

# Communication

*"To express the most difficult matters clearly and intelligently, is to strike coins out of pure gold."*

- Geibel

Advocacy is the art of persuasion. In order to persuade it is necessary to communicate with your audience. The members of the audience with whom you wish to communicate will include not only the judge or magistrate but also any juror or witness who may be present.

Effective communication comes down to the language that you use. You must tailor your language to suit the audience and you must constantly be aware that the words used by yourself and any witness you may call, need to be understood by everyone involved in the proceedings.

If, in the course of proceedings, you stray into language that is unfamiliar to your audience or any member of it you may be fortunate and find that the person directly concerned will ask you to clarify your meaning. That will permit others in the court to benefit from the explanation you provide. However, more often than not, where a witness is involved, the witness will wish to hide from a display of ignorance by guessing at what is meant by your question. The danger is obvious. Others in the room (excluding the judge) will not have the opportunity to seek clarification.

It is especially dangerous to use other than plain language if you are addressing a jury. The members of the jury do not have the opportunity to point out that the words you are using are not familiar to them or that they have no idea what it is that you are trying to convey. A powerful argument may disappear in a fog of verbal confusion.

The effective advocate will use words that can be understood by all. Except when addressing a court constituted by a judge or magistrate alone or a specialist tribunal, it is prudent to use plain and simple language at all times. It is easier to ask "where do you live?" than to risk misunderstanding by enquiring "what is your residential

address?" It is also easier to refer to cars rather than motor vehicles, jobs rather than employment and beer or wine or spirits rather than intoxicating liquor. The list of examples is endless.

A similar problem of misunderstanding or lack of understanding can arise when the witness you have in the witness box uses language that is likely to be unfamiliar to his or her audience. This may occur where you are dealing with an expert or simply a person who has a wider vocabulary than most. Medical practitioners are commonly witnesses in all kinds of proceedings. Their vocabulary, as with their writing, can sometimes be hard to understand. Not unnaturally they use the language or jargon of their profession. They will say that a patient was hemorrhaging rather than bleeding, or that he suffered a contusion rather than a bruise, and so on. Many of the expressions used may be very familiar to you but not so to others in the court. Similar observations apply to witnesses from other professions and special interest groups.

You should encourage the witness to use terms that can be understood by all and, where the witness fails to do so, it is necessary for you to paraphrase the answer in terms that are readily understood. This will particularly be so where your witness is prone to using acronyms and professional jargon. It is your obligation to ensure that what is said by the witness, as with everything that is said by yourself, is understood by all present in court.

In a similar vein it is necessary for you to ensure that you don't slip into the habit of using legal terminology, shorthand or acronyms. You may know that "the Code" refers to the Criminal Code and what familiar expressions such as "adjourned generally", "stood down", "embarrassed", "interrogatories", "discovery" and so on



Hon Justice Riley

mean in their legal context. You will be familiar with the acronyms CSJ, DUI, DEU and so on. Others may not.

In an article entitled "The Ten Commandments of Evidence in Chief"<sup>1</sup> Peter Berman SC gave the following example of the use of inappropriate language in actual proceedings:

*Q: Do you expect your relationship to survive the trauma of your present separation?*

*A: Um?*

*Q: Do you intend to live with him after he gets out of gaol?*

*A: Yeah."*

It is not just the terminology that may create problems. People in court may also have difficulty with concepts that are thoroughly familiar to yourself and your expert witness. Part of the art of communication is ensuring that the listener is able to keep up with, and follow the thought processes behind, the language. One eye needs to be kept on the witness and the other on the listener or listeners.

**Endnote:**

<sup>1</sup> Available on [www.lawlink.nsw.gov.au/pdo.nsf/pages/DefenderBank](http://www.lawlink.nsw.gov.au/pdo.nsf/pages/DefenderBank)