

ADVOCACY

Organise the Address

“Don’t agonise. Organise. ”

Florynce Kennedy

In earlier articles in this series I discussed the need for brevity in your final address to the jury. Brevity may be achieved by focusing on the core issues in the case and avoiding peripheral issues.

I suggest you construct your address so that it presents an argument that is to the point, easy to follow and intellectually satisfying thereby making it easy for your audience to understand and accept your conclusions. A well ordered address adds force to the argument you present. Careful consideration needs to be given to how an effective order of presentation may be achieved. You will need to pose a number of questions to guide your preparation. Your first task will be to settle upon the content of the address. You will ask yourself: What issues do I need to address? What issues can I safely ignore?

Once you have identified the matters to be addressed you will then consider how best to present the argument relating to those issues. In what order should the identified issues be addressed? How will I start? How will I conclude? How will I approach the strengths of the case for the opposition and the strengths in my own case?

In dealing with counsel who was presenting a confused address Mr Justice Maule is reputed to have said:

“I know my brain is getting a little dilapidated; but I should like to stipulate for some sort of order. There are plenty of them. There is the chronological, the botanical, the metaphysical, the geographical, why even the alphabetical order would be better than no order at all.”

A logical process ought to be adopted. Issues should be raised and addressed in a logical order so that your audience can see how one thought process flows into the next. Any confusion in your mind and any confusion in the approach

you adopt is likely to lead to confusion in the minds of the members of the jury. If you jump from thought to thought and topic to topic it will be difficult for others to follow what you are saying and the impact of your argument may be lost as the jury struggles to keep up.

It is preferable to proceed through the material you wish to present in a deliberate and predetermined order endeavoring to ensure that the arguments that seem appealing to you are developed in a way that makes them also appealing to your audience. Of course in some cases confusion may be the only hope for success that remains for you. However in most cases a clear, concise and logical presentation is called for.

At the conclusion of a case it is likely you will have a range of arguments to present. Some of those arguments will be strong arguments and others not so strong. It is not necessary to present every argument and, indeed, it can be counterproductive to do so. Be selective.

If you have a strong argument and you present it in company with a weak argument, you may find that the overall impact of your strong argument is reduced because of the scepticism the jury feels for the weaker argument.

You need to determine your best arguments and present those clearly and forcefully. You should avoid the desire to address all arguments just because they are there. Do not get stuck on peripheral issues. Do not unnecessarily overload the jury.

Of course in the case of a prosecutor it may be necessary to address a wider range of arguments than is the case for defence counsel because the prosecutor must establish the Crown case beyond reasonable doubt. It may be necessary for the prosecution to draw all the threads together to assist the jury. What is required will vary from case to case.



Hon Justice Riley

One aspect of your preparation for your final address to a jury should relate to matters of an organisational nature. It is desirable that your presentation be smooth and free-flowing. The jury should not be distracted whilst you pause to order your thoughts or while you find an exhibit or endeavour to locate a passage in the transcript.

At the time you commence your address your thoughts should be in order. You should know what you intend to say and in what order you intend to say it. The papers and exhibits to which you may need to refer in the course of your address should be to hand and arranged in such a way that permits you to have ready access to them at any time. There should be no need for you to seek forgiveness from the jury whilst you locate a particular item.

Whilst you are fumbling amongst your papers or searching for an exhibit the minds of the jury will be focused upon matters other than the argument you present. When you have located the missing item you will have to regain the thread of your argument and ensure that the jury has done likewise. If you are properly prepared such an interruption to your presentation will not occur.

The presentation of your final address is a crucial event in the trial process. An ordered and logical approach is called for. Careful preparation will avoid that event being marked by unnecessary and distracting interruptions.