

EFFECTIVE ADVOCACY

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I. THE ADVERSARIAL PROCESS

As many of you will know, the criminal justice system in England is adversarial not inquisitorial. The Prosecution, known as the Crown Prosecution Service (CPS), decides whether to charge the Defendant with a criminal offence. Although funded by the State the CPS is entirely independent of the Government and, indeed, the Police. The investigation into whether a crime has been committed and by whom is conducted by the Police, who then present the results of that investigation to the CPS.

The CPS alone decides whether to charge the Defendant and in making that decision it applies a two stage test. First, is the evidence sufficient to create a realistic prospect of a conviction? If the answer is no, the Defendant is not charged. If the answer is yes, then the second stage arises — is it in the public interest to prosecute? For example, the evidence may show clearly that the Defendant has stolen an item of little value, but the Defendant is terminally ill and about to die. It would not be in the public interest to prosecute him for a minor crime in such circumstances. If, however, the alleged crime is serious, then neither old age nor ill health will necessarily mean that a charge will not be brought.

Provided that the CPS applies the correct two stage test, the Court will not in general interfere with the decision reached by the CPS. In overall control of the CPS is the Attorney General, who is accountable to Parliament.

Once a Defendant is charged, then the expectation is that the case will be brought quickly before the Court. We have a saying that sums up the position well — justice delayed is justice denied. Of course a simple assault is very different from a complex fraud. Nevertheless both the Prosecution and the Defence are expected to act efficiently so that each case can be brought speedily to trial.

If the Defendant is in custody, Parliament has imposed a custody time limit. No matter how serious the charge, the trial must start within 112 days of the case being sent to the Crown Court or the Defendant will be released on bail. The Court does have a power to extend the custody time limit, but the Judge can only grant an extension in limited circumstances, generally when satisfied that there is a good and sufficient reason for an extension and if satisfied that the Prosecution has acted with all due expedition. It is simply unacceptable that a Defendant should languish in prison for a long period before the trial starts. You only have to put yourself or someone you love in the position of the Defendant to understand the importance of efficient and effective trial preparation. Any one of us could one day be unlucky enough to be the subject of an allegation. Whether guilty or innocent, and especially if innocent, no-one should wait any longer for the trial than is absolutely necessary. The time limit imposed by Parliament focuses the mind of the Police, the Prosecution, the Court and also the Defence.

Quite apart from the custody time limit, English Judges also have significant case management powers designed to ensure efficient and speedy justice.

So the CPS alone decides whether to charge a Defendant with a crime. All prosecutions are done in the name of the Queen as Head of State. So, when I commit a crime, or more accurately, when I am caught, my case will come to Court as the Queen (in Latin, *Regina*) v (against) Janice Lesley Brennan. Those of us who prosecute must never forget that we do so in the name of our Queen. It is a serious responsibility and we must at all times conduct ourselves with the utmost integrity and propriety.

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At trial the case will usually be prosecuted and defended by members of the independent Bar, Barristers. Many of us at the Criminal Bar both prosecute and defend, although obviously not in the same trial! It is a good way to keep a balance, a sense of perspective and good judgement. I thoroughly recommend it. The Prosecutor's task is to present the evidence that supports the charge. As it is the Prosecution that brings the case against the Defendant, it is their task to prove the charge if they can by making the Jury sure of guilt. The Defendant has no obligation to prove innocence. The role of the Defence advocate is to test the evidence and try to undermine it by creating doubt about guilt.

The Judge acts effectively as an umpire. He/she must ensure that the rules are obeyed. He/she decides which evidence is admissible, if there is a dispute about that between the Prosecution and the Defence. He/she will tell the jury what the law is that they must apply to the evidence. But it is the Jury and the Jury alone that decides whether the Defendant is guilty or not. The Jury decides which facts are proved and which are not, which witnesses are truthful and reliable and which are not. The Jury makes its decision on the evidence presented before them by the Prosecution and the Defence, and it is the Prosecution and the Defence, not the Judge, that chooses what evidence to produce in support of their respective cases.

II. ADVOCACY TRAINING METHODS FOR TRAINEE ADVOCATES AND NEW PRACTITIONERS

For many years we believed that advocates were born with the necessary skills and that advocacy could not be taught. We were wrong — at least as far as the basic skills of an advocate are concerned. Certain advocacy techniques can be taught and, if taught correctly, can be mastered by just about everyone. Of course, once those techniques have been acquired, to become the best you will need natural ability and flair and you will find your own personal style. Not everyone can become a world class swimmer, but we can all be taught to swim competently and safely. So it is with advocacy.

The method that we now use to teach advocacy is one that we were introduced to about 20 years ago by a brilliant Australian Judge, the Honourable Mr Justice Hampel. We have adapted it slightly to fit better with the English style of Courtroom practice. It has been our pleasure in recent years to travel to many countries around the world in order to share our experience of teaching advocacy and to help other jurisdictions create their own advocacy workshops. If any of you would like assistance in setting up your own advocacy training scheme, I would be very happy to discuss it with you later.

The beauty of the advocacy training method is its logic and its simplicity. Advocacy is a performance skill, just like playing a sport or a musical instrument. Effective advocacy requires the ability to communicate and the ability to persuade. Of course one has to know what the law and the Court's procedures are, but that knowledge will not by itself make a person a good or effective advocate. There are 4 basic elements of the skill of advocacy:

- i) The ability to ask clear and simple questions of witnesses;
- ii) The ability to structure the questioning of a witness or an argument in order to achieve the objective;
- iii) The ability to present an argument with clarity and precision;
- iv) The use of a manner which is attractive to the Court.

How do we teach those basic elements? First of all we watch and listen as the trainee advocate performs a short piece of advocacy that lasts no more than about 4 or 5 minutes. As the trainee performs, we assess and we select one aspect, and one only, of the performance that we feel is a fundamental aspect that needs to be addressed in order to improve the performance. Our goal is to help the trainee to perform better, to a higher level of skill, but it must be done one step at a time. You do not teach new car drivers by placing them in a Formula 1 sports car and asking them to drive at speed in a Grand Prix! You would instead put them in a low power car and teach them first to drive slowly in a straight line. Only when they have mastered that technique will you teach them how to reverse.

Once we have identified the one fundamental aspect of the trainee's performance that we want to address, we then embark upon a six stage review of the performance:

- i) Headline
- ii) Playback
- iii) Reason
- iv) Remedy
- v) Demonstration
- vi) Replay.

The Headline is a succinct and simple identification of the aspect of the performance that we intend to focus on. It may be, for example, "Ask one question at a time". It is designed to be memorable so that the trainee can later remember and, therefore, apply the lesson being taught.

The Playback is simply a brief reminder to the trainee or what he/she actually said in the performance that gave rise to the Headline. For example: "You said this to the witness- 'You went to the Bank, you had a gun with you, you demanded a lot of money, you threatened to kill the staff at the bank, you hit the security guard over the head with the gun, then you ran out and into your getaway car'."

The Reason explains in simple language why what the trainee said was not effective advocacy. Here the reason would be as follows: "You have asked not one question but seven questions. If the witness answers "No", is that "no" to each question or "no" just to the last one, or the middle one or some of them? If you want to persuade the Court you will not succeed if you confuse it."

The Remedy is a practical explanation of how the trainee advocate can do this aspect of the performance better. For example: "Break down your questions into one discrete area or concept at a time. Require the witness to answer that one distinct point before you move on to the next point, and then the next and so on until you have finished."

The Demonstration requires the Instructor to show the trainee how to do that single aspect of the performance. The Instructor must demonstrate at the level of competence that the trainee realistically can master. The demonstration is an essential part of the training method because experience has shown the truth of the old adage: "Tell me — and I will forget; explain — and I will understand; show me — and I will remember."

Finally there is a Replay. This is where the trainee has another short attempt at the performance. It is designed to show the Instructor that the trainee has now mastered this one aspect that was the subject of the Headline.

Later, when the trainee does a further piece of advocacy, the instructor will seek to improve a different aspect of the performance. So bit by bit, the trainee learns the different skills required of an advocate.

This method of instruction works, there is no doubt about it. In my free time when I am not in Court myself, I teach advocacy to the young members of my profession using this method. It is a tried and tested formula and I thoroughly recommend it to you. My fellow teachers are both practitioners and Judges, each one of us keen to help the next generation of advocates. We ourselves improve as advocates by the very discipline of teaching. Advocacy is a skill that must be practised constantly and the best teachers of advocacy are those who themselves work as advocates in the Courts.

III. THE BENEFITS OF EARLY CASE STRATEGY PLANNING

Knowing how to formulate a question or how to advance an argument is only part of our task as advocates. To be effective and persuasive we need to identify what our goal is and how we seek to achieve it. We know the verdict that we want the Judge or the Jury to reach, but how do we say the Court can legitimately reach that decision? What is our strategic route map to that conclusion? What is the argument which logically leads to that conclusion and that conclusion only? This is what we call Case Theory or Case Strategy.

It requires a close examination and analysis of the available evidence. Is it complete? Are there gaps in it which are capable of being filled? Is the evidence credible? Is it consistent with other evidence or undermined or contradicted by other evidence? Or does it fit together well? Is this particular witness both honest and reliable? Is there scope for mistake or confusion? Only by asking yourself such questions at an early stage are you able to form a judgement about the way ahead. It means not merely taking the evidence at face value, but thinking about it more deeply, constantly probing and assessing.

An effective and persuasive Case Strategy or Theory is one which is:

- i) Consistent with the evidence;
- ii) Consistent with the law; and
- iii) Consistent with common sense.

If it is not consistent in those three ways, it is not a valid Case Theory and the Judge or Jury will have to reject it. If done early, this approach will not only allow time for further evidence to be obtained, but it will also allow for a better judgement to be formed as to the likely success of the case at trial. From an advocate's point of view, it allows you to put forward a persuasive and compelling theory in your opening speech, which you are able to maintain throughout the trial.

IV. CONTINUING PROFESSIONAL DEVELOPMENT FOR EXPERIENCED ADVOCATES

It was not until 1999 that the Bar Council for England and Wales introduced the concept of mandatory continuing professional development (CPD) for experienced practitioners. I was appointed a member of the first CPD Board, later becoming its Chairman. I still have very mixed views about the concept.

The rationale behind the idea was that the public was entitled to be satisfied that members of the Bar were maintaining and improving the knowledge and skills that they acquired when they first qualified as Barristers. After all, nobody would want to be treated by a doctor who was ignorant of all the advances in medicines since he/she became a doctor 40 years ago.

The difficulty that the Bar Council faced was how to ensure that each barrister was indeed still competent to practise. The knowledge and skills which I need as a criminal practitioner, who conducts trials in Court before Juries five days a week, are very different from those of, say, a commercial practitioner, who may only rarely appear in Court and then only before an experienced and senior Judge. The solution that the Bar Council reached was to leave it to the personal judgement of each barrister precisely what further professional development was needed, provided that it amounted to at least 12 hours of training per year.

But therein lies the weakness of the scheme. No competent professional would dream of not keeping up to date with the law; nor would such a person allow his/her skills to fall below an acceptable standard. Such a professional does not, therefore, need to be required to undertake further training as he/she would do it anyway. The less than competent practitioner, however, cannot be forced to improve if he/she does not want to. Such a person can be made to attend a lecture, for example, but cannot be made to pay attention to it.

So while I cannot fault the logic behind the concept of compulsory continuing professional development, I do have very real concerns about its efficacy. I look forward to learning about your experiences.

V. ADVOCACY TECHNIQUES BEFORE LAY JURIES AND PROFESSIONAL JUDGES

Those of you who are advocates will know only too well how our approach will differ depending on whether we are appearing before an experienced, professional Judge or before a Jury comprised of members of the public. A professional, legally trained Judge will pick up a point very much quicker than a Jury, sometimes before you have even articulated your point. A Judge can master complex or copious material with comparative ease. A Judge will not have difficulty in understanding expert evidence. A Judge may engage in a dialogue with you from which you can gauge whether he/she has formed a favourable or unfavourable view of your argument.

A lay Jury on the other hand is an unknown quantity. You have no idea of their experience or level of understanding of either the evidence or the argument you are advancing. They may find the prospect of expert or complex evidence utterly terrifying. But, the advantage of a lay Jury is that they lack the natural cynicism of a case hardened Judge. They have an abundance of common sense and an experience of life far wider than that of a Judge. They are perhaps more amenable to persuasion and good advocacy.

So what techniques can you employ to assist a lay Jury and, therefore, enhance your prospects of success? Clarity, simplicity, brevity and a measured pace of delivery — these are perhaps the key skills. Clear, everyday language is essential. We lawyers may understand our own jargon and shorthand terms — members of the public will not. If the Jury cannot understand what you say, they will certainly not be persuaded by your argument.

I firmly encourage brevity on the part of an advocate. How often have you had to endure a long, dull speech? I very much hope that mine is not one of those!! I know only too well how easy it is for my attention to wander when I am bored, how sometimes I have to struggle to stay focussed or even awake. Professional Judges are far better able to deal with dull speeches than ordinary members of the public on a Jury. The current young generation has an especially short attention span. They use Twitter to communicate — 140 characters. They send text messages. Or use Facebook. Many do not have the patience even to read a book. They exist on sound bites and short snapshots of information. They cannot sit down for dinner without constantly checking their smartphones. Advocacy has to take account of this new style of life.

So get to the point. Look at each member of the Jury as you address them. It is far harder for someone to lose attention when you have eye contact with them. Make what you say interesting. Speak slowly. They need not only to hear what you have to say, but also have an opportunity to absorb it and begin to process it in their minds. Make them feel a part of what you have to say. For example, sometimes when I am about to make a point about a piece of evidence, I will preface my remark by a comment such as this: "I suspect, members of the Jury, that you will already have identified this odd feature in the evidence. You will no doubt have asked yourselves, how can that be true?" It can be productive occasionally to flatter the Jury in this way, to make them feel that you regard them not only as intellectual equals, but perceptive and thoughtful too.

VI. SIMPLIFY THE INDICTMENT

In England the very first thing that the Jury hears in a trial is the Indictment, that is the charges that the Defendant faces. Often there may just be one charge, for example, murder or rape. But we all have experience of trials where there are many, many charges upon which the Jury has to reach a verdict. I think that the most that I personally have had to deal with is about 40 charges in a case where the Defendant had been committing sexual offences for more than 50 years against four generations of his family.

In such complex cases it is essential to ensure that the Jury does not become frightened by the

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magnitude of their task, afraid that they will not understand the case and scared that they will become confused. If you allow them to panic, they will quickly conclude that they could never, ever be sure of the Defendant's guilt and they will decide at the outset that their verdicts will be ones of Not Guilty. The more that you can simplify the Indictment, the charges, the better. It may be productive to select a few charges only to represent the most serious conduct of the Defendant rather than seek to have a separate charge for every possible crime the Defendant has committed, whether serious or not.

When I prosecute a complex case, I frequently prepare what I call a "Guide to the Indictment", that is a short document which describes in non-legal language what the misconduct in each charge is. It is a practical document designed purely to assist the Jury, and indeed the Judge, to understand the charges more easily.

VII. OPENING SPEECHES

The next stage in an English trial, after the Indictment has been read to the Jury, is for the Prosecutor to make an Opening Speech. My goodness, have I heard some bad opening speeches during my 34 years at the Bar! Dull, difficult to follow, unengaging, lacking in confidence. For a Prosecutor, an Opening Speech is a most potent weapon in your armoury. It is your very first opportunity to put your mark on the case, to begin to persuade the Jury that your case theory is correct and that the Defendant is indeed guilty. The moment that you open your mouth to speak you will have the rapt attention of everyone in the courtroom. Do not waste that magic moment. Tell the jury at once what the case is about. Grab their attention and keep it. Let me give you an example:

"Members of the Jury, the 21st of August was a perfectly ordinary night for 75 year old Mary Jones. She had a cup of tea and then went to bed at 10 o'clock. But she did not sleep for long. Just after midnight there was a massive bang on her front door. She put on her dressing gown and went down to open the door. There in front of her was a man she had never seen before. Covered in blood and with a knife protruding from his back. Before he could utter a single word, he collapsed on the ground and died. The Prosecution say that it was this Defendant who plunged that knife into his back and killed him. Your task, members of the Jury, is to decide if the Prosecution can prove that it was him."

Have I captured your attention and interest? I hope so. Compare then that introduction to an Opening Speech with this bad example:

"Members of the Jury, the Defendant is charged with murder. Murder is a common law offence. It is the unlawful killing of another person. Unlawful means without legal justification or excuse. The Prosecution must prove that when the Defendant killed the victim, the Defendant either intended to kill him or intended to cause him grievous bodily harm. Grievous bodily harm means really serious bodily harm. The Prosecution has the burden of proving the Defendant's guilt. It must make you sure of his guilt. That is a very high standard of proof. Nothing less will do. He does not have to prove his innocence. If the Prosecution does not make you sure of his guilt, he is entitled to be found not guilty."

That example is what I describe as a dull law lecture. It does not inspire any interest in the case, it does not suggest any particular confidence on the part of the speaker and it almost indicates that a not guilty verdict is appropriate. Once you have lost the attention of the Jury it will be very hard to regain it. So instead my advice is to seize the initiative and maximise the potential that an Opening Speech presents you. Tell the Jury the story, do it with confidence and flair, inspire them with your enthusiasm.

VIII. EFFECTIVE PRESENTATION OF EVIDENCE

If done well, the Opening Speech whets the appetite of the Jury for the evidence. How you present that evidence can make a big difference to the ability of the Jury to understand it and be persuaded by it. If you can, start with a strong, interesting witness. Do not begin with difficult to follow, technical evidence — leave that until later. If you have a potentially weak witness, it may be wise to sandwich

him/her between two stronger witnesses. Part of proper case preparation involves an assessment of the order in which you should call your witnesses. There is no obligation to start with the victim. Let me again give you an example:

A woman alleges that the Defendant raped her. When interviewed by the police the Defendant says that not only did she consent to sexual intercourse with him, but that she instigated it. In addition to the woman, you also have a witness who was driving down the road where the incident happened. His evidence is that he saw a woman run out into the path of his car and force him to stop. He noticed that her clothes were torn and that she seemed terrified and distraught, barely able to speak other than to say the one word "Police, police". Why not call him as the first witness? It sets the scene beautifully. He has no motive to lie. He cannot be attacked in cross-examination in the way that the victim can be. It is a strong note on which to begin your evidence. It enhances the credibility of your victim before she even gives her evidence.

IX. THE USE OF PRESENTATIONAL AIDS

We do not use these nearly as often in England as I believe we should. Language is a wonderful tool, but sometimes not as effective as a photograph, a map or a plan. If you want a Jury fully to understand just how big a quantity 5 kilograms of cocaine is when a Defendant says I did not know that that was in my suitcase, let them see the actual bag of cocaine. Let them touch it, hold it in their hands, feel its size and weight. When a Defendant says I forgot that I had a knife in my hand when I struck out at the victim, let the Jury hold the knife, see its length, gauge its weight and get a sense of just how difficult it is to "forget" that it is there.

A few years ago I prosecuted a Defendant for causing the death of two young people by his dangerous driving. There were a substantial number of eye witnesses to the crash. When I prepared the case and read the various witness statements, I found it very easy to get confused about which vehicle was where on the road at any particular time. I quickly realised that there was a high likelihood that the Jury would also become confused and that, once confused, they could not be sure of guilt and would find the Defendant not guilty. I decided to ask the police to prepare for me a big display board and a number of small magnetic toy cars in different colours. The police were sceptical of my request. They said that no-one had ever asked them for that before, that they really didn't think it was necessary, and so on. I am sure that they thought to themselves: "Silly woman!"

I made my Opening Speech not from my usual position in the Courtroom, but standing by the display board. As I explained to the Jury the sequence of events that led to the crash between the Defendant's car and the car with the two deceased, I moved the toy cars across the board. The Jury and Judge watched intently. I could tell that they were able to follow the story that I was relating to them. When the time came for each witness to give evidence, the board was placed by the witness box and I asked them to show on the board what they remembered each vehicle doing. The visual effect was far more productive than the mere spoken word. Indeed being able to see this representation of the incident as it unfolded actually seemed to help the recall in the witnesses' minds. As a consequence, their evidence was coherent and compelling. By the end of the trial the sceptical police officers were completely persuaded of the effectiveness of this visual aid and have used it many times since in other trials.

Such presentational aids can be used in all types of trials. If you want to show how a Defendant has laundered criminal money around the world through numerous bank accounts in different countries, why not illustrate it, transaction by transaction, on a computer screen in front of the Jury? A picture tells a thousand words. A picture is memorable in a way that words may not be.

Many, many years ago when I was just a baby barrister I represented the Defendant, a ballet company, in a civil case. The claimant was a dress maker who had been hired by the ballet company to make the dresses for the ballerinas. The costumes did not fit and so the ballet company refused to pay for them. I decided that the photographs of the dresses did not adequately demonstrate just how poorly fitted they were and so I arranged for the dancers themselves to come to Court dressed in the costumes. Each time the ballerinas did certain dance moves, a breast would be exposed. The Judge was very quickly persuaded of the validity of the defence!

X. HOW TO MAKE EXPERT EVIDENCE INTELLIGIBLE

The variety of our work often requires us to master complex expert evidence. Medical experts, financial experts, fingerprint experts, DNA experts, blood spatter experts, facial mapping experts, road traffic collision experts, aviation accident experts, structural engineering experts, the list constantly grows. You will have come across all of these and no doubt many more too. The first difficulty we face is to understand the reports ourselves! We will frequently have to read and re-read them before we can grasp precisely what the expert has said. Until we ourselves understand it, we cannot even begin to make it intelligible to a lay Jury or even to certain Judges. We cannot expect a Jury to accept the evidence of a witness if they do not understand what the witness is saying.

Long before the trial starts I try to meet the expert and ask him/her to explain to me in simple terms what this area of speciality is all about. Only when I am able to put it in my own straightforward way, using as few technical terms as possible, will I be happy. If I do not understand it, how can I expect to help the Court to understand it? When I make my Opening Speech I will endeavour to explain to the Jury whatever the topic is in those simple words and I will tell them only as much as they need to know in order to understand the case.

When the expert witness is in the witness box, very often I ask him/her to start with the conclusion he/she has reached, for example, "The blood inside this baby's brain was most likely a result of an incident of violent shaking which took place not more than 48 hours previously." This is like the bold headline in a newspaper. It sets the scene and is memorable. Then I will work backwards to elicit from the expert witness what clinical findings caused him/her to reach that conclusion. Again I shall make the expert explain it in very simple language. Sometimes a presentational aid assists, for example, a baby doll or a model of a skull. Even if the Jury finds it a little difficult to understand all of the explanation of the expert's reasons for reaching the conclusion, the Jury will not forget the conclusion itself.

It is equally important when you have to cross-examine an expert to use the simplest possible language so that the Jury can understand and follow your line of argument. Everything we do in Court should, of course, be done at a measured pace, but that is especially so when dealing with highly complex concepts.

XI. CROSS-EXAMINATION TECHNIQUES

It is only on television that you will see a cross-examiner force a witness to say "Yes, I'm guilty, I did the murder." But, you don't have to obtain a confession to achieve your purpose. Short direct questions that put the witness on the spot are especially productive. Sometimes the most effective question is the single word: "Why?"

A good cross-examination needs to be planned meticulously. It is like a ballet. For it to flow well, it needs to be choreographed. Your first question is extremely important because it sets the tone for what follows. Your first question is the one most eagerly anticipated by the Jury, probably because they too have watched many television programmes!! As you begin with the rapt attention of the Jury, it is very important not to lose it by asking a pointless or unnecessary question. Cut out anything that does not matter and instead get straight to the point. The shorter and more direct your question, the less scope there is for the witness to avoid answering it — and if he/she does seek to evade the question, then that will be at once apparent to the Jury, who will draw the obvious conclusion.

One error which many advocates make is to ask what we call multiple questions, that is, more than one question at a time. It is unproductive. The witness will not remember all of the questions and will choose to answer only the one that is most favourable to him/her. By limiting yourself to one question at a time, you maintain the opportunity to build your cross-examination up and increase the pressure on the witness bit by bit. Of course the witness is not going to agree with everything you ask, but, by asking your questions firmly, confidently, slowly and succinctly, you are likely to create in the mind of the Jury the impression that your case theory is the correct one. What you want is for the Jury to hear your question, process it in their heads and think to themselves: "That's a good question," then

turn to the witness and silently say: "Let's see you answer that if you can."

Once you have asked what you need to ask, shut up! The danger for all of us advocates is that we like the sound of our own voices. We think that we can improve on the answers we have already obtained. We are wrong! Stop when you have done what you set out to do. We have all made the mistake of asking one question too many — and undermining all that we had previously achieved.

Don't restrict yourself to a pre-prepared list of questions. It is not a play at the theatre where each person follows a pre-determined script. Of course as part of your case preparation you will have anticipated what the witness is likely to say, nevertheless, until you actually hear the answer and see how the witness gives that answer, you cannot know for sure what he/she will actually say. A good advocate is a good listener. Sometimes the witness will blurt out a remark that he/she did not mean to say. It may be highly significant. If you do not pause to listen but instead plough ahead with the next question on your list, you will miss it and lose it for ever. If the answer is particularly damaging to the witness, then silence for a few moments is the best technique. Let that damaging answer sink into the minds of the Jury. Your silence is the non-verbal equivalent of underlining the answer with a thick red pen.

XII. CLOSING SPEECHES

Many that I have heard are dull, dull, dull. If the audience is bored, their attention will wander and it can be very hard to get it back again. Merely repeating to the Jury the evidence that they have listened to is not only dull, but it treats them as complete idiots. You might just as well say to them: "I know you heard this evidence, but I think you are extremely stupid and so I will tell you the evidence again." Advocacy is the art of persuasion. The closing speech is your opportunity to show the Jury why the evidence points to the conclusion you wish them to draw, why they should rely on one witness or piece of evidence and reject another. It is a time to reason with them, not to lecture them. In my experience Juries particularly dislike being told by lawyers what they must do. They are highly likely to do the complete reverse to show their objection if you are foolish enough to try to bully them!! Remember that they are lay people, not lawyers.

Remember too that some of them will be especially nervous about the importance of their function. It is indeed a heavy responsibility to sit in judgement of our fellow citizens and as a result some jurors worry enormously about making a mistake. Some will be tempted to say "not guilty" purely because they are too frightened to say "guilty" in case they are wrong. A technique which I employ is to go straightaway to my first point — no introduction, no preamble, just the first matter I want them to consider. Sometimes I do it by way of a rhetorical question, for example, "Why would the Complainant make up an allegation that the Defendant raped her, if he did not? What possible gain does she get from a false allegation? Why would she choose to put herself through the ordeal of a trial if it did not happen?" My objective is to get the Jury to think in the way I want them to. By posing the question, but not supplying the answer, I allow them to believe that they are working out the answer for themselves. This flatters their intelligence and acknowledges their independence. They do not feel that I am telling them what to do.

I will never say to a Jury: "You must believe this particular witness or accept this piece of evidence." That is to bully them. Instead I might say something like this: "It may be that when you heard this witness you thought to yourselves: that sounds credible." Or I might say: "No doubt you have already thought of this point yourselves" and then I go on to mention my point! Treat the Jury as your equals. You will be amazed at how perceptive they are, how good they are at judging witnesses and assessing evidence, how sometimes they spot something that we experienced advocates have missed! None of us has the monopoly on wisdom and certainly not me!

XIII. CONCLUSION

It is a privilege to be an advocate in Court. I enjoy my career enormously. We never stop learning more about our art. I very much hope to have the opportunity to listen to your experiences and to learn from you how to do my work better.