

Presenting the plea

In nearly every case the plea in mitigation and the whole sentencing process will be an extremely stressful and daunting experience for your client. For the sake of all concerned, including your client, one of your aims will be to ensure that the exercise proceeds as smoothly as circumstances permit. You should assist your client to be as comfortable as possible in the circumstances that prevail. This will include ensuring that your client knows what to expect in the course of proceedings. It is important that you explain the procedure to your client including the roles of the various people in the court, where and when your client should stand, what he or she will be asked and how he or she is expected to respond.

As with other exercises in advocacy your plea should be prepared in advance. You will develop and follow a predetermined case strategy. You will determine in advance those issues you propose to address and the order in which you propose to address them for maximum effect. When delivering the plea you should be clear in your language and you should, so far as possible, be succinct in your presentation.

You will so far as time and resources permit have available to you all information necessary to permit you to present a full and effective plea on behalf of your client. You will have considered in advance of the presentation of the plea problems which may arise both from the position adopted by the Crown and from matters likely to be raised by the bench and you will have settled upon methods of satisfactorily resolving these.

If you are to present written character references on behalf of your client you should endeavour to obtain those at an early time. Insofar as is possible you will ensure that each referee acknowledges in the body of the reference that he or she is aware of the offending of your client.

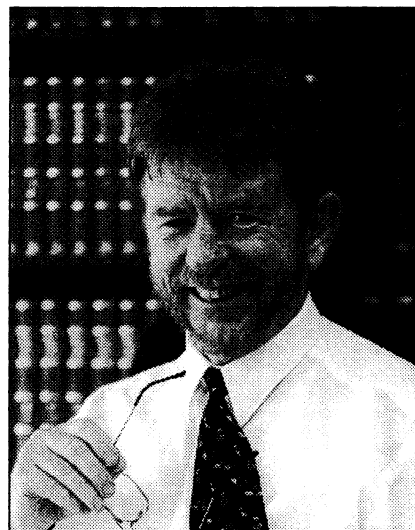
Defence counsel will determine in advance whether to call evidence in the course of the plea. You will need to consider whether to call evidence from your client and whether to call evidence from any of the referees. In making your decision whether to call the client to give evidence careful consideration must be given to whether such a course will be to his or her advantage. There will be cases where the course to be adopted will be clear. In some cases it will be necessary to

call your client in order to satisfy the court of some particular matter. In others it may be clear that the client should not be called. In most cases it will be a matter for the careful exercise of judgment in all the circumstances.

If you propose to call character evidence you should ensure that you first speak with the witness. Do not call the witness cold. Before the witness enters the witness box you will be conversant with what he or she is prepared to say and, importantly, what the witness is not prepared to say. I am aware of one instance where a character witness was asked to give evidence as to the past honesty of the prisoner and did so. However counsel, without instructions, went on to suggest to the witness that his client was a good worker only to be met with the response: "no, he is a bludger".

Both counsel should be in a position to deal with any issues that may arise as to the law relating to the offence, the law relating to sentencing, the facts of the particular matter and the range of appropriate dispositions. Defence counsel will have informed the client of the available dispositions and obtained instructions as to each. Counsel for the prosecution will have considered what is and what is not within the range of appropriate dispositions and be in a position to address those issues where necessary.

In some cases referring the court to comparative sentences will not be necessary and in others it will be so. Some judicial officers do not find great assistance in being referred to comparative sentences whilst others regard it as an advantage. Much will depend upon the nature of the case. You should be in a position to meet



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the needs of the court whatever they may be. It is necessary to bear in mind that the appropriate sentence will always depend upon the individual circumstances of the case.

Often a particularly difficult issue for defence counsel will be the question of remorse. Submissions are frequently made that the client feels remorse or is sorry for what he or she has done.

If such a submission is made as a bald assertion from the bar table it is less likely to receive as much weight in the sentencing process as it would if supported by reference to an objective source for example, to the making of restitution, to the immediate acceptance of responsibility by your client, by information provided by others as to the impact of the offending upon the offender and so on.

Genuine remorse is obviously an important factor in the sentencing process and great care should be taken in identifying information regarding any remorse that your client may feel and presenting it in the strongest possible light.

Although making a plea in mitigation or presenting the prosecution case on a plea is something that may be done by you with great frequency you should remind yourself of the importance of the occasion to both the community and to your client.

You should endeavour to ensure that you do not treat such an occasion as "just another plea". ①