

ADVOCACY

Relating to the Jury

“A jury consists of 12 persons chosen to decide who has the better lawyer.”

Robert Frost

The approach adopted by an advocate in presenting a case to a jury will differ from that which would be employed if the tribunal were a judge or magistrate sitting alone.

Generally speaking members of the jury will be embarking upon a new experience. It is likely that many will find the newness of the experience distracting, especially in the initial stages of the proceeding. Until the roles of the participants have been spelled out there will be a tendency to look upon the process as an interested spectator rather than a participant. Jurors are likely to find the conduct of legal proceedings quite different from anything they have experienced before. They will not be familiar with the layout of the court, the “interesting” dress of the participants, the roles of the principal players or with the unusual use of language that makes up the jargon of the courts. They may have difficulty in grasping legal concepts and approaches to proof that lawyers, who appear in the courts regularly and have specialised training, take for granted.

It follows that you should not assume that the jury has greater knowledge and comprehension of what is going on than in fact may be the case. Do not make the mistake of assuming that members of the general public and, in particular, members of your jury think in the same way as do lawyers. Be aware that different members of the jury will have different cognitive skills. They will inevitably have different levels of intelligence and they will gather

and process information in different ways.

You should also bear in mind that the members of the jury will be hearing the facts of the matter for the first time. They will be doing so in circumstances where the whole process is distracting for them. They will not have a ready familiarity with the history of the matter and therefore will not have an immediate appreciation of the importance of facts that may be obvious to others with a longer involvement in the action.

You should present your case in a way that is both clear to persons who are not familiar with the courts or the particular matter and in a way which ensures that the interest and attention of the jury is maintained.

To this end there are some strategies that you may wish to adopt. In cases that are factually or legally complex you should endeavour to identify and employ simplification strategies. This will include avoiding complex language and, so far as it be possible, complex concepts. Information provided to the jury should be reduced to its simplest and most direct form. You should avoid jargon. You should avoid acronyms. You should employ plain English and simple terms. In order to address and simplify

complex issues you may wish to use chronologies, charts and other visual aids of the kind discussed in an earlier article in this series.

As with most people in the community, jurors have a limited attention span. It is essential that you employ strategies to endeavour to maintain their interest and attention. You should add variety to your presentation. You should avoid the



Hon Justice Riley

monotone. You should intersperse your presentation with a reference to visual aids or to exhibits. You may wish to introduce the occasional rhetorical question to maintain interest and to have the members of the panel formulating answers that are consistent with the case that you are endeavoring to present. If you fail to maintain the interest of the jurors then, no matter how compelling your argument may be, it may not be given a fair chance of proper consideration because the capacity for attention has been exceeded.

Although I suspect that most juries are sufficiently sophisticated as to avoid identifying the client with the advocate, it will be helpful to your client's cause if the jury is able to warm to you. It would be unfortunate if the members of the jury felt antagonistic or distrusting towards you for whatever reason as that may reflect upon the view they form of your client. Displays of arrogance, insensitivity, bullying, unfairness and other displeasing characteristics by the advocate are unlikely to help the cause of the client. Of course if the members of the jury have a feeling of trust in the advocate that may be beneficial for the client.

In my experience most juries are collectively intelligent and perceptive. They are less likely to be swayed by a dramatic presentation than they are to be swayed by pure, direct and simple logic. They will be put off by sharp practice on the part of the advocate. There should be no attempt to con them. You will be assisted in gaining the trust of the jury

Continued over

ADVOCACY

Continued from page 17

if you are seen to be candid. You should avoid any suggestion or possible perception that you are trying to deceive them. It is better to confront bad facts and endeavour to explain these rather than be thought to be avoiding them. The members of the jury are told to bring their commonsense and experience of the real world to bear in making decisions. They are unlikely to be impressed by nice distinctions or subtle arguments that do not confront the important issues of the case.

Obviously when appearing in the presence of a jury you should demonstrate confidence in your own skills and confidence in your client's case. That confidence should not transgress into arrogance or be marred by flippancy about the case or sarcasm regarding the case for the other side.

You must to the best of your ability make your presentation simple, interesting and to the point. You should keep the special needs of the jury in the forefront of your mind at all times including when you are engaged in preparation for trial.

AROUND THE NT BAR

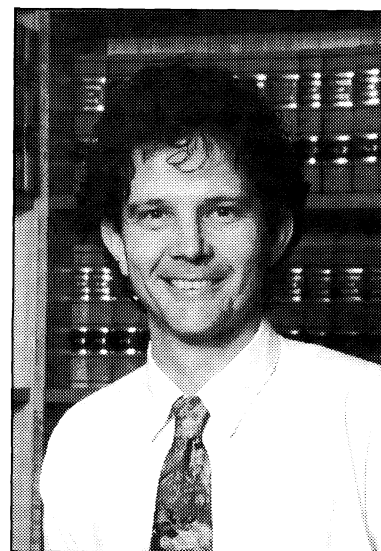
Richard Bruxner

Richard Bruxner is a barrister at William Forster Chambers in Darwin, Northern Territory.

Richard was admitted to practice as a solicitor in the Northern Territory in February 1990, having obtained an Arts Law degree at the University of Queensland.

He was employed by Cridlands between 1989 – 1990 and 1992-1997, becoming a senior associate of that firm in July 1996. He spent two years working in Canberra between 1990 and 1992 with Canberra firm Crossin Power Haslem (now Barker Gosling).

Richard joined William Forster Chambers in February 1997. He is a member of the Northern Territory Law Reform Committee. Richard has appeared and advised in a variety of commercial litigation matters. He has acted for and against the ACCC in enforcement proceedings under the Trade Practices Act. He has also appeared before several administrative tribunals both as counsel assisting and on behalf of interested parties. He is currently involved in a number of



Richard Bruxner

matters arising under the Native Title Act and the Aboriginal Land Rights (NT) Act. He has particular interest in the areas of professional negligence, government liability (private and public law), restitution and equity.

Despite his enthusiasm for carpentry and fishing (and the invaluable contributions of his four and six year olds to those pursuits) he is unlikely to give up his day job.

ACTION IN 'HUMANITARIAN EMERGENCIES': EFFICIENCY, RESPONSIBILITY AND POLITICS SEMINAR

On Friday 12 October 2001 the Australian Red Cross and the International Committee of the Red Cross (ICRC) are hosting a full day seminar at the Carlton Hotel in Darwin.

This seminar seeks to raise issues surrounding increasingly dire situations of humanitarian need world-wide, often coinciding with armed conflict, in which various actors play roles which may be complementary, overlapping, unclear, or even mutually-exclusive. Is it right to label such situations 'humanitarian emergencies' or are they really political emergencies with humanitarian consequences? What are factors which influence the actors' behaviour? What are the cures proposed by the international community for such

situations? What is the legal framework for action? And how do government, international organisations, NGOs, and the Defence Force tackle these issues in a way which is efficient, responsible, and attuned to the victims' needs?

Registration

Full: \$44.00 GST inclusive (Registration on or before 1 October) or \$55.00 GST inclusive (after 1 October)

Concessional: \$27.50 GST inclusive (Registration on or before 1 October 2001) or \$33.00 GST inclusive (after 1 October 2001)

Full time students, pensioners and unemployed are eligible.

The seminar presents an opportunity for all groups and individuals interested in

the practical, political, and structural problems surrounding humanitarian assistance in situations of internal violence and armed conflict to share their ideas with knowledgeable representatives of humanitarian organisations, the Defence Force, academia and government. The interactive format of the seminar is designed to allow for ample discussion and exchange of views.

Contact:

Seminar Secretariat - IHL Seminar
Australian Red Cross - NT Division
GPO Box 81
Darwin NT 0801
Or contact Michelle Fadelli on 8981 4499 or austredcross.ihl@octa4.net.au
to get your registration form.