



1

---

---

---

---

---

---

---

---



2

---

---

---

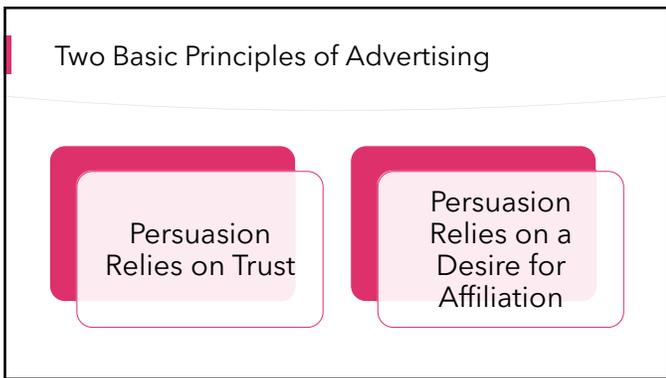
---

---

---

---

---



3

---

---

---

---

---

---

---

---

## Heuristics: Tapping into the Court's Humanity

- A *heuristic* is a decision-making shortcut used by our brain to process information
- They are fast ways for our brains to process information because they can provide a solution almost immediately, without requiring much information

4

---

---

---

---

---

---

---

---

## Hacking the Court's Heuristics



LESS IS MORE



LIKEABILITY SETS THE MOOD



EXPOSE IDEAS JUST ENOUGH,  
BUT NOT TOO MUCH

5

---

---

---

---

---

---

---

---



6

---

---

---

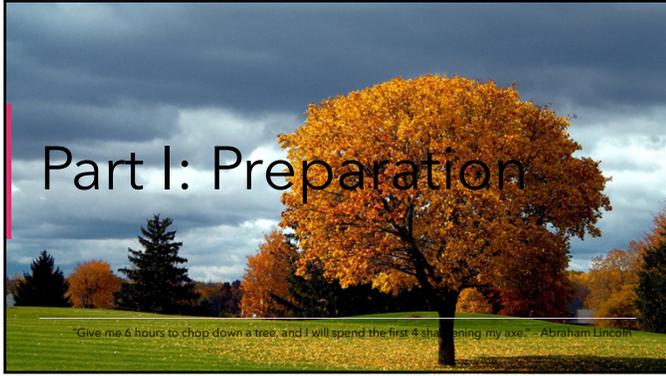
---

---

---

---

---



7

---

---

---

---

---

---

---

---

**Tip 1: Know Your Panel**

- Which relevant opinions has each justice authored?
- Did a justice previously serve on a trial court that heard criminal/child welfare cases?
- Did a justice actually practice criminal/child welfare law?
- What are the justices' questioning styles?
- Does the justices often ask the same questions at arguments?

8

---

---

---

---

---

---

---

---

**Tip 2: Know (the Right Parts of) Your Record Cold**

What you must know:

- Your brief(s)
- Other brief(s)
- Timeline
- The key facts (the core reasons why your client lost)
- Everything you're going to affirmatively argue

9

---

---

---

---

---

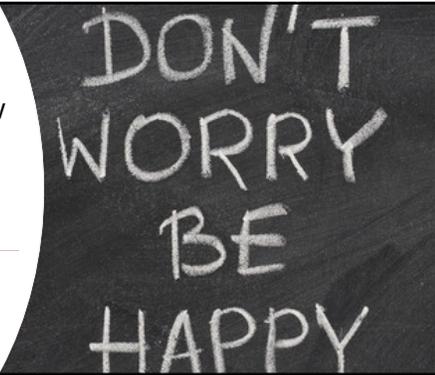
---

---

---

**Tip 2A: Know Everything Else . . . a Lot Less**

Don't waste your time on material you *probably* don't need to know!



10

---

---

---

---

---

---

---

---

**Tip 3: Open with your Theme/Theory of the Appeal**

- Be bold - don't keep it a secret from the judges.
- Come back to it. And back again.

11

---

---

---

---

---

---

---

---



**Tip 3A: Numbers are Your Friends**

If your theory of the case is that you win for 3 reasons, open by telling the panel that you win for 3 reasons, and say the numbers:

There are 3 reasons why the letter was inadmissible:

- 1<sup>st</sup>, it was hearsay, and there was no applicable exception;
- 2<sup>nd</sup>, it was protected by the psychotherapist-client privilege; and
- 3<sup>rd</sup>, it failed under the "best evidence" rule.

Let me start with reason 1, the fact that it was inadmissible hearsay . . .

12

---

---

---

---

---

---

---

---

### Tip 4: Prep Topics, not Answers

Don't let the judges throw you by:

- asking a question the "wrong way"
- asking for you to explain something instead of asking a question, or
- mentioning your topic in another question or comment

Instead, prepare by topic.

---

---

---

---

---

---

---

---

13

### Tip 4A: Bullet Points are your Friends

Explain in bullet points whenever you can.

They:

- Are easier to hear
- Are easier to remember
- Sound more comprehensive

---

---

---

---

---

---

---

---

14

### Example - Bullet Points

"The main witness was incompetent for several reasons:

- He has an IQ of 43
- He suffers from paranoid delusions
- He suffers from memory loss, and
- He has no understanding of the importance of telling the truth.

As a result, he should not have been permitted to testify."

---

---

---

---

---

---

---

---

15

Tip 5: Prepare for the Harmless Error Question

 What exactly was the harm/why did that error matter?

 Or why is this error structural/so fundamental that you don't need to show harm?

16

---

---

---

---

---

---

---

---

Tip 6: Anticipate Problems

Don't run away from:

- Weaknesses in your argument
- Problematic facts
- Bad case law

Prepare for them.

17

---

---

---

---

---

---

---

---

Tip 7: Standards/Burdens Are Your Friends (If You Let Them Be)

- Know the trial-level standards and burdens of proof, as well as the standards of appellate review.
- Acknowledge them & shape your arguments to them.

18

---

---

---

---

---

---

---

---

Tip 8: Prep your public policy arguments (even if you didn't argue them in your brief)



19

---

---

---

---

---

---

---

---

Tip 9: Prepare a Strong Closing

- Close on a high note
- Not just the relief you want, but why you should win

20

---

---

---

---

---

---

---

---

Tip 9A: Specify the Relief You're Seeking



21

---

---

---

---

---

---

---

---



22

---

---

---

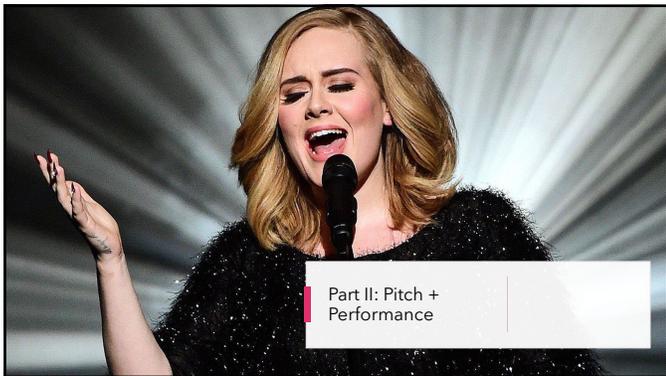
---

---

---

---

---



23

---

---

---

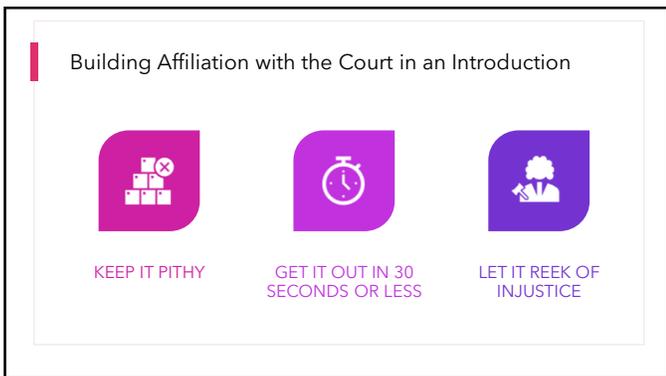
---

---

---

---

---



24

---

---

---

---

---

---

---

---

### Less is More

*Example:*

During closing argument at the termination hearing, R.K.'s counsel stated, "It's clear that R.K. is unfit. He's a terrible parent, the evidence is clear."

When lawyers refuse to subject the state's evidence to any meaningful challenge, they aren't acting like lawyers at all. And that's a constructive denial of counsel that calls for a new trial.

---

---

---

---

---

---

---

---

25

### Less is More

*Example:*

Shortcuts are not acceptable in child welfare cases. The trial court took many shortcuts in this case, and they deprived my client of due process.

I'll start with the most harmful shortcut, which was...

---

---

---

---

---

---

---

---

26

### Less is More

*Example:*

Shortcuts are not acceptable in child welfare cases. The trial court took many shortcuts in this case, and they deprived my client of due process.

I'll start with the most harmful shortcut, which was...

---

---

---

---

---

---

---

---

27

Likeability Sets the Mood

**Process-Induced Effect:**  
A product is more likeable, the easier the cognitive effort. Low-effort conditions enhance memory.



28

---

---

---

---

---

---

---

---

Likeability Sets the Mood

Always strive to be the most professional advocate in the room - even if your face wants to disobey.

29

---

---

---

---

---

---

---

---



30

---

---

---

---

---

---

---

---

### Likeability Sets the Mood

- Don't read argument unless you're reading a quote
- Use a pleasant, conversational tone
- Don't be over-dramatic or angry
- Don't make jokes/be funny

31

---

---

---

---

---

---

---

---



### Likeability Sets the Mood

Reduce the Cognitive Load on the Judges:

- Use Bullet Points + Numbered Lists
- Limit the Information Presented
- Speak Slowly

32

---

---

---

---

---

---

---

---

### Likeability Sets the Mood

**Don't** artificially distance yourself from your client

33

---

---

---

---

---

---

---

---

Likeability Sets the Mood

Example:

"My client's position is that the trial court erred when it improperly allowed the witness to testify to a hearsay statement."

Or

"Mr. Smith believes that..."

---

---

---

---

---

---

---

---

34

Likeability Sets the Mood

**Don't** make the argument about you

---

---

---

---

---

---

---

---

35

Likeability Sets the Mood

Example:

"I believe that the witness was incompetent because..."

Or

"I feel that everything that guy just said is bullshit..."

---

---

---

---

---

---

---

---

36



37

---

---

---

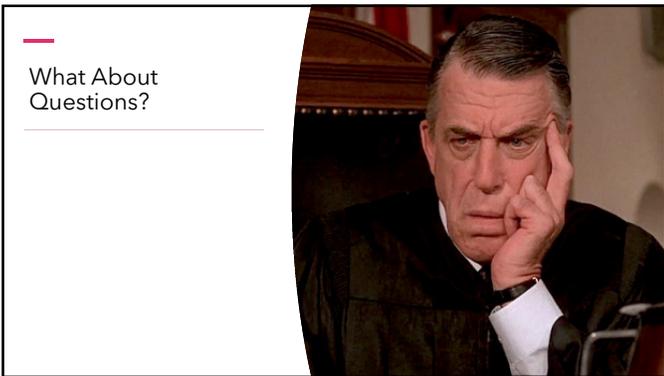
---

---

---

---

---



38

---

---

---

---

---

---

---

---



39

---

---

---

---

---

---

---

---

Expose Ideas Just Enough, but not Too Much



**Sleeper Effect:**

Exposure to a claim, even if claimant low in credibility, over time leads to belief in the claim (because hearer forgets source of claim).

40

---

---

---

---

---

---

---

---

Expose Ideas Just Enough, but not Too Much

Short Term Memory MAXES OUT between 6-8 pieces of information.

Read your Panel: Are they bored? Fascinated?

41

---

---

---

---

---

---

---

---

Expose Ideas Just Enough, but not Too Much

If they are bored (or you are running out of time!), make a "presentation argument":

- Put together a list with 6-8 points on why you should win, including facts + caselaw
- Then get out your concluding statement (why you should win and the relief you're seeking)
- And then...SIT DOWN

42

---

---

---

---

---

---

---

---

Questions?

**Ruchi Kapoor**

Appellate Director | Legislative Liaison  
Office of Respondent Parents' Counsel  
Denver, CO  
[rkapoor@coloradoorpc.org](mailto:rkapoor@coloradoorpc.org)

---

---

---

---

---

---

---