliament does not hide elephants in mouseholes" in a case on statutory interpretation (See *Whitman v. American Trucking Associations, Inc.,* 531 U.S. 457). You can find such catchy phrases and literary styles in judgments, films, or literature, or you can also create your own. You can even consider using poetry, and other literary devices such as sarcasm, satire, alliteration, irony, or parody when illustrating various points. Try to make your brief as interesting as possible while tackling the issues.

2. Elementary Analysis
The judge "rarely performs his functions adequately unless the case before him is adequately presented" (Louis D. Brandeis, *The Living Law*, 10 Ill. L. Rev. 461, 470 (1916). You should build your submissions by reference to the elements of the cause of action. The submissions should follow the style of the pleadings: the pleadings are only as strong as the material facts, and the submissions should follow through by fleshing out the elements of the claim. For example, after the pleadings have shown the material facts giving rise to negligence, the submissions should show the precise elements of negligence, how the evidence proves each of the elements, and what the law requires in consequence. The submissions should restrict themselves to this elementary structure.

The "risk" of drafting submissions using this elementary structure is that arguments may be shorter than "normal". Most submissions run into hundreds of pages; it is as if counsels are competing to see who will terrify the other by the sheer volume of their endless paragraphs, they fear that if they state precisely what they need in as few words as possible they may be accused of incompetence. But in the midst of this, the Court suffers, and the client may lose; the arguments are not meant for the opposing counsel, they are meant for the Court.

You are not making the Court's work easier by saying in fifty-nine pages what you could say in five. There is no preferable number of pages (though some Courts do specify), but it is always easier to persuade the Court when the judge does not need to comb through a wilderness of overblown adjectives to get to your point. Do not make the Court work hard to understand your brief. You are more likely to get what you ask if the Court feels that you have truly digested the issues for it and simplified the case to its elements.

3. Relevant Authorities
You must select your authorities carefully considering the Court in which your case appears. Binding authorities are preferable and more useful than the merely persuasive. Do not tell the

Court it has no choice – show why the relevant authorities obligate it to do or not do a certain thing, then let the Court tell itself it has no choice in the matter. Do not tell the Court it has a choice in the matter when clearly it does not, for example, by concealing contrary authority. If there is an authority forbidding the Court from a thing, do not conceal it – state it, and provide any available exceptions; if none, consider finding justification in different authority – if none, concede and save the Court's time. When judges receive your arguments, they are looking for persuasive analysis – give it to them.

The quotations (as drawn from authorities) you rely on in your submissions should support your analysis of the issues and the facts. It is likely that the judge has already read the quotations you are reproducing in your arguments, therefore, restrict the length of relevant quotations to a reasonable minimum. A quotation that runs into three pages or more is unnecessary, and it reduces the strength of your arguments. The quotations should not only be kept to a reasonable length, but they should also be relevant to the case. More importantly, you should simply weave the law into your arguments, so you do not have to rely heavily on quotations.

You must refrain from overstating the utility of any quotation to the case in hand. And when responding to the submissions of an opponent, do not understate the relevance of the quotations they have used; you must deal with them directly – concede where necessary, distinguish the authority if possible.

Ensure you check all your authorities before citing them, and their history within the judicial system. Your submissions may be deeply undermined by citing a case that the Court had already declared is bad law.

4. Accurate Citations

While drawing strength from the authorities, the submissions should also make proper cross-references to the evidence and the pleadings, but the submissions cannot raise a new ground that is not contained in the pleadings or the evidence. A proper cross-reference can be made through footnotes, or by in-text references, depending on the practice directions of the Court.

In-text references are more appropriate for cross-references to the evidence and pleadings while footnotes are for case citations. Whether you provide the list and digest of authorities or not, you should ensure that all the authorities are accurately cited so that the Court can easily trace the cited source. You may even provide hyperlinks for ease of access.

5. Respectful Tone

The tone of your submissions, as with all your pleadings in Court, should be firm, respectful, deferential, and direct. As such, there are things you must observe in all cases:

- Avoid personal attacks, or insults, against the opponent (or the Court itself). Personal attacks include making unfair comments on the learning capabilities of counsel, describing the opponent's submissions as ridiculous, spurious, baseless, disingenuous, instead of addressing the points in substance. Do not impute mischief to counsel without clear evidence of a violation of ethical rules.
- On appeal, do not insult any judge of the Courts below, whether directly or indirectly. The appellate Court, or any Court for that matter, does not look kindly upon counsels who, under the cover of passionate argument, insult the

members of the bench. Counsel's privilege to raise all reasonable arguments is not limitless; it may lead to contempt of Court.

Beware of the sensitivities and preferences of the bench and follow their lead unless this would work an injustice to your client. When departing from their preferences, show why you have done so with good reason.

Even if you believe yourself to be more knowledgeable than the Court, do not let it seep through your submissions. Keep your intellectual arrogance to yourself, but also do not be so timid as to fear stating the prevailing position accurately, for example, if a decision is *per incuriam,* failed to consider certain facts, disregarded certain evidence without good reason, ignored a statute, a controlling precedent, or a change of circumstances, plainly state that and show the consequences and relevance to the case in hand.

6. Reasonable Remedies

You should state precisely what you would like the Court to do for your client. The remedy must be reasonable, not one that the law clearly states cannot be granted by the Court. It is preferable to list the remedies required at the beginning of the submissions, but there is no harm if you state them at the end. What you cannot do is leave the Court to look for them. The Court should know exactly what you want it to do. For example, do not simply say "we pray that this Court overturns the judgment of the High Court", you should unbundle that statement into the various elements of the impugned judgment: "we pray that this Court declares the statute unconstitutional because the reasoning of the High Court misinterpreted the Article 3D4 of the Constitution." The Court is more likely to take your arguments seriously when they are precise as opposed to when you simply make general statements.

7. Appropriate Conventions

Conventions are rules and practices that are not to be found in any written law, but which are nevertheless habitually obeyed and regarded as binding when practising before the Court; the practice of the Court is the law of the Court for the Court is a master of its own practice. The settled practices of the Court may not be found in any statute, but one can easily find out their import by consulting with fellow members of the profession who have practised in the specific Court. But in our day, the Courts have increasingly tried to make our work easier by issuing regular practice notes and directions. Therefore, there may be conventions that apply to a particular Court, and you would be well-advised to find out what they are before filing submissions, for example, certain judges may have special requirements as to typography, and so on. As a written type of persuasion, the content of the submissions is just as important as its presentation.