

## SAHCA Advocacy Tips

This article considers opening and closing speeches in the higher courts

### **Q: Aren't opening and closing speeches just boring summaries of the evidence to be got through as quickly and simply as possible?**

A: Many advocates would consider a cross-examination reducing a witness to extinction to be the most fun an advocate can have. However, in the ordinary life of the Solicitor-Advocate, such moments occur rarely. There is much satisfaction to be derived from a good speech followed by the right verdict. Advocacy is all about persuasion, and when the dust of a trial has settled your speech will be the only direct opportunity you have to persuade the jury. It merits just as much consideration as any other part of the trial and should be regarded a satisfying part of your task, not merely the kick-off or the bit before the ref. blows the whistle.

### **Q: What should be in the Prosecutor's opening speech?**

A: Your opening speech will set out to the jury what you intend to prove and how you intend to prove it. It is the first piece of action they see and will set the tone of the trial. You are the storyteller and you want the story to capture their attention. Remember that they will rapidly form an impression of you as well. Juries are ordinary people. They will need explanations in simple terms, but don't patronise and don't adopt a voice or manner that isn't "you" in an attempt to muck in. Explain the ingredients of the offence in everyday language. Don't use jargon – G. B. H. - and don't assume the term in the statute will be readily understandable. Look up the relevant JSB direction in advance. It's important that your explanation of the law at the beginning of the trial and the Judge's at the end are the same. It's also courteous to speak with your opponent(s) if you plan to say anything controversial or unusual.

### **Q: What are the pitfalls in opening?**

A: Firstly, referring to evidence whose admissibility is in dispute. Check whether your opponent intends to take any point of law, e.g. the admissibility

of a police interview. The jury will never know of it if the challenge is successful, as it will be dealt with in their absence.

Secondly, overstating your case or overplaying your hand. Remember that all you have is a set of witness statements. Soon, a live human being, replete with frailties is going to enter the witness box and tell the court what he saw and heard. He may not come up to proof; he may go hostile or qualify his evidence. So don't tell the jury, "You will hear from Jim Bloggs who will tell you that..." because Bloggs might not. So delicately understate the evidence - e.g. "Jim Bloggs was at the scene and the defendant made remarks to him which you may feel were effectively admissions of guilt." Thirdly, in the Crown Court we talk about the burden of proof as being "Satisfied so that you are sure" - "beyond all reasonable doubt" is reserved for TV dramas. Don't labour the point either - this succinct formula is going to be hammered home in all the closing speeches and in the Judge's summing-up. Do not advance something for which there is no support, keep emotion out of it and only comment in a fair manner. Remember, as a Prosecutor, you are the Minister of Justice, your task is not to get a conviction at all costs.

**Q: Can the Defence make an Opening Speech?**

A: Yes, and in a long or complex case the Defence advocate may wish to deploy the tactical advantages of an opening speech. There are risks in such a strategy and the considerations obtain for any opening remain valid. The risks are that you reveal your best points, letting the prosecutor attack them through cross-examination, or your witnesses do not come up to proof or you open too high. If you wish to make such a speech, it is customary to tell your opponent and tell the judge by saying "Your Honour, I shall be calling other evidence".

**Q: How do I prepare my opening?**

A: First, you do not read out the police summary from the Advance Disclosure. You read your Brief and form a theory about what has probably happened. The facts and inferences create the theory - if a fact doesn't fit then the theory is at fault - re-think your strategy. Your examination of all witnesses and your closing speech will flow from that theory. Ensure it is flexible so that

if /when new evidence comes to light, the theory can be modified/justified (or vindicated/gloated over!).

**Q: What are the key components of the closing speech?**

A: You must draw together all of the favourable points presented in evidence. Equally, the difficult points must be tackled. Make appropriate concessions e.g. if, in our S20 case, the injuries do amount to GBH, say so and concentrate on what is in dispute. If you prosecute, you need to persuade the jurors that you have satisfied them so that they can be sure of the defendant's guilt. If you defend, you have the opposite task. You can comment on the evidence - explaining your theory and how it all now fits. If there are any points of law, it is courteous to air these with your opponent before speeches. If you are not in agreement canvass matters with the Judge so that the jury is directed in a consistent manner. Never hold back a point in the hope, if you are convicted, you can use it as appeal ammunition.

**Q: What can't I say?**

A; You can only use evidence put before the jury in your speech. You cannot tell them of something they did not hear, nor pursue a line that you did not put to witnesses. Again, don't close too high – it's not over till the Judge sums up and if you overdo it he might comment on it. Jokes, irony, sarcasm and parody are respectable techniques but remember the gravity of the occasion and that victims may be in the gallery. What may amuse other advocates may utterly alienate a jury where the victim has suffered an awful experience.

**Q: How long should my closing speech be?**

A; Fidel Castro addresses his hapless audiences for several hours. You will not do this! In a three-day trial, 20 minutes is likely to be enough, in a one-day trial, 5 or 10 minutes. Brevity really is the soul of wit and an uncomfortable or bored audience is unlikely to be persuaded by the author of its misfortune. Don't address the jury as if you were on the barricades either - people don't like to be shouted at. Keep a conversational tone - almost as if you were sharing a secret.

**Q: How can I appear effortlessly in control?**

A: Always prepare your closing sentence, otherwise you will undermine your until-now confident delivery by circling endlessly while you struggle to think of something stunning. Look smart - bands should be white and pressed, not yellow and crumpled. It may be de rigeur in some quarters to wear a torn gown but the jury will think you are just scruffy.

Prepared on behalf of SAHCA