

PRACTICAL ADVOCACY

A PAPER PRESENTED BY CHIEF FERDINAND OSHIOKE ORBIH AT A SEMINAR ORGANIZED BY LAW OFFICERS ASSOCIATION OF NIGERIA, EDO STATE CHAPTER

I think it is appropriate to congratulate the Edo State Chapter of the Law Officers Association of Nigeria for organizing this seminar whose theme is “**Law as a Tool for Social Engineering.**”

Since all papers to be delivered in the course of this seminar are expected to be approached against the back drop of this theme, a word or two on the theme before we proceed to the topic of this paper will not be out of place.

Law is defined inter alia as the aggregate of legislation, judicial precedence, and accepted legal principles; the body of authoritative ground for judicial and administrative action¹

According to Roscoe Pound in his essay – “more about the nature of law”

*“There are two ideas that run through the definition of law; one an imperative ideal, an ideal of a rule laid down by the law making organ of a politically organized society, deriving its authority from the authority of the sovereign; and the other a rational or ethical ideal, an ideal of a rule of right and justice deriving its authority from the intrinsic reasonableness or conformity to ideals of right and merely recognized, not made by the sovereign”.*²

An engineer is someone who plots or contrives to bring about. When therefore you dwell on law as tool for a social engineering, you are more or less saying that law is an instrument for social change, development and/or improvement. This is why we submit, without any fear of contradiction, that advocacy is of paramount importance in the quest to use Law as an instrument for social engineering.

WHO THEN IS AN ADVOCATE?

An advocate is a person who assists, defends, pleads or prosecutes for another³. The status of an advocate carries with it, enormous responsibilities to the legal profession, the court, the client and the society at large. These duties and

obligations are very well encapsulated in the following passage from Lord Denning's book, "The Discipline of Law"

"An advocate is a minister of justice equally with a judge. No one save he can address the judge, unless it be a litigant in person. This carries with it a corresponding responsibility. A Barrister cannot pick or choose his client, he is bound to accept a brief from any man who comes before the court. No matter how great a rascal the man might be. No matter how given to complaining. No matter how undeserving or unpopular his cause. The barrister must defend him to the end. Provided only that he is paid a proper fee, or in the case of a dock brief, a nominal fee. He must accept the brief and do all he honourably can on behalf of his client. He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouth piece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously mis-state the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him. He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.

*Such being his duty to the court, the barrister must be able to do it fearlessly. He has time and time again to choose between his duty to his client and his duty to the court. This is a conflict often difficult to resolve: and he should not be under pressure to decide it wrongly.'*⁴

Such is the enormity of the duty and obligation of the advocate. For the private legal practitioner whose clients are diverse, it is difficult to keep the above tenets. As for the law officer whose clients is the state (who also employs and pays their salaries) it is even more so. However, it is important to point out whether as law officers or as private legal practitioner, every advocate is enjoined to keep to these tenets.

Practical advocacy would therefore be the actual practice of the act of advocacy.

There is no doubt that advocacy is a skill – Its skill of persuasion. The question which arises is this – can advocacy be learnt? Iain Morley QC in his book, “The Devil’s Advocate” had the following to say on the issue of whether Advocacy can be learnt:-

“Like any skill ADVOCACY CAN BE LEARNT. Up to a point. No one can be taught to be a brilliant advocate, just as no one can be taught to be a brilliant pianist. Brilliance requires talent. Whether any of us has talent is a gift of the Gods. However, we can be TAUGHT COMPETENCE IN ADVOCACY. Competence is not making errors. We can be taught how not to make errors. Simply that. No more complicated than that. Just as most people can be taught to play the piano, so too can they be taught advocacy...But unlike the pianist an error free performance in court is something more – it is highly unusual. Advocacy without error is no small achievement.”⁵

In this paper we shall try to emphasize those things that can enhance effective or good advocacy. The first of these is a good command of the English language.

COMMAND OF LANGUAGE

In his book, “The Discipline of Law” Lord Denning opined that to succeed in the profession of law, you must seek to cultivate the command of language. He put it beautifully in the following passage;

“Words are the lawyer’s tools of trade. When you are called upon to address a Judge, it is your words which count most. It is by them that you will hope to persuade the Judge of the rightness of your cause. When you have to interpret a section in a statute or a paragraph in a regulation, you have to study the very words. You have to discover the meaning by analyzing the words – one by one – to the very last syllable. When you have to draw up a will or a contract, you have to choose your words well. You have to look into the future – envisage all the contingencies that may come to pass – and then use words to provide for them. On the words you use, your client’s future may depend.”⁶

One cannot put it better than the way Lord Denning stated it above.

On the reason why words are so important to an advocate, we shall once again borrow from Lord Denning who stated that;

“The reason why words are so important is because words are the vehicle of thought. When you are working out a problem on your own – at your desk or walking home – you think in words, not in symbols or numbers. When you are advising your client – in writing or by word of mouth – you must use words. There is no other means available. To do it convincingly, do it simply and clearly. If others find it difficult to understand you, it will often be because you have not cleared your own mind upon it. Obscurity in thought inexorably leads to obscurity in language.”⁷

Even though words are very important in advocacy, often time we find that they are difficult to master. The difficulty in mastering the use of language was succinctly put again by Lord Denning when he stated as follows;

“Sometimes you may fail – without your fault – to make yourself clear. It may be because of the infirmity of the words themselves. They may be inadequate to express the meaning which you wish to convey. They may lack the necessary precision. ‘Day’ and ‘Night’ clear enough at most times. But when does day begin and night end? Some may say at sunrise. Others would say at dawn. Then when does ‘dawn’ begin? No one can tell exactly. Or a word may mean one thing to one person and another thing to another. Take ‘punctual payment’ or ‘prompt payment’. To one it may mean immediate payment. To another, it may permit of a little latitude and it may suffice if payment is made within a day or two. The difference between the two will remain unless it is settled by the House of Lords. Yet, again a word may mean one thing in one context and another thing in another context. Thus, ‘money’ may be limited to the money in your purse and cash at bank or it may include money owing to you for dividends or rents. Yet again, a word may mean one thing in one situation and another in another. Take the words ‘insulting behaviour’. Blowing a whistle on the centre court at Wimbledon maybe ‘insulting behaviour’; but blowing it at the cup final at Wembley would not. It depends on the meaning which you

yourself choose to give to ‘insulting’. The difference is not to be settled by authority, but by individual choice. Constantly, you will find ordinary people giving different meanings to the same word. This gives full scope to the lawyer.”⁸

How then can an Advocate Acquire this Command of Language which is so much Desired?

I can not find any better method than the one prescribed by our teacher for today Lord Denning. I say no better method because I have been a student in his school for a long time. And talking from experience, I have no hesitation in telling you that his prescription works. Now Denning is prescription is as follow:

“when I was called to the Bar, I had to become proficient with words. I did it by drawing on my reserves of English literature. These I had acquired at the Elizabeth Grammar School to which I went daily. I had read much of Shakespeare and many of our poets and novelists whilst still at school. All my prizes from the age of 11 were for English, I have then still, bound in handsome leather, with the school crest and the date AD 1569. The titles in succession are the Great Authors, Macaulay, Carlyle, and Milton. Reading these and others provided the essentials; a wide vocabulary of words, and an understanding of the meaning attached to them by the masters of the language. Come to think of it, that is how the makers of the great Oxford Dictionary set about their task to discover meanings. They compiled it ‘from over five million quotations derived from English works of literature and records of all kinds’. Then glance at the Dictionary itself to see the result. It shows that the meaning of a word may change from decade to decade, from place to place, even from one person to another. It may depend on the subject matter under discussion or the context in which it is used. So you have a challenging task ahead if you are to acquire command of language: and to say what meaning any particular word has in particular case.

Next, I had to practice continually. As a pianist practices, the piano, so the lawyer should practice the use of words, both in writing and by word of mouth. Again, forgive a personal reminiscence. In chambers, if asked to advise, I took infinite pains in the writing of an opinion. I crossed out sentence after sentence. I wrote them again and again. Seek to make your opinions clear at all costs.

Make them positive and definite. Not neutral or vacillating. My pupil master told me early on of the client's complaint: 'I want your opinion and not your doubts', and of Sir George Jessel's characteristic saying: 'I may be wrong and sometimes am, but I am never in doubt'."⁹

CASE PREPARATION

In addition to having a good command of the English language, a good advocate must cultivate the right approach to preparation of his cases.

My principal, Chief J.A. Sadoh (who later became a judge of the High Court of Edo State Judiciary), often told us, times without number, that cases are won and lost in chambers. It follows therefore that there can be no gain saying the fact that thorough preparation of cases in the inner recesses of the chambers is the hallmark of a good advocate.

In criminal matters, everything starts and ends with the charge or information. You must find out what must be proved and to what standard. Usually, the burden of what must be proved is on the prosecution, but not always; check the relevant statute. If the allegation is Assault occasioning actual bodily harm, the issues to prove are;

Was there actual bodily harm?

To whom?

Was it caused by an Assault?

Was the assault unlawful?

In a civil trial it is trite law that the Writ of Summons and pleadings occupy a pride of place. It is important to ensure that the relevant statutes are scrutinized even before the preparation of the Writ of Summons. Often times, land mines are planted in the Statutes for the unwary advocate who glosses over the need to scrutinize them. And they come in various forms. For instance, the statute may prescribe that a pre-action notice in a particular form be given to the proposed Defendant before the institution of the suit. E.g. S. 12(i) of the NNPC Act.

A statute may also prescribe a time limit within which an action may be instituted. See also S. 3(i) Public Officers Protection Act. It is also important to ensure that you institute your action at the right court. For instance, S. 251 of the Constitution

of Federal Republic of Nigeria 1999 puts all items in the exclusive legislative list under the exclusive jurisdiction of the Federal High Court.

An advocate who does not do these preliminary checks is almost always likely to be faced with a preliminary objection at the trial of the suit. Preliminary objections are therefore largely self imposed avoidable obstacles. And the antidote is thorough preparation.

All sorts of problems can come up in form of preliminary objection unless utmost care is taken by the advocate when preparing court processes, be they civil or criminal matters. For instance in *Okafor v. Nweke*.¹⁰ The crucial issue inter alia which arose for consideration was whether or not it is permissible for a legal practitioner to sign court processes in a partnership name without an additional indication in the process of the name of the practitioner who is a member of the partnership or firm handling the matter. The motion under consideration in that ruling, was signed by “J.H.C. Okolo & Co., Applicant’s counsel 162B, Zik Avenue, I Enugu”. In resolving the issue, the Supreme Court Coram Ononoghen and Oguntade JSC held as follows;

“I am not unaware that legal practitioners have formed the habit of signing court processes in their partnership or firm names without indicating the name of the practitioner signing the process. I have had course to deal with such processes in my career on the Bench. I do not however, remember a particular occasion when an issue has been made done in this application by senior counsel for the respondent, G.R.I. Egonu Esq., SAN.

It is no justification or an acceptable excuse that because the practice has been followed for a long time for this court not to respond appropriately to Mr. Egonu's objection. The practice is either right and acceptable or wrong and unacceptable. Mr. Egonu SAN has submitted that under sections 2(1) and 24 of the Legal Practitioners Act, Cap. 207 Laws of the Federation, 1990, a firm of legal practitioners 'J.H.C. Okolo SAN & Co.' not being a person whose name appears on the roll of legal practitioners, was not entitled to sign or issue the notice of motion before this court. Counsel relied on New Nigerian Bank Plc. v. Dendag Ltd. (2005) 4 NWLR (Pt. 916) 549 at 573, a decision of the Court of Appeal.

Now, section 2(1) of the Legal Practitioners Act. Cap. 207 of the Laws of the Federation, 1990 provides:

'Subject to the provisions of this Act, a person shall be entitled to practise as a barrister and solicitor if, and only if, his name is on the roll.'

And section 24 of the same Act provides:

'A person entitled in accordance with the provisions of this Act to practise is a barrister or as a barrister and solicitor, either generally or for the purpose of any particular office or proceeding.'

The simple question that arises, in view of the clear provisions of Cap. 207 reproduced above, is whether or not 'J.H.C. Okolo & Co. SAN' is a person entitled to practise as a barrister and solicitor. It seems to me that only human beings actually called to the Bar could practise or practise by signing documents as a motion paper.

The argument that it is an over adherence to technicality to annul the process improperly signed and filed by 'J.H.C. Okolo & Co. SAN' fails to overlook the good sense in ensuring that our laws are strictly enforced and observed. It would have been quite another matter if what is in issue is a mere compliance with court rules.

In conclusion, I upheld the objection of Mr. G.R.I. Egonu SAN and agree with the views of my brother, Ononoghen JSC. I would uphold the conclusion that the processes filed in the application, particularly the motion on notice filed on 19/12/05 and the proposed notice of cross-appeal are incompetent."

It must be pointed out however, that the above decision of the Supreme Court is not in consonance with the Court of Appeal in the case of *Unity Bank Plc v. Oluwafemi*.¹¹ The issue in that case was whether the law firm of Oluwole Aluko & Co. was competent to issue and sign the notice of appeal since the firm is not a registered legal practitioner within the context of the provisions of S. 2(i) and 24 of Legal Practitioners Act. In *Unity Bank Plc V. Oluwafemi*, the Court of Appeal held as follows:

“Having regard to the context of rule 4 of the Registration of Titles (Appeals) Rules, the purpose of which on this issues, is to ensure that the name of the legal practitioner giving notice of appeal and representing the appellant is clearly known, then it is a sufficient compliance with the requirement for a legal practitioner to sign and give his name, if a legal practitioner practising alone gives the name under which he is registered as a business name, as this can only refer and apply to the legal practitioner who so holds himself out as practising under the business name. No possible doubt or conclusion can therefore arise in these circumstances.’

It can thus be seen that the Supreme Court in allowing the appeal and setting aside the judgment of the Lagos High Court considered the issue a mere technicality. Since this case was decided, the Supreme Court has consistently harped on need to discard technicalities where resort to them would be at the expense of doing substantial justice. This is very clearly the case here. There is no doubt that Oluwole Aluko has been appearing for the appellant in this matter. This is born out by the court's records which are taken judicial notice of under section 74(1)(m) of the Evidence Act.” Per Alagoa JCA.

Despite the decision of the Court of Appeal in *Unity Bank v. Oluwafemi (Supra)*, it is better to err on the side of caution by ensuring that Court processes are signed by a registered legal practitioner in conforming with the provisions of S. 2(i) and 24 of the legal practitioners Act. Furthermore, on the principle of Stare Decisis, the decision of the Supreme Court is binding on all courts including the Court of Appeal.

It is important to bear in mind that case preparation in chambers also includes, planning how you will prove the case in court. In this regard, witnesses are of vital importance. Iain Morley QC¹² gave the following advice on the issue of witnesses:

“The case will be proved by the witnesses, not by the advocate. Obvious, but people often loose sight of this. The witness gives evidence which proves the indictment. The advocates will later argue over whether the witnesses have succeeded against the burden and standard of proof...It is surprising how often the advocates never often apply the evidence in the statement to each of the elements of the counts of the indictment. Do the witnesses prove the counts?

Look carefully at this, instantly we can see every witness – particularly if there is evidence arising. You will have identified case laws if you are defending – if prosecuting you will need to produce an advice on giving further evidence. But it is not only evidence which is missing that we notice. We also notice the section in the witness statements which are vague and unsatisfactory. We begin to sense where the lines of attack against the prosecution case will be easiest.”

Furthermore, case preparation also includes reading all the proofs of evidence, all correspondence on the issue and indeed all documents pertaining to the case. It sounds easy but I tell you from experience it is very difficult to read all materials pertaining to a case. Sometimes a counsel may read a document half way and find something useful, but unknown to him that same document may contain some materials which may be devastating to his case. Sometimes, he finds out after the harm has been done i.e. after he must have tendered the same in evidence and the opposing counsel begins to make use of it in ways that were never intended or anticipated by the Counsel who tendered it.

CASE PRESENTATION

(a) Know your Court or Tribunal

On the importance or need to know your court or tribunal Iain Morley QC¹³ gave the following piece of advice;

“Infact it is usually a good idea to find out about your judge, ask the usher what mood he is in. Ask in the robing room what he is like. Learning about your tribunal is part of your job. What you discover can be used to the advantage of your case and can hone in your address all the better to fit the judges expectation. Some advocates start with the belief that the judge will be slow, others wordly perhaps, even daft: this is crazy advocacy. It annoys a judge and so you loose precious respect. It makes it more difficult to persuade the judge because, now you are likely to be ignored, as it might be thought to be a loss of face to agree with you.”

To the above advice, I would like to add that nothing is too simple to find out about the judge. Matters such as whether he sits early, or late: or if he sits late whether he sits at a particular time, whether he rises early, or rises late, whether he

is the type that likes to have all authorities on any particular issue arising before him or whether he is the type that will be satisfied with 1 or 2 authorities on a point, are all important. Knowledge of these issues will determine your strategy in each case. I know of a judge who never liked counsel to cite too many authorities, and the easiest way to get adjournment in his court was to offload as many authorities as possible on your desk. And as soon as he enters the court, the first question he will ask is, Mr. X is it me you intend to cite all those authorities for, today? You may mention your matter and take a date. For that same judge, counsel who is bent on going on with his matter used to hide his law reports under his seat and safely in his bag until after the case is called and hearing actually starts. Even at that, he had to ensure that he brought out the authorities one by one from his bag otherwise, the judge may still end up adjourning his case.

When I was prosecuting at the Failed Bank Tribunal, I remembered once when it was difficult for me get information on a particular judge who was from one of the Northern States of Nigeria, and before whom I had a very difficult case. To put myself in a position to win that case, I knew that I had to reason like that judge or tribunal. In order to put myself in that position I was able, through her clerk of court, to get all her previous judgments. By the time I finished reading through those judgment, it was not difficult for me to know the steps to take in the prosecution of that matter which I had before the judge.

COURT APPEARANCE

Dressing

An advocate must be well dressed, must be neat beginning from the hair on his head to the shoes on his feet. Do not get slack about your appearance at court. Everyday you are on show. So show them. Make sure the clothes you wear make you look formal and fantastic. Looking fantastic makes you look like a winner. Judges cannot help themselves – they take people who look like winners seriously. Lest I forget, make sure your shoes are dark and well polished.¹⁴

Apart from dressing well, Lord Denning¹⁵ took it a step further when he stated thus:

“Remember also that, whatever the tribunal, you must give a good impression. Your appearance means a lot. Dress neatly, not slovenly. Be well groomed. Your voice must be pleasing, not harsh or discordant. Pitch it so that all can hear without strain. Pronounce

your consonants. Do not slur your words. Speak not too fast nor yet too slow. All these things are commonplace but they are so often forgotten that I warn you against the mistakes I see made daily. No hands in pockets. It shows slovenliness. No fidgeting with pencil or with gown. It shows nervousness. No whispering with neighbours. It shows lack of respect. No ‘ers’ or ‘ums’. It shows that you are slow-thinking, not knowing what to say next. Avoid mannerisms like the plaque. It distracts attention. Don’t be dull. Don’t repeat yourself too often. Don’t be long-winded. All these lose you your hearers: and once you have lost them, you are done for. You can never get them back – not so as to get them to listen attentively.

One thing you will not be able to avoid – the nervousness before the case starts. Every advocate knows it. In a way it helps, so long as it is not too much. That is where I used sometimes to fail. My clerk – as a good clerk should – told me of it. I was anxious to win – and so tense – that my voice became too high pitched. I never quite got over it, even as a King’s Counsel. No longer now that I am a Judge. The tension is gone. The anxiety – to do right – remains.”

A point must be made that the risk of repetition but for the sake of emphasis, that *repetition does not improve the quality of an argument or submission*. Rather, it makes a counsel to sound dull and monotonous like a broken gramophone record. It thus has the opposite effect of diminishing the effectiveness of your presentation.

I will only add that it is only when it appears that you are not carrying the court along that there may be need to repeat your submission. But even in such an instance, it is better to repeat yourself in different words.

ADDRESSING COURT

A. Need to Respect the Court.

It is important to show utmost respect, deference and politeness to the court. Judges occupy a formal position in the society, they have enormous powers within the law. They can separate families, they can change lives with jail sentences, they can imprison witnesses (and advocates) for contempt, and they can seize huge sums of money and freeze assets. They deserve all the respect that counsel has to offer.

It is perhaps instructive to take to heart the admonitions of the Court of Appeal Coram Amina Augie JCA, in the case of *Ayorinde v. Kuforiji*¹⁶

"I have nothing useful to add except to comment on the alarming rate at which counsel use abusive and insulting language in their briefs of arguments, and it must be deplored. Counsel should guard their tongues and pens in and out of court in their references to judgments of court, particularly as impolite remarks against judgments serve no useful purpose except to reduce the integrity of the court before litigants, and this does not augur well from the legal profession' - See Akinduro v. Iwakun (1994) 3 NWLR (Pt.330) 106 & Udoh v. The State (1994) 2 NWLR (Pt.329) 666, where Tobi, JCA. (as he then was) observed as follows -

"Counsel should try as much as it is humanly possible to refrain from castigating Judges in the guise or cloak of arguing the case of their clients. Raining aspersion on how a Judge conducted a case is not part of good advocacy. It is part of good advocacy for counsel to see Judges as parties in the same boat of administering justice and that both are indispensable parties in that boat. While counsel has all the freedom to present the case of his client with all his legal strength and expertise, they should on no account, use the forum to attack the Judge that he was either biased or know little or no law'. (italics mine)."

Learned counsel's jibe that the learned trial Judge was apparently in a haste to give judgment for the respondent and therefore 'ignored or failed' to take judicial notice of a law is not borne by the record and is therefore a sly attempt to accuse the lower court of bias or ignorance of the law. This is wrong and I add my voice in condemning same."

Similarly in *Akpughunum v. Akpughunum*¹⁷ the Court of Appeal Coram Dongban-Mensem JCA also spoke on the need for counsel to sharpen their advocacy skills rather than verbally assault judges in their submissions;

"Before I put F-I-N-I-S-H to this appeal, let me comment briefly on the issue of reassigning the matter to another judge, I consider it an unnecessary addition to the relief sought. Learned counsel should

very well be advised and reminded in the words of the eminent jurist and judicial administrator, Uwais JSC (as he then was and later CJN) that judges are not members of the jury.

'...Judges are there to decide cases and not to excuse themselves whenever a litigant doubts without cause the judicial qualities of those assigned to sit in judgment.

Litigants should not be encouraged to treat Judges like members of a jury whom they can challenge off the case, with or without cause.'

Further, in appropriate case, this court makes the requisite order when an interlocutory appeal succeeds. Learned counsel needs not create/arouse unnecessary hostility in judges in the course of the performance of their arduous tasks of adjudication. Every aggrieved party has a right of appeal up to the Supreme Court. Learned counsel are well advised to sharpen their advocacy skill for a legal battle rather than verbally assault and degrade judges in their submissions. Such practice must be discouraged. The choice of language of the learned counsel for the appellants was rather appalling and should be avoided."

The need to treat courts with courtesy and respect, should be counter balanced by the need for counsel to be courageous when presenting his clients' case before the judge or tribunal. He has the duty to call the attention of the judge to an omission in the application of legal principles and/or rules of practice.

This duty was highlighted by the Supreme Court Coram Muhammed JSC in the case of *Anthony Nwanchukwu v. The State*¹⁸ when he stated thus;

"The duty of ensuring that the right thing is done is not only on the trial judge. It is a duty as well on a party to a case or his counsel. The counsel, where one is engaged, who, by the nature of his call, is an officer of the court must insist that the right thing is done by the court in accordance with the law. Thus, where a counsel observes that a Judge is deviating from the known principles of practice/law, he has a duty to invite the attention of the Judge to that omission. At least the records will bear him testimony that he, as a counsel, for one of the parties before that court, has not tacitly condoned an illegality."

b. Need to Assist the Court to Attain the Ends of Justice

Counsel in presentation of his case also has a duty not to support an act which is antithesis to justice, this point was made by the Supreme Court Coram Ogboagwu JSC in the case of *Sokoto State Government v. kamdix (Nig.) Ltd*¹⁹;

"The point that is not in dispute and is conceded by the learned counsel for the respondent is that Galadima, JCA, who did not participate in the hearing of the appeal wrote a concurring judgment in an appeal that he never saw the counsel for the parties and did not listen to their respective addresses. Is it right? I or one may ask the learned counsel for the respondent. Does the learned counsel for the respondent, as a member of the legal profession and who is also a minister in the temple of justice, in defence of his integrity have the moral and professional conscience to support something or an act that is an antithesis of justice? It will not cost him anything including his fees, I believe, to advise his client that what happened is/was really unfortunate. It was inadvertent. Everyone of us at one time or the other makes human mistakes. The pressure of work or workload in the appellate courts is responsible for such mistakes which I concede is not a slip. If the appellants had acquiesced to the "irregularity" as contended by the learned counsel for the respondent, why then this appeal? I or one may ask him."

The standard of the duty to court, is in line with the often repeated saying that counsel is an officer in the temple of justice. In *Uzuda v. Ebighah and Ors.*,²⁰ the Supreme Court was full of praises was for counsel who conceded defeat as follows:-

"as an aside, to experience this rare gesture of knowing when to throw in the towel unto the arena of contesting parties in a dispute as the instant one otherwise gracefully and neatly for that matter is one of the hallmarks of good advocacy. In this regard, I think the senior counsel and his team for the plaintiffs (respondents) in this matter must be commended highly as having demonstrated what good advocacy under the rule of law encompasses; this underscores the fact that the senior counsel and his team are true officers of the court. They have played the game with their cards face upwards. Win or Lose taking a position as this on the peculiar facts of the

matter, serves the interest of justice apart from saving the time of the court - it is worthy of emulation by counsel generally."

In recent cases, both the Court of Appeal and the Supreme Court have reminded counsel of their duty to help to reduce period of delay in determining cases in court. For instance in *First F Ltd v. NNPC*.²¹ The Court of Appeal had this say on the issue;

"Counsel should heed the advice of the courts by avoiding unnecessary appeals against interlocutory decisions by concentrating on finishing the substantive suits. Interlocutory appeals only succeed in delaying the conclusion on suits. Consequently, counsel owe it a duty to the court to help reduce the period of delay in determining cases in our courts by avoiding unnecessary preliminary objections so that the adage 'justice delayed is justice denied' may cease to apply to the proceedings in our courts."

Similarly in *H.R.H. Igor Umeonusila Umeanadu v. Attorney General of Anambra State and Anor*. The Supreme Court while speaking on the same issue stated as follows;

"With profound humility and the greatest respect, this is a typical interlocutory appeal that has strengthened and supported my view or advocacy that interlocutory appeals to this court should and ought to be discouraged and in fact, not allowed to continue. I humbly advocate that, unless in very special circumstances, all interlocutory appeals should wait and be filed together with the main and substantive appeal to this court. For my stance, see the cases of Ogie & 3 Ors. v. Obiyan (1997) 10 SCNJ 1; (1997) 10 NWLR (Pt. 524) 179; Okobia v. Madam Ajanya & Ors. (1998) 6 NWLR (Pt. 554) 384 at 364-365; (1998) 5 SCNJ 95; Dr. M.CO. Iweka v. SCOA (Nig) Ltd. (2000) 3 SCNJ 71 at 91 ; (2000) 7 NWLR (Pt. 664) 325 - Per Ogundare, JSC (of blessed memory) and Elom Oke & Ors. v. Eze Nwaogbuinya (2001) 1 SCNJ 157; (2001) 3 NWLR (Pt. 700) 406, just to mention but a few. This can be done without filing separate appeals. Speaking for myself, most times, it is time wasting and most of the time, they are designed or employed as delaying tactics or punishment for the opposing party by some litigants and/or learned counsel who knows undoubtedly, or ought to know

that their case like this case, is like one standing on a 'quick sand' so to speak. Where however, they are allowed to continue, the Rules of this court need, with respect, an urgent review in respect of costs which will enable the court, have a discretion in the award of costs which at least, will not be below a certain reasonable amount. Afterwards, it is said that it is the duty of the court whenever possible, in the interest of justice, to assist the parties in reducing the expense of litigation. That the court should try as much as possible, to avoid placing unnecessary financial burden upon the litigants."
Per Ogbuagu JSC.

EXAMINATION-IN-CHIEF

Examination-in-chief has been described by some people as the most difficult skill because without leading the witness counsel is expected to extract all the relevant evidence. With police officers and experts this can be easy because they can refer to their notes but other witnesses must rely on their memory. Incidents can appear different to such witnesses months later and often, they wander off the point and have to be brought back. It must be pointed out however that there is nothing wrong in asking leading questions when the matter is not in dispute. A leading question is one which suggests the answer. It sounds simple, but like most things legal, in practice, the dividing line between leading and non-leading question can be very hazy.

Generally, a non-leading question will begin with the following;

Who
What
Why
When
Where
How
Please describe²²

Avoid the standard phrase "what happened next" because the witness may give either too much details or too little or just plainly wanders off the point."

"What happened next" is a recipe for losing control of the witness. The evidence must be chronological and the advocate must know his objective with each witness.

CROSS-EXAMINATION

The aim of cross-examination is to enable the cross-examining party to demolish or weaken the case of the other party. As stated by the learned authors of Phibson on Evidence²³;

“All cross-examination must be relevant to the issues and the witness’s credit. The object of cross-examination is to weaken, qualify or destroy the case of the opponent and to establish the party’s own case by means of its opponent’s witnesses.” See also *Uwaifo JCA in Ojiako v. The State*²⁴

In *Onouka v. Owolewa*²⁵ The Court of Appeal summed up the important of cross-examination in the following manner;

“The submission of the respondent the cross-examination is procedural, is untenable, as under our adversarial system of jurisprudence the art of cross-examination is the greatest weapon to attack an adversary. It is fundamental, the pivot, the central hobb and gravity of our civil system, because cross-examination is based on our rule of pleading with its source. Our rule of natural justice of audi alterm partem (hear the otherside.) To deny a party from cross-examination of the adversary without justifiable legal reasons amounts to a denial of fair hearing as enshrined in S. 36(i) 1999 Constitution of Federal Republic of Nigeria.”

Furthermore, cross-examination of a witness is of paramount importance because failure to cross-examine a witness upon a particular matter is said to be a tacit acceptance of the witnesses evidence.²⁶ As important as cross-examination is in advocacy, it is so dangerous that if you do not need to cross-examine a witness, please do not.

Iain Morley QC in his book, “The Devil’s Advocate”²⁷, prescribed ten rules of cross-examination. They are as follows;

1. **THINK COMMANDO:** Do not lay siege. Like a commando you go in, you get what you want and you get out. Remember it is dangerous out there. Every question invites disaster. So stealth, cunning, brevity, should be your watch word.

2. When you have got what you want, STOP. Do not try to improve on answers because the witness will think that you have had him and will back track. And try not to say thank you, as it tips the witness off that you have what you want and he may try to undo what he has just said. Just STOP, FULL STOP.
3. Never ask a question to which you do not already know the answer, in other words, do not use cross-examination to dig around, you have no idea what you will find. It may be helpful but watch out it may not be. A cross-examiner is not a gambler. He is also not a fisherman.
4. Always ask leading questions. By asking leading questions you control the witness. A witness who spins out of control becomes a loose cannon.
5. NEVER, EVER, EVER ask the witness to explain. NEVER. In other words, NEVER ask the witness WHY or HOW.
6. Reserve your comment or submission for the judge. NEVER, EVER, EVER for the witness. In other words, do not ask conclusively questions or questions which demands a conclusion from the witness.
7. Never ask the witness for help such as asking a witness “surely you can not be certain of the identification, I mean it really was dark, that’s fair, isn’t it.”
8. Ask only one thing at a time. In other words, avoid a roll up question lengthy explanation will destroy you, e.g. “it was dark, being night time, with street lights at the front of the house, and you looking out of the window into the back garden, isn’t that right?”

One thing at a time e.g.

It was dark?

It was night time?

The street lighting was at the front of the house?

You looked out of the back window?

Isn’t that right?

9. When putting your case, tell the witness he disagrees with it.

10. Bounce for confrontation – Bounce is about bending perception when you bounce for confrontation you subtly get the witness to agree with the suggestion embedded in your question.

FINAL ADDRESS

In a final address, it is important to master the facts of your case and that of your opponent. You will do a lot of disservice to your client when you fail to master the facts of the case. And mastering of the facts includes both oral and documentary evidence.

Thereafter you get decided authority on the issue for determination. If I may share my personal experience with you, my principal, Chief J.O. Sadoh used to tell us that the time to prepare your final address is when you are settling your pleadings in a civil matter or when you are drafting your charge or preparing your defence in a criminal one.

It helps you to prepare your case against the backdrop of the law and not the other way round.

CONCLUSION

In conclusion, it is important to bear in mind that litigation is not a matter of planting mines to deceive the opponent with a view to destroying his case in limine.

On the contrary, litigation is a process where the parties set out their cases frankly and fully for the determination of the court. A tricky and miserly prosecution of a client's case is not part of good advocacy²⁸.

THANK YOU FOR LISTENING.

CHIEF FERDINAND OSHIOKE ORBIH

1. Blacks Law Dictionary (7th Edition) page 889
2. Legal Essays in Tribute to Orrin Cape McMurray 513 at 515
3. Blacks Law Dictionary (7th Edition) page 56
4. The Discipline of Law by Lord Denning
5. The Devil's Advocate – A Short Polemic on how to be seriously Good in Court by Iain Morley QC
6. The Discipline of Law by Lord Denning
7. The Discipline of Law by Lord Denning
8. The Discipline of Law by Lord Denning
9. The Discipline of Law by Lord Denning page 6 -7
10. (2007) All FWLR Pt. 368, page 1016 at 1025 – 1027 paragraph G-B; 1028 – 1029 paragraph G-L
11. (2007) All FWLR Pt. 382, page 1923 at 1928 paragraph G-E
12. The Devil's Advocate by Iain Morley QC page 77
13. The Devil's Advocate by Iain Morley QC page 94 – 101
14. The Devil's Advocate by Iain Morley QC page 36
15. The Discipline of Law by Lord Denning
16. (2007) 4 NWLR (Pt. 1024) page 341 at 369 paragraph D – H; page 373 – 374 paragraph F – C
17. (2007) All FWLR (Pt. 376) page 746 at 760 paragraph C – G
18. (2007) All FWLR (Pt. 390) page 1380 at 1403 page F – H; see also (2007) 7SC 1
19. (2007) 7 NWLR (Pt. 10430) page 466 at 503
20. (2009) NPELR – SC 348
21. (2007) Vol. 4 WRN (105) at 149 lines 20 – 40
22. The Devil's Advocate by Iain Morley QC page 136 – 139
23. 12th Edition paragraph 1592
24. (1991) 2 NWLR (Pt. 175) page 578 at 588
25. (2001) 7 NWLR (Pt. 713) page 695 at 713
26. See the following cases
 - (a) Akinwunmi v. Idowu (1980) 3-4 SC 108
 - (b) Bello v. Eweka (1981) 1 SC 101
 - (c) NTA and Sons v. EHA (1991) 8 NWLR (Pt. 209) page 295 at 393
 - (d) Omoregbe v. Lawani (1980) 3 – 4 SC 108
27. At pages 153 – 170
28. See Newswatch Communications Ltd. v. Alta