

ADVOCACY

Presenting the Address

"If you don't know where you are going, you'll end up some place else"

Yogi Bera

The closing address is your final opportunity to present your case directly to the jury. At this time it is essential that you exercise all your skills in an endeavour to engage the jury. There are numerous techniques you may wish to employ to achieve this end. Many of these have been discussed in earlier articles in this series.

One matter of importance is the approach you adopt to the jury. Care must be taken to ensure that you are, and are seen to be, talking to them rather than lecturing them or in any sense talking down to them. You will be assisting them in the task they are about to undertake and that will involve an element of explanation of your argument and discussion of the reasons for one approach being preferred over another. In such circumstances it is easy to create an impression that you are being patronising or for you to sound condescending. This is to be avoided.

It is desirable that you endeavour to maintain eye contact with as many members of the panel as possible. You are likely to lose the jury if you spend your time reading from notes. Similarly, if you are forever flicking through your notes, or searching for documents, or clicking your pen, or engaging in any other distracting conduct, you will be detracting from the effectiveness of your presentation.

There is much debate about the use of notes in the presentation of an address. If you are one of those fortunate individuals who is able to clearly recall all of the matters that are to be addressed without the assistance of notes then of course you should address without reference to notes. However most people will need to at least have a series of points or headings to remind them of the order of the address they are about to present and as a check list to ensure that every point that should be addressed is addressed.

Others may need to have a more detailed outline of the address incorporating key

phrases to be used at pre-determined points, passages in the transcript to be quoted and other matters of importance to the address.

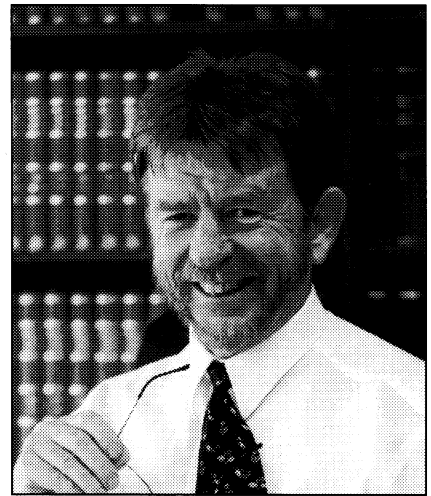
I do not accept the view that it is necessary to do away with notes altogether. For some people the presence of notes may act as a form of security blanket even though the notes are not referred to. Such advocates may wish to have notes to hand for the purposes of reminding them of matters to be addressed, ensuring that all topics have been covered and for them to resort to if struck by a mental blank.

In addition an advocate may wish to have parts of the address recorded in a form that is carefully constructed and which identifies pre-determined persuasive expressions specially created for greater impact. In those limited circumstances the advocate may wish to place greater reliance on notes for a short time.

Personal experience will determine the extent to which you use notes in your address.

Whatever approach you adopt you should avoid the monotonous reading of the final address. To simply read the address makes for dull listening and can mean that what you have to say is less persuasive than would be the case with a natural conversational presentation of the argument. Reading from notes removes the spontaneity from your address and is likely to reduce the impact and appeal of what you have to say.

Further, if you are reading you cannot engage the members of the jury. You



Hon Justice Riley

will have little idea as to how they are reacting to what you say. You will not know whether a change of tack is desirable.

In the course of the final address it is inadvisable to read at length from any source including the transcript and documents that are exhibits in the proceedings. If the jury does not have the document before them, and therefore the ability to follow it themselves, reading a lengthy passage is likely to lead to a loss of concentration and inattention. In most cases it will be better to paraphrase and summarise passages for the jury. If there are vital words that need to be directly quoted then direct quotation can be adopted of those particular words and the paraphrasing then resumed. In the event that you have to read directly from a document you should have the precise material that is to be read identified in advance.

You should not be determining what is to be read and what is not to be read whilst you are on your feet. It is useful to highlight the passage that is to be read clearly identifying the commencing point and the end point.

Consistent with your conduct throughout the case you should avoid the temptation to use complex terms, technical phrases, acronyms or legal jargon in your address. In other words, you should avoid the use of language that might be misunderstood by your audience.

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As part of the process of seeking to simplify the issues and maintain the attention and understanding of the jury you will seek to adopt simple and direct language.

If your address is to be interrupted by a necessary adjournment you will wish to take full advantage of that.

Immediately before the adjournment you will focus full attention upon one of the stronger arguments in your armory.

The jury will then retire with that consideration in mind.

They will have the whole of the break to ponder it.

When the hearing resumes following the adjournment you can remind the jury that you were discussing that powerful point immediately before the adjournment and by repetition reinforce it. You may then move on to your next point.

In most cases when you reach the end of your address it is desirable to claim the verdict.

Bring the matter to a conclusion by telling the jury exactly what it is that you want.

It may be imprudent to demand a particular result because the jury may consider you to be intruding upon the function they have been told is for them alone.

Rather you should confidently request the result.

The conclusion of your address should be on a strong note. It should not peter out. The address should not simply fade to black.

The members of the jury must be left with the full force of your argument uppermost in their minds as you resume your seat. ①

ANZAPPL Conference

Future priorities will be the focus of the Australian New Zealand Association of Psychiatry, Psychology and the Law's 22nd Annual Congress (Conference) in Darwin on July 11 to 14.

Titled Changing Climates: Future Priorities in Psychiatry, Psychology and the Law, the conference's keynote speaker is an internationally known Canadian psychologist from the Universite de Montreal, Dr Sheilagh Hodgins.

As part of the Conference, local practitioners have been asked to prepare and present the feature session which takes place traditionally on the Saturday afternoon (13 July).

It usually takes the form of a mock trial or a hypothetical involving practitioners from the three disciplines. The object is to make a serious point in the exercise but also to entertain.

Solicitor General Tom Pauling and DPP Rex Wild have been asked by ANZAPPL to prepare and present this session.

And they'd like others to be a part as well.

Those interested in participating should contact Rex Wild on 8999 7315 ASAP.

The main part of the Conference itself is shaping up well.

30 abstracts

"The response to our call for papers has been encouraging with more than 30 abstracts received," ANZAPPL's Gordon Barrett QC said.

ANZAPPL was set up in the 1970s by the late Dr Rob Myers, a psychiatrist who saw the advantages to the three professions (and their clients) in a greater dialogue between them (the professions).