

Luck will run your way!

A book review by Rex Wild QC, Director of Public Prosecutions

Gary Player, the famous South African golfer, won millions of dollars and many, many tournaments. He often played miraculous shots. In his prime, he was accused by those he vanquished of being lucky. He used to reply to the effect that the harder he practised and the more he applied himself and prepared for tournaments, the luckier he got.

This is a curious introduction to a review of a book on a legal topic. Hopefully all will become clear.

Before proceeding further, I should declare interests. The book being reviewed is by David Ross QC and the title of it is *Advocacy*.

Comcare - cease effects decisions cont...

amendment to the SRC Act all claims once accepted under s. 14 of the SRC Act as being a work related injury remain active into the future. A claimant thereafter has a continuing right to submit claim for an entitlement to compensation which must then be considered on its merits.

Practitioners should consider past matters where the AAT affirmed a cease effects decision or where the AAT affirmed a decision to deny a s. 14 claim at a time after an earlier s. 14 acceptance as an affirmation by the AAT on this basis is clearly unsustainable given the Federal Court's interpretation of the SRC Act.^①

Footnotes

¹ [2003] FCA 318.

² [2003] FCA 318.

³ [2003] FCA 318.

⁴ [2003] FCA 318.

⁵ (1992) 39 FCR 236 at 240.

⁶ [2003] FCA 1628.

⁷ [2003] FCA 318.

⁸ [2004] AATA 617.

⁹ [2003] FCA 318.

¹⁰ [2003] FCA 1628.

¹¹ Unreported Federal Court 78/0008 3 March 1978.

David and I commenced the law course in Melbourne University together in 1962. I was from Sydney. I knew no one. David befriended me on my first day. We have been friends ever since; that is, for over 40 years. David went to the Victorian Bar in 1967. I arrived there in 1973 having been a solicitor for some years. I read at the Bar with David. In 1974 he left the Bar for some years to be the first Director of Practical Training at the Leo Cussen Institute, which was established that year. He asked me to be one of the teachers. I was pleased to do so and taught Civil Litigation.

When I had my first criminal trial (and my first significant criminal anything) it was to David I went for advice. In 1979 I was asked to co-ordinate and structure the first Readers Course at the Victorian Bar. Again, it was to David that I went to obtain advice about the course preparation, the syllabus, choice of presenters and the like.

Readers of *Balance* will know David is a regular visitor to the Northern Territory and has been for many years. We have been opposed in a number of trials in Darwin and Alice Springs and he has been briefed on behalf of the Crown. He gives freely of his time and has presented seminars to Territory lawyers during his visits. He is a born teacher as well as a fine advocate. Whenever he appears here in Darwin there seems to be a flock of young people gathering around him outside the court wanting to see him in action. He is an eminent advocate with extensive experience in trials and appeals throughout Australia. He has also taught advocacy in many countries.

So it is, then, that the readers of his new small book on advocacy will be certain to receive sound instruction

and good advice.

It is a very pleasant and digestible book to read. Simple propositions are put plainly. They are demonstrated by unobtrusive, and often entertaining, bon mots or short references to cases. What he says makes sense. He is instructive and encouraging.

We have learnt that advocacy is the art of persuasion in court. David says that:

"Advocacy is winning cases. Nothing more and nothing less. It consists in persuading a court to do what you want. The court may have serious misgivings, but the good advocate gives them no choice".

What is a *win* in a particular case of course might be open to argument. It might be in terms of getting the best possible result in the circumstances for your client. That might be a suspended sentence rather than an actual term of imprisonment where an outright acquittal is not possible. In a civil claim, a win might be minimising the plaintiff's damages in a clear case of negligence (I'm assuming that counsel acts for the defendant!). On the other hand, as we know, prosecutors never win cases; they just *minister* to the cause of justice!

There is good advice as to using plain and simple language in dealing with witnesses. Although cross-examination is often regarded as the glamorous part of the business (who has written a book on the *Great Examinations-in-Chief?*), the ability to get a witness to *tell the tale* is one which every advocate must attain. As the author says, *evidence-in-chief wins most cases*.

The author deals with all the issues that might arise in the daily activities

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Legal Extravaganza to Draw Lawyers from Across the Globe

Early next year, lawyers from across the nation and around the world will descend on the Gold Coast for one of the largest and most significant legal conferences ever held in Australia.

Glenn Ferguson, chair of the Conference Organising Committee, said: "LAWASIAdownunder2005 promises to be the highlight of next year's legal conference calendar throughout Asia and the Pacific".

"The conference is expected to attract delegates from across Australia and from as many as 30 countries within the region and beyond," he said.

The legal extravaganza will encompass the 19th Biennial LAWASIA Conference, the Law Council's Legal Convention, the Queensland Law Society's Law Symposium, the 11th Conference of

the Chief Justices of Asia Pacific and the 13th Presidents of Law Associations meeting.

A meeting of the Australian Standing Committee of Attorney-Generals (SCAG) will also coincide with LAWASIAdownunder2005.

"The conference offers a unique networking opportunity for practitioners to develop relationships with their counterparts interstate and overseas," Mr Ferguson said.

East Timor's Foreign Minister Jose Ramos Horta, ASIO Director-General Dennis Richardson and David Hicks' lawyer Stephen Kenny will be among the high-profile guest speakers to

address the conference

Other keynote speakers include well-known human rights lawyer and UN Human Rights Commissioner, Asma Jahangir, and award-winning Pacific correspondent and journalist, Sean Dorney.

LAWASIAdownunder2005 will be held at the new Gold Coast Convention and Exhibition Centre from 20-24 March 2005.

A registration brochure is available from the LAWASIAdownunder2005 conference website. To access the brochure, or for more information, visit www.lawasiadownunder.com ①

Luck will run your way! cont...

of a court advocate. Read it all at once, as I did, or rustle through the pages until something takes your fancy. Here a reference to a *Basha Inquiry* (39 ACrimR 337), there a reference to dealing with prior inconsistent statements. Many of the examples given are from Territory cases.

David refers to that old saw that suggests every advocate should start his preparation by writing his final address. He knows no one who has done so, he says. Nor do I, although the proposition is often promoted. It is true, however, that the preparation before trial or hearing and the conduct of the case itself should all be aimed at achieving the best possible result. It is this result which must be in the sights from the outset and the ammunition will be collected during the hearing to be fired during that *finquility*. *Some of the old timers are magnificent. A few have been in practice for 30 years but with the experience of one year repeated 30 times.*

There is plenty of value for the reader. I suspect that often only the young advocate thinks he can learn from such a book. I disagree. There is something here for every practising

advocate (and some pleasure for those of us nearing the end).

After the case is over, the author suggests

- Do not tell your opponent about the defects in the case you have settled. You might never settle another one again.
- Be gracious in victory and in defeat.

I wish I had written this book. As it is, I heartily recommend it to readers of *Balance*. I will endorse it for use by the students who undertake the course of *Advocacy* at Charles Darwin University. I will get in copies of it for the staff of the ODPP. I will put some aside to give as gifts to young lawyers. Get yourself a copy!

I nearly forgot. David, like every other advocate I know (for example, Justice Riley in his series of articles on advocacy which have been published in this journal), emphasises the importance of preparation. He pens a whole chapter on it. As David says: "*painstaking preparation means that luck will run your way!*"

Advocacy, by David Ross QC, Cambridge University Press, tel (03) 8671 1411, RRP \$39.95.①

The Little Red Book of Advocacy

Justice Trevor Riley wrote regular advocacy columns in *Balance* for over five years. His columns were always popular and well read. *The Little Red Book of Advocacy* was compiled from these pearls of wisdom.

Justice Riley has long been a "teacher" of advocacy, regularly conducting workshops on the issue since 1994. He has been an instructor with the Australian Advocacy Institute for many years.

"This collection of Justice Riley's articles is an important contribution to the education of advocates..." Professor George Hampel QC, Chair of the Australian Advocacy Institute.

The Little Red Book of Advocacy retails for \$22 (including GST) and is available from the Law Society NT. For more information, or to order a copy, please contact the Society on (08) 8981-5104 or via email at lawsoc@lawsocnt.asn.au.