SINGAPORE ACADEMY OF LAW ANNUAL LECTURE 2012 – "THE ART OF ADVOCACY"

The Right Honourable The Lord Igor **JUDGE**
Lord Chief Justice of England and Wales.

1 I am grateful for the honour that has been done to me in inviting me to deliver this annual lecture. My wife Judith and I are privileged to be here and, if I may say so, we have already been shown huge kindness and much traditional courtesy.

2 Coming here, to a country that, by its history and geography, is one of the world's great hubs of air and sea routes – small in size but vast in achievement and aspiration – reminds me of my own place of birth in a tiny island, which has for centuries been a hub and the heart of Western European civilisation, but where classical Arabic is the native tongue – the island of Malta.

3 My mother is Maltese. I was born there during the war, in the middle of a bombing raid. As she pointed out to us not so long ago – because, happily, she is still with us – that if the bomb had come 15 yards closer, we would all have been dead, and we would.

4 Once Malta, like Singapore, was part of the British Empire. Now, like Singapore, it is an independent and proud Republic. And there is an astonishing symmetry about this. I saw your flag, and the flag of Malta is also red and white with a little embellishment in the corner, only the Malta flag is the other way around. But isn't it extraordinary that I come all this way and there is this link? Now both those communities – both your community and the community of Malta, and for that matter, the community in Britain, are fortunate – the rule of law prevails.

5 I am just going to repeat those words because they can be far too easily taken for granted. In all these three communities, the rule of law prevails. Let us pause and be grateful.

6 For today's purposes I shall identify one irreducible aspect of the rule of law, and it is this: an independent legal profession appearing as advocates before independent judges, in a relationship that is marked by mutual respect. That is my thesis.

7 Advocacy is not a matter of nationality. Every community throughout history has found its great advocates. You all remember ancient Greece, Demosthenes teaching himself to be an advocate by going down to the seashore and speaking with pebbles in his mouth, above the sound of waves so as to make sure that his voice could be

heard in the assemblies in Athens, where thousands of people would meet. He appreciated that the advocate's voice was a weapon that would be absolutely useless if it could not be heard.

8 But why I was asked to speak about advocacy baffles me. I once went to the House of Lords. I am going to use words that no advocate should ever use but I did to myself then, and I say again, I went to the House of Lords with a cast-iron winner, on a point of statutory construction that I could not lose. My opponent stood up (he was the appellant) and within one minute, certainly no more, one of the learned Law Lords leant back in his chair, opened his arms wide, yawned slightly and said, "When I was on the Law Commission, what we [had] meant [for] this statute to provide was …", then he went on with a meaning that was the precise opposite of what the statute said. In this way, I lost to a certain winner, and I lost it five–nil. Within two years, the House of Lords, some of whom were the same members who had thrown me down five–nil, said that the decision was to be confined to its very narrow and particular facts. In other words, they had been talking rubbish two years earlier. But on that occasion, I was not the advocate. So what it comes to is that the person addressing you today lost a certain winner, which two years later the House of Lords said he should have won. What sort of advocate is that? So I went and became a judge. And having established my absence of credentials, I think I'd better go home now. So I will. Cheerio!

9 Well, I have decided to stay. You have been kind to us; I'd better give the lecture. Just a word or two about context though: wherever I use the word "his" or "her", I always include "she" or "he"; and "court", where I use it, includes arbitration or tribunal. Although the programme refers to five separate headings in this lecture, I am dealing with them compendiously.

10 So let me come back to my basic thesis. Great damage to the administration can be done when there is an absence of mutual respect between the judge and each of the advocates. Of course, we all know, you all know, some advocates are better than others. You can't say, but I can. But we also all know that some judges are better than others. That's the reality of life. We also know – do we not? – that there are sometimes personality clashes between advocates, just as there are, on occasions, personality clashes between a judge and an advocate. Of course, all this is true: we are dealing with human beings. But the essential feature that I am driving at is this: there must be what I shall describe as "institutional respect". Justice is better served when there is a degree of professional harmony between the legal profession and the judicial office holders.

11 Lord Bingham of Cornhill, one of my predecessors, went rather further than I would have gone, quoting an observation of the philosopher, Piero Calamandrei:[1]

> The judicial process will have approached perfection when the discussion between judge and lawyer is as free and natural as that between persons, mutually respecting each other, who try to explain their points of view for the common good. Such an arrangement would be a loss for forensic oratory but a gain for justice.

12 Now you don't very often disagree with Lord Bingham – certainly I don't. But I respectfully disagree that there can be a discussion of the kind envisaged in this quotation. There are, of course, formalities within the processes of law that are essential to the orderly discharge of business. More importantly, whether in a criminal or a civil case, the advocate is acting for a client. The judge has to listen to rival cases and make up his mind between them. The role of the advocate is dual. The advocate has obligations to the court but it is the undoubted responsibility, as your Chief Justice has just indicated, of every advocate to advance the case of the client – however unpopular it may be – in its best light and to the best of the advocate's ability. The judicial objective is different. It is a process involving high-quality advocacy on both sides of the case – the prosecution and defence, plaintiff and defendant – that produces the answer required by truth and by law.

13 So the crucial words in the quotation are "mutual respect". That is an expectation that the judge is entitled to have from every advocate, and every advocate is entitled to receive that from the judge, an expectation based on the clear understanding of each other's different responsibilities in the administration of justice, but not too cosy, not as cosy as Piero Calamandrei had implied.

14 Perhaps, in the end, he overlooked that litigation is not a symposium between distinguished commentators in a great academic institution, but a legal process that, so far as the parties involved are concerned, will involve answers that provide life-changing consequences such as the deprivation of liberty and punishment, financial disaster, the removal of children from one or the other parent.

15 And as judges in this overall context, we have to remember that the simultaneous duties of the advocate – to the court and to the client – can create very difficult problems of professional judgment, and that in any event there is a principle of legal professional privilege, which means the judge cannot know the whole story or the particular pressures under which the advocate is working. Before we seek to

1 Piero Calamandrei, *Eulogy of Judges* (John Clark Adams trans) (Prince University Press, 1942) at p 27.

criticise the advocate, we need to remind ourselves not only of the problems that we can see for ourselves, but also more importantly that we probably do not have the fullest idea of all the problems the advocate is currently facing. As for the advocates, there are advocates – might I possibly suggest with the greatest possible respect – who, perhaps on occasion, fail to appreciate that the answer to many cases is neither as straightforward nor as simple as the advocate on one side or the other thinks that it really must be. Perhaps all the advocates here will respect the problem identified by King James VI. It's a lecture in itself. But at the early part of his reign at the start of the 17th century, he decided that he should exercise a judicial function. After all, the king is the fountain of justice so he would sit as a judge. He discovered what every judge in every jurisdiction very rapidly recognises. I quote:[2]

> I could get on very well hearing one side only, but when both sides have been heard, by my soul, I know not which is right.

16 Perhaps I can sum it up in this way: when I was in practice at the Bar, the worst sort of judge was the sort who knew all the answers; when I became a judge, I discovered that the worst sort of advocate was the one who thought I was completely stupid and thick. Both tended to bully rather than persuade. And if nothing else, advocacy is the art of persuasion. Notice it is an art, not a science. If there is one message I can give, and I do give it time and time again, it is that advocacy is a most personal, individual skill, with different forensic techniques that have to marry up with and be consistent with the character and personality of the man or woman advancing the case. Let me give an example. If you need a major operation, say, to your leg, there will be a large number of surgeons specialising in the field, available to help and advise you. Each will have his or her own bedside manner. Each will help you before the operation with his or her bedside manner – or hopefully will help you with their bedside manner; most surgeons I have had to deal with have terrified me in advance but let's let that pass – and then after the operation, assist you in its aftermath. The bedside manner is a reflection of their personalities and characters. But that is not the operation. The actual process – of course, I am simplifying – of cutting into your leg and into the body and working away at the complex structures found there proceeds in a way that, allowing for the minutest variation in technique, is more or less identical. And it all takes place in private, in an operating theatre.

17 Please don't misunderstand me. I am not, of course, referring to pioneering operations, to operations that go just that little further than ever before because medical science has advanced. That is a different matter. Nor am I decrying the care, skill and professionalism involved.

2 John Hostettler, *Champions of the Rule of Law* (Waterside Press, 2011) at pp 36–37.

But the operation itself is not personal, in the sense that the personality and character of the surgeon has a direct impact on the processes.

18 Now let us take advocacy. Identify any difficult criminal trial. You can find ten good quality advocates to defend the case or to prosecute it. Each of them, if they are any good, will study the papers, think about the case, reflect on how to approach it, and come to court and present the case as each of them judges best. And this is true, whether the case is criminal, civil, family, planning, tribunal, first instance, arbitration, appeal court, or any of the myriad of tribunals in front of which advocates may appear. There are many good advocates. But they do their cases differently.

19 To begin with, the advocate has to be comfortable with his own way of doing things, with his own personality, with his own style and attitude to the case, his way of dealing with the judge and the witnesses – all are reflective of his personality and character. And he is carrying out his responsibilities in public. Indeed, just about everything an advocate does is done publicly. His client is not under anaesthetic; he is there, observing it all for himself. So are all his colleagues, and believe me, colleagues spot your professional forensic blunders as soon as you make them. I always used to hear a titter when I made mine – that was my learned friend making the most of it at my expense. I never tittered in reply, of course – you understand, I was a gentleman.

20 So the profession of advocates is working in public, in a constantly changing and fluid forensic situation over which, no matter how much preparation the advocate has made, he has no complete control, and indeed in which, if he is over-prepared, he may stick too long to the script, clutching it like a child with a cuddly comforting toy. The best advocates respect and understand the imperative of the moment, they are alert to its needs and they are flexible to the changing momentum in a case. Sometimes these changes are very subtle, apparently tiny movements in the atmosphere. But you never quite know what answer will be given, or the way in which a piece of evidence that you anticipate will emerge. And you have to be ready for it. You – that is, the advocate – have to be ready for it. Fully prepared, but not over-prepared. Anticipating the improbable, but unable to predict what form the improbability will actually take, but flexible enough to cope with whatever form it may take. This is why it is about you, about the individual, the human being who is wearing the robes of the advocates' profession.

21 These are the sort of reasons why I describe advocacy as an art. The truth is that persuasion is an art. And I want to give you examples of persuasiveness that have absolutely nothing to do with the court process but illustrate it. I have used these examples before, and I make no apology for doing so. I am going back to some research into "D-Day"

in 1944. I know you have your disaster history of the 1939–1945 war – so have we. This history may not be as vivid for you as it is for us in Europe, but in summary Nazi Germany had overcome the entire continent of Europe, and to relieve Europe of the thrall of Nazism, an invasion of Europe was planned. It succeeded, but my goodness, it was a most remarkable success, and the opportunity for failure was enormous. But huge numbers of men were gathered together to sail across the Channel to die in order to save Europe. And here are the words of three different commanders to the men under their command. All of them, of course, united in fear and apprehension of what lay ahead, and all knowing that there were going to be many casualties.

22 The first commander said:[3]

> Look to the left of you, look to the right of you, there is only going to be one of you left after the first week in Normandy.

23 The second, said:[4]

> What you are going through for the next few days, you won't change for a million dollars, but you won't want to go through it very often. For most of you, this is going to be the first time you are going into combat. Remember that you are going in to kill, or you will be killed.

24 The third pulled out a large commando knife, flourished it above his head and shouted:[5]

> Before I see the dawn of another day, I am going to stick this knife into the heart of the meanest, dirtiest, filthiest Nazi in Europe.

25 Let's pause. I am talking about persuasiveness. The first commander was factually correct. The casualties were going to be and they were, in fact, horrific. The second tried to suggest, by way of inspiration, that they were all going into something of an adventure, a once-in-a-lifetime adventure. The third was utterly unrealistic because he knew, and the men he was addressing also knew, that the meanest, filthiest Nazi of all and all his close allies were nowhere near the coast of France, let alone the coast of Normandy but bunkered down in Berlin.

26 Now relate this to the trial system. For a judge sitting on his own, perhaps the second of these efforts could have represented the most persuasive advocacy. For a trial by jury – still our system, although I know perfectly well not yours – perhaps the third. And for a court of appeal of three judges, perhaps the first was best. Each tribunal demands different advocacy techniques.

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3 Antony Beevor, *D-Day: The Battle for Normandy* (Penguin Group, 2010) at p 24.
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27 And returning to the quotations, the significant feature is that the words chosen by the three commanders were addressed to groups of men who were in identical positions of fear and apprehension, and the commanders themselves, when all is said and done, were young men too. They were crossing the Channel with their men, their risks were identical to their men and, no doubt, they were equally apprehensive and frightened. So what each of them said was a reflection of his own personality, of how he felt able to inspire them at a moment of profound responsibility, at a time when he was in deep apprehension. In other words, they used words that their personalities led them to use.

28 The advocate cannot be anything other than his own man. He cannot be somebody else. He cannot be trained to advocate in a way that is not a reflection of his or her own personality.

29 We are, as I emphasise, talking about persuasiveness, persuading the tribunal. The point of construction of tax law or a charter party is quite different from a criminal trial arising from a homicide, which may or may not have occurred in unreasonable or excessive self-defence. Of course, before any tribunal, there is nothing like standing still most of the time; keeping your hands out of your pockets always, not waving your hands about like a conductor who has got the Valkyrie to conduct when Wagner is really blasting away on the trumpet. That is no good. The judge is looking at your hands and wondering when they are going to fall off. Look at the court, if possible, engage the eye of the judge, speak clearly, modulate your voice; remember your voice, your crucial weapon; modulate the speed at which you speak. Occasionally when you are losing the court's attention, just drop your voice – not shout.

30 And then as some of you are doing now, you lean forward to hear what on earth is coming next. Unless you have bored the court into somnolence, the judge will lean forward to try and pick up what you are saying, then you return to speak more loudly. If, of course, you bored the judge into narcolepsy, I'm afraid you're not going to be very good because you should have spotted that at an earlier stage. Silence – silence has its important moments. The pause can highlight that moment, and can add great emphasis; much greater than the shouted word.

31 May I respectfully suggest to you, particularly to the young among you, don't forget to listen. Listen for the hesitation in the evidence of the witness, listen for the issue that seems to be interesting judges in the court of appeal and with which your opponent seems to be having some difficulty. Listen to what your client is telling you. I found that out when I had clients who suffered major personal injuries usually in car accidents in the days before you had a headrest, whose spines were broken at the back of the neck. You wanted to hear what they were not telling you. You wanted to hear what the catastrophe had done to ruin

their lives and which they were not prepared to talk about until they decided they could trust you.

32 Listen, listen. Don't bury your head in your papers. If you do, you will miss these important moments. And I repeat, don't forget the pause. If you have a good but slightly complex legal point, let it sink into the judge's mind. Give his mind time to work, to mull over, to chew over the complex point you're making. And if you are cross-examining a difficult witness who, you have reason to believe and your instructions tell you, is not telling the whole truth, a pause by you will often lead the witness to want to fill the silent gap, and in doing so, he may give something away that he might rather have kept hidden.

33 One of the great advocates of my early days was an Irishman called James Comyn. He was appearing before Lord Denning, famous in England and, I suspect, throughout the world, for his concern of the man we describe as the "little man". Comyn was appearing in front of Denning in the Court of Appeal on an absolutely hopeless appeal for a tenant against the landlord, and he began knowing that there was very little law on his side, if any. These were his few opening words:[6]

> In this case, I appear for an 87-year-old widow, whose husband was killed in the last war, and she'd lived in this house where he left her to go and fight for his country, ever since.

"Come, come, Mr Comyn," said Denning, "This is a court of law, not a court of sympathy."[7]

34 And there was then a long pause. Comyn did not break into it. He let it linger and linger, waiting for the moment. And then Denning filled the gap, "How old did you say this poor old widow was?" That was fabulous advocacy – not rushed nor forced, just fabulous advocacy.

35 In this pantheon of advocacy, I offer you two further stories. Just about every common law jurisdiction claims this first one for its own, and for all I know, you here in Singapore may claim it for yourselves. If you do, I apologise but it always raises a laugh on these occasions. The advocate for the appellant opened his case in this way: "My Lords, in this appeal, there are three points. One is arguable, the second is not arguable, the third is overwhelming."

36 And the court responded in a calm, sensible, balanced way that judges do, "Well, why don't you tell us what your overwhelming point is?"

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6 Edmund Heward, *Lord Denning: A Biography* (Barry Rose Law Publishers, 1997).
7 Edmund Heward, *Lord Denning: A Biography* (Barry Rose Law Publishers, 1997).

37 "Aha," the advocate said, "That is for your Lordships to discover."

38 Now, it is a great story. I love it; I tell it at every opportunity. Now why? There are here a large number of advocates of distinction and promise as well as many judges. And we all titter because that is a story in which the advocate has undoubtedly outsmarted the court. But to what end? Was this best way to persuade the court to find for him and his client? The answer to that is "no". So it is a good story and it was bad advocacy.

39 Let me now come to a different approach in our Court of Appeal Criminal Division. This is a story from England. It was told to me by the Lord Justice of Appeal who was presiding in a very busy court on a very busy day when things had taken a long time, and the court was in a hurry to complete its list. And, in truth, it was rather a hopeless appeal against sentence. A young counsel stood up, and within minutes – I am sure your judges don't do this in Singapore, but in England I am afraid we do – the court was intervening, interrupting, "Oh, what about so and so. Have you thought about this? Have you thought about that? Well, why not? Three bags full." On and on they went at counsel, and suddenly again the way it happens in England but, of course, not here in Singapore, they all had to pause for breath. So they did. The counsel said quietly, but firmly, "My Lords, I know I am not going to get this aeroplane off the runway, but could you at least allow me to drive it out of the hanger?"

40 Sublime advocacy. It stopped the court in its tracks. It made the court listen. And the Lord Justice involved told me, "He was marvellous, he never did get his plane off the runway, because there was nothing in his case, but it was marvellous." The court was put in its place, and the advocate was serving the interests of his client. He behaved courteously, firmly, respectfully, and with mutual respect the court recognised that he was right and they were wrong, and from that moment on, treated him with the respect to which he was entitled.

41 One of problems of the modern world is that time has not expanded proportionately to the material being created in every aspect of our lives. I could go on about that, but I won't because there are still only 24 hours in a day, and 60 minutes in the hour. The legal system is affected in the same way as other parts of our society. Our trials – I am speaking now about England and Wales – are taking longer and longer, and the technique of advocacy has become much more diffused. Certainly in England, modern advocacy doesn't seem to have much use for Rudyard Kipling's six wonderful friends. I read long transcripts of questioning of witnesses that, for a start, very rarely contain a question,

which virtually never reflect his advice and which I strongly commend to you all:[8]

> I keep six honoured serving men, they taught me all I knew, their names are 'what' and 'why' and 'when', and 'how' and 'where' and 'who'.

42 Virtually any question in any court can begin with those words, and for the purposes of cross-examination, perhaps the word "did" could be added to them and, of course, on occasion the "why" can become "why not". "Did you so and so and so and so? Why?" Or, depending on the answer, "Why not?" Much better than just charging in, ask the question beginning with those words.

43 We must be far more austere in our system and, I suspect, throughout the world, in our use of time. There is a fairly simple principle, which I endeavour to encourage at home. It is this: neither the advocates nor the parties to any form of litigation, whether criminal, civil, family or whatever, are entitled to take as much time as they like to develop their cases. Time is a resource. It is a finite resource. It is perhaps the most certainly finite of resources. Of course, both sides are entitled to a reasonable opportunity – a reasonable opportunity to deal with the case against them, to present and advance their own cases. But where a case takes longer than reasonably necessary, it presents a huge disadvantage to the litigants, in terms of nervous energy and costs, and it has a knock-on effect on all the other cases waiting to be heard.

44 Ultimately, it begins to undermine confidence in the administration of justice. I would like to think that throughout the common law world, we can persuade judges and advocates of this fundamental: it is a confusion to regard the length of time taken by the case as any evidence of the quality of the advocacy involved. I quite understand that if a lawyer has to spend days, weeks or months preparing a case, he will think that the length of the trial should bear some proportionate length to the care, time and trouble he has taken. But surely the point of preparation includes work designed to exclude what doesn't really matter very much. If you have one authority from your Supreme Court that established the principle, why do you need ten that make the same point in different language? I was, you say, too busy to write a short letter – the same with arguments.

45 Now one of the reasons why our cases take longer is, of course, the increasing length of our judgments. That's not the responsibility of the advocate. I am speaking now for us in Britain, but again I don't think the problem is confined to Britain. It may not apply here but there

8 Rudyard Kipling, "I Keep Six Honest Serving Men" in *The Just So Stories* (Macmillan & Co, 1902) at p 5.

are certainly common law countries where it does. Judgments are not academic disquisitions, nor are they are arguments of counsel. Judgments are the legal principles that the court has applied after the advocate has identified the legal principle that he wishes the court to apply. If necessary, where an existing principle has been modified or extended, it sets out precisely why and the basis for the modification or extension. The judgment explains to both sides who has won and lost, and why. And just because the court has chosen not to deal expressly with the endless elaborations of argument, or indeed every submission advanced or every authority referred to by one side or another, it does not mean that the court has ignored them. If they are not referred to in the judgment, it is because the judge has decided that they have no bearing on the ultimate outcome. Don't be offended if your lengthy argument produces a two-paragraph judgment – it is not personal.

46 Much the same point indeed perhaps arises even more strongly with the written arguments – what in England we call the skeleton argument. Now let's look at that as a form of advocacy. This is the written persuasion. The pen or, nowadays, modern technology – computers and modern technology in different forms – are being used to produce something for the judge to see and read, rather than the voice being used for the judge to hear. I am not sure I dare say this but I am going to. Whichever you do, the advocate needs to engage the brain. This is a remarkable change to the common law tradition, which is founded on the orality.

47 But these written arguments have developed their own technique; there is much more flesh on the skeleton than there ever used to be. Obviously, when a judge reads a prepared written argument, he will be impressed. Let me tell you about me. I read the appellant's written argument. By the time I turn the last page, I think, "Well, he's going to win. Let's go, that's it." It is obvious and clear. But then I am a fair-minded judge and I think, "Well, I'd better read the other side's case." And I read the written argument for the respondent. When I finish reading that, I think, "Wow, he's got to win." So it is advocacy. However, like oral advocacy, the art of preparing a written submission is more subtle than it looks. Mad thought! The document should be prepared for the purposes of the court. It is the court that is being persuaded to help the judge to find for your client. Sometimes I believe – I have said this in England and I have never had anybody challenge me – in England that these arguments are written for the client, so that the client can think that the big fat fee he is paying for the advocate is fully justified. And so they go on and on and on. Because if you just write a skeleton argument saying the appellant should win because the judge has not applied the rule in *Foss v Harbottle*,[9] he'll wonder why he was

9 (1843) 67 ER 189.

paying you all those thousands of pounds. Sometimes in the cases of countries with divided professions, they are written to impress the solicitor who is instructing the advocate. The problem therefore can sometimes be a lack of focus. Please allow me to repeat myself. The objective is to persuade the court, not to impress anyone else. I am also going to enjoy saying this: whether you like it or not, I am looking at the advocates in the hall, judges are just ordinary human beings. And you know something about ordinary human beings? They tend to listen more carefully and follow more closely the advocate who seems to them to have thought carefully about his submission and to advance submissions with real weight, rather than those that look as though they are grandstanding to somebody else.

48 The written submission has had some unexpected consequences. Some advocates who are masters of the written submission are not as good when it comes to oral presentation. An increasing habit we have, and I do suggest to you that you don't allow it to develop here, is the habit of the advocate reading his submission. And this habit can lead to the destruction of the oral process. Your voice could command attention, it is your weapon but it can cause boredom. Your PowerPoint presentation may reveal that you're fantastically adept with modern technology but make sure it doesn't diminish your advocacy.

49 Let me offer this to you:

> Do your Lordships have my skeleton argument? You do? I thank you so much. I am looking at paragraph, no … sorry, so sorry My Lord, paragraph 47. Erm, does Your Lordship have it [to the second judge] … No, paragraph 47. Right. 'Fourscore and seven years ago, our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the propositions all men are created …' Am I going too fast for your Lordships – oh I am going too slowly. I am so sorry, I'll move on. 'Now we are engaged in a great civil war, we've come to dedicate a proportion of that field to the final resting place for those who gave their lives …'

50 And so, one of the great speeches of history can be destroyed by an advocate reading his submission. Would any of you listen to any of that? Would Abraham Lincoln have ever, ever been known of in that context if he had delivered his speech in Gettysburg in that way? Of course not.

51 Two brilliantly written arguments, and the judge does not know which side is right. What's the advocate to do? One of them must be wrong. One of the arguments must be flawed. The advocate's responsibility is to identify the flaw, to reveal the leap in a logic that slides over the difficulty in the argument. Now this ability in the advocate to deal with issues that trouble the court in the context of written submissions is much harder than it looks. It requires at least as much

preparation as the written argument. And I want to offer one piece of advice that many advocates at home do not seem to have mastered. I suspect it's something to do with training. Of course, you will think about how to advance your own case. That is elementary. Sometimes you get so enmeshed in this part of the process that you fail to think through where your own case is at its weakest, and where your opponent's is at its strongest. Concentrate on those issues. Be ready with the answer at the hearing. When I was at the Bar, I asked myself this question before going into court. I regret that I wasn't able to find an answer to this particular question when I went to the House of Lords and lost five–nil. Because here's the question: "If I were the judge in this case, what would I ask me?" It is a very salutary lesson. Your own case, brilliant, frills, whizbangs and all – but what about the weakness in it? What's the judge going to ask me to deal with? He knows all the good points.

52 The average advocate can deal with all the points in his own case and advance them. The best advocates have thought about and are ready to deal with and address the aspects of their opponent's case at its strongest, and their own case where it is weak and problematic. This is integral if I am to say so, to the preparation and quality of preparation of every argument, whether written or oral.

53 In the end, however one dresses it up, we are – are we not? – in the judicial process, engaged in doing justice according to law. The quality of this process is heavily dependent on the quality of the advocates who appear before us in our courts. It really is as simple as that. The importance of the role of the advocate in contemporary systems is completely undiminished. It is not one jot less important now than it used to be. Techniques may have changed with modern technology, modern methods, the use of the PowerPoint and so on. The modern world with all the dramatic, revolutionary changes with which we are becoming familiar, has not altered these principles. Indeed, in some respects, the importance of the quality of the advocates has been enhanced, not least because the law has become so very much more complicated. But important as all this is, the basic techniques of persuasion, flexibility, of alertness to the moment and, most of all, of the advocate being the advocate that his or her personality and character makes them, is unchanged. And 70 years later, any advocate will continue to recognise the reality of the observation of Justice Jackson of the US Supreme Court, who said that when he was in practice as an advocate, he had three arguments ready for every court appearance. Now that sounds too good to be true until he goes on to say the three consisted of:[10]

10 Robert H Jackson, "Advocacy before the Supreme Court: Suggestions for Effective Case Presentations" (1951) 37 ABA J 801 at 803.

> First, came the one that I planned – as I thought, logical, coherent, complete. Second, was the one actually presented – interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating argument that I thought of after going to bed that night.

54 I must come to an end but before I do, I hope that some of the more matured members of this audience would allow me briefly to address the younger members of the audience.

55 I was an advocate for 25 years. I absolutely loved that profession. The daily combination of responsibility and stimulation meant that some days, of course, were good – things went well. Some days things didn't go so well and maybe you learnt a lesson and they didn't. But I never remember a single dull day. I don't remember driving off to court without feeling the adrenalin start to run. I made lifelong friendships with those who were my opponents, competing for work with me. And however their capabilities varied – some were outstandingly wonderful and some were less good, with only one exception that I have never forgotten and I will take with me to my grave – every single one was a man or woman of personal integrity. Isn't that a wonderful way to spend your life with such people around you, doing such work?

56 The advocacy profession has never been easy. But nothing that is easy has ever been worth very much. And you cannot succeed in anything unless you try and you put your whole heart and soul into it. Please, if you want to be an advocate, don't be put off by the difficulties. I am perfectly well aware of them, and perfectly well aware of them at home. It has always been very difficult to get started. It is very difficult to maintain a practice; people are choosy.

57 But in the end, in life, you have to live with yourself. Now imagine that you backed off on something you really want to do, you have to live with yourself for the next 50 years or so. You have to live with, "I didn't have the guts." Imagine if you do your best and it doesn't work out. "Well, I gave it my best shot." And perhaps no less important for those of you for whom it works and on whom luck has shone, and if you do succeed – there will be times when the luck has shone on you and not on somebody else who is competing with you for the same work – do remain humble. It is not all down to you. Luck is involved. And perhaps I'd better end by saying good luck to all of you.

58 Thank you very much indeed.
