

# TIPS ON ARGUING TO A JUDGE

Judge Dan Buckley

ABTL

January 14, 2020



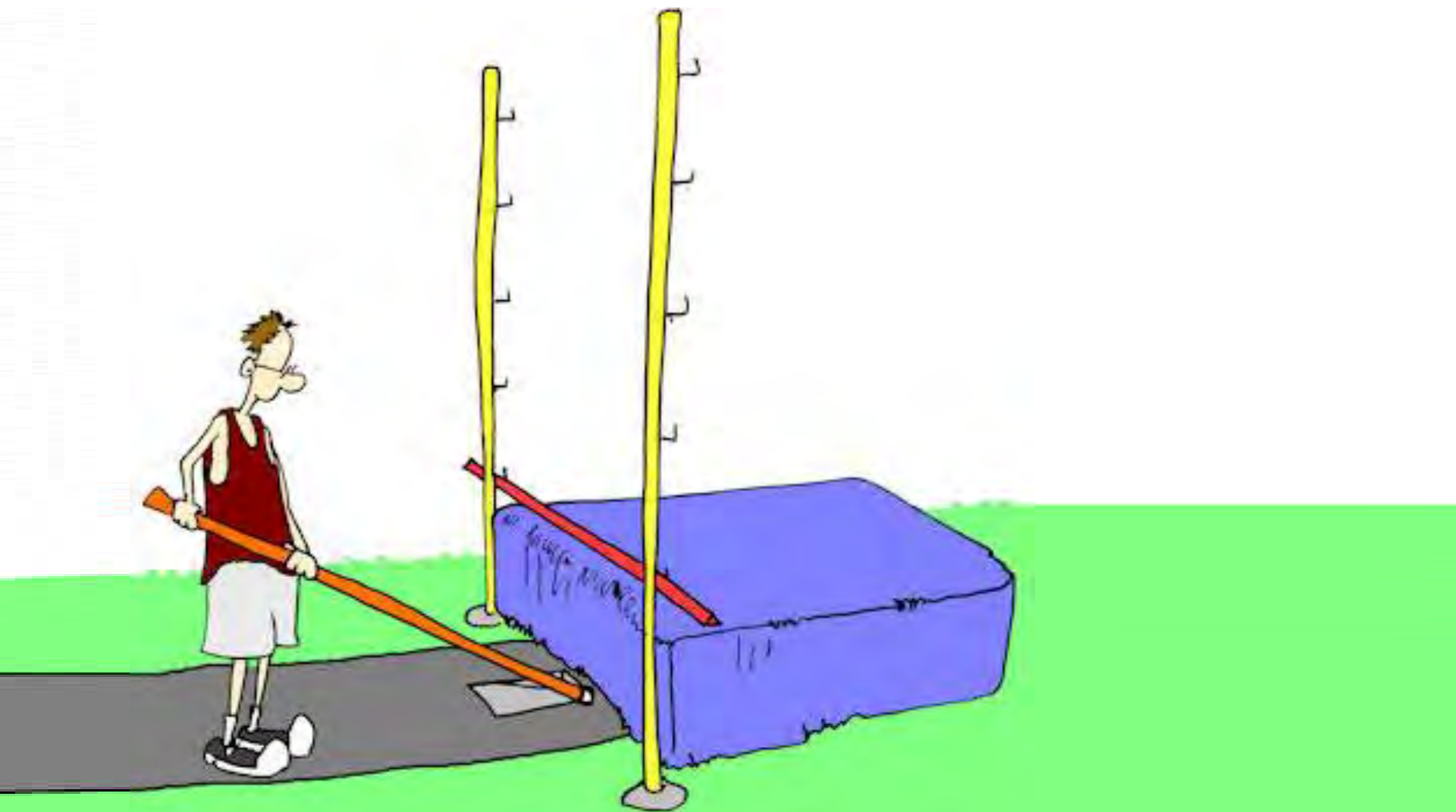
# You should know . . .

We judges want you to make  
great arguments

Help us make the right decision...

# Will cover

- ▣ How to prepare
- ▣ What to do in the courtroom
- ▣ What judges like
  - – and don't like.



Your walk back to your office?



# CMC to motion for new trial

Win the day

Perspective

Leave good impression.

# Big Picture Tip

Be old school.



# Preparation

Know the judge.

▣ Issues tentatives?

▣ Likes, dislikes?

▣ Any leanings?.

# Preparation

- ▣ Know the file
- ▣ Know the facts
- ▣ Know the cases
- ▣ -Be able to distinguish
- ▣ -Respond to incorrect summary.

# Preparation

Assume judge reads papers

Do NOT summarize or repeat.

# Preparation

Be ready to go first or second

But this ain't a good argument . . .

# Preparation

Prepare outline

Requires careful thought.

*I didn't have time to write a short letter, so I wrote a long one instead.*

- Mark Twain



# Visual



# Visual

▣ No PowerPoint!

# One suggestion

Copy of key statute, case,  
critical paragraph.

# Back to the basics

- ▣ Courtroom attire . . .

# More basic advice . . .

# Crux

- ▣ What is wrong with tentative or opponent's argument?
- ▣ Focus on essential facts, law, application, standard, burden, etc.

# Crux

1. Identify the critical disputed fact or authority
2. Give a concise reason why you are right.



# Crux

90% of time, you should win  
because of one or two reasons.

# Don't ignore tentative.

# If no tentative

▣ Still . . .

1. Identify the critical disputed fact or authority
2. Give a concise reason why you are right.

# Crux

Start with a succinct outline

First sentence gives the ask

Second sentence gives narrow issue.

# Crux

Tell us when moving to next section in outline.

# Crux

Tell us what you will tell us, tell us, tell us what you told us.

# One more very basic

Give a verbal response . . .



# At the hearing

Cite the case, cite the record

Tell the judge where to find it

Thus, need to know where it is!.

# At the hearing

Take the judge by the  
intellectual hand.

# At the hearing

Avoid the kitten argument approach.

# Listen

To the Judge

To the adversary

To yourself.

- ▣ The ultimate basic point
- ▣ Be persuasive . . .

# Respect

Respect the Court

Respect your adversary.

# How to show respect

Welcome questions.



# How to show respect

Answer the damn question!.

# How to show respect

Never postpone an answer

If you don't know, say so

First word: “yes” or “no”

# How to show respect

Concede a losing point.

# Know how to win

Don't act as if it is a miracle  
that you won . . .

# Know how to lose

How NOT to act . . .

# Not showing respect

Interrupt the judge

Including non-verbal.

# Not showing respect

Argue after the judge has ruled.

# Not showing respect

“This is a very complicated.”



# Not showing respect

“What you don’t understand.”

# Not showing respect

- ▣ And the ultimate way?
- ▣ “With all due respect, Your Honor.”

# Complex comments

Request further briefing if we  
cite new case

Right way to say will seek writ.

# Pointers

Attack the opposing argument

-not opposing counsel

-“no matter how egregious the jerk might be”

▣ This is what we see/hear . . .

# Pointers

“Your Honor,” not Judge Buckley.

# Pointers

There is no “I” in team  
-nor in oral advocacy.

# Get rid of “I”

- ▣ I
  - ▣ Don't care!
- ▣ I think . . .
  - ▣ Not as persuasive
- ▣ I believe . . .

# Critical pointer

- ▣ If you are winning,
- ▣ SHUT UP!! . . .



# Critical pointer

- ▣ Prevent “snatch defeat from the jaws of victory”
- ▣ Ask if the Court has any questions.

# Critical pointer

- ▣ If tempted, zip it . . .

# Communication tip

Master. The. Pause.

*The right word may be effective,  
but no word was ever as effective as  
a rightly timed pause.*

- Mark Twain

- ▣ Speak in phrases, not whole sentences
- ▣ Cannot give a better example . . .

# More . . .

Provide audible punctuation

Don't speed past important points

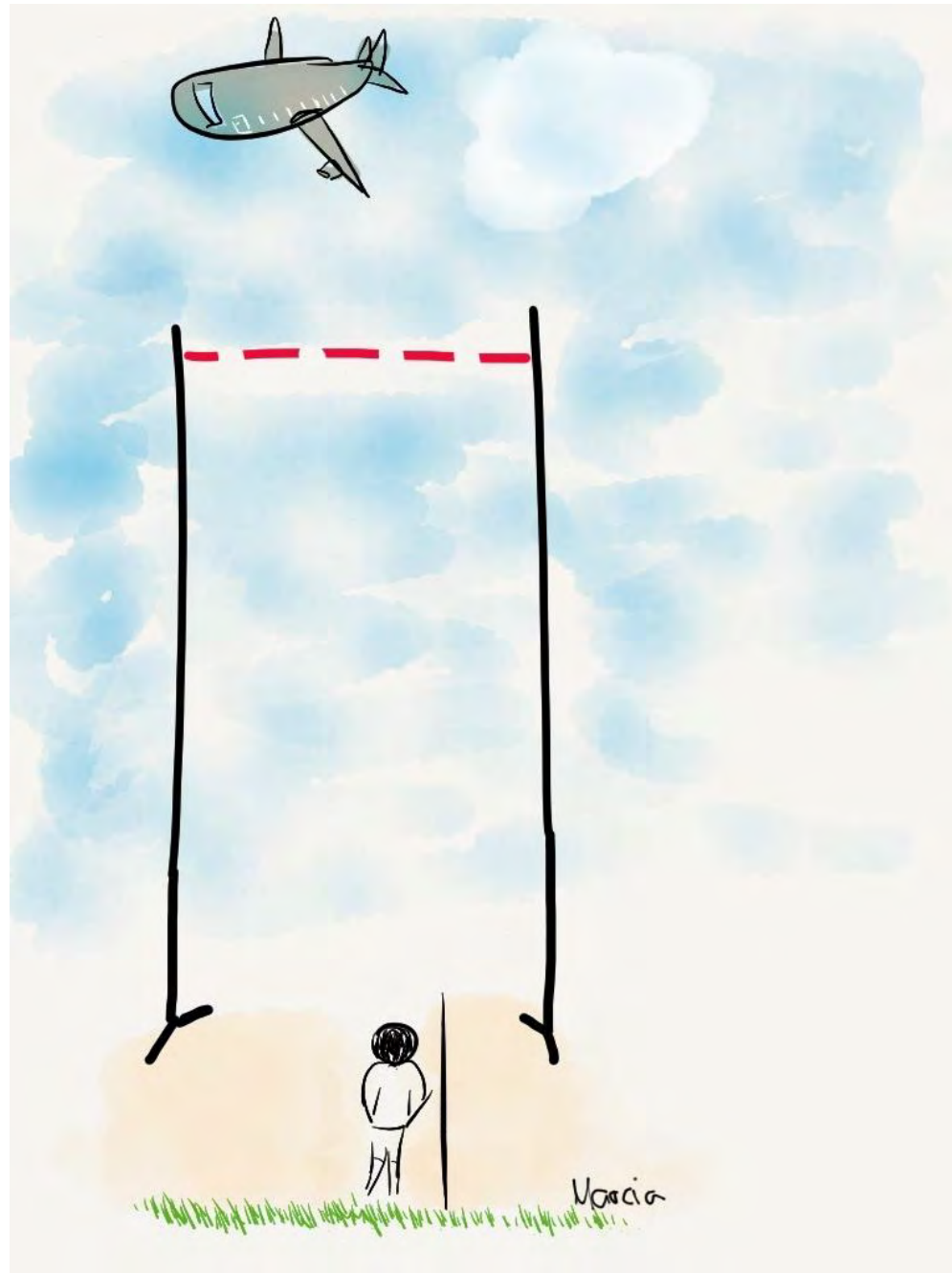
Add gestures to punctuate.

# Suggested books

- ▣ Making Your Case: The Art of Persuading Judges by Antonin Scalia and Bryan A. Garner
- ▣ The Articulate Advocate: New Techniques of Persuasion for Trial Lawyers by Brian K. Johnson and Marsha Hunter

# Now . . .





Thank You!!