

Identification and Recollection

The tradition of oral testimony and vulgar interest, seduce some barristers into cross-examination which betrays little understanding of the difficulty and unreliability of human recollection.

An experiment conducted in the Reading Course in 1989 was structured to provide three incidents which were carefully scripted and filmed. Several days later the barristers were asked to prepare affidavits recalling the occurrences.

Forty affidavits were tendered. The deponents may be assumed to have been honest, diligent in their efforts to recall the events, possessed of above average intelligence and linguistic skills and subject to none of the anxieties of deponents who must anticipate cross-examination.

The three incidents were designed to be increasingly memorable. The first involved a young woman interrupting to deliver a routine message. The second involved a young man dressed in distinctive clothes engaged in a short conversation which was unusual. The third interruption involved a woman in extraordinary clothing engaging in an extraordinary dialogue.

Some conclusions may be drawn which are of general interest:

1. Every affidavit was in some respect wrong.
2. A large measure of accuracy was evident in conclusions as to tone or attitude; but as conclusions, and not observations of physical indicia, they would probably be inadmissible.
3. Approximately 30% were inaccurate as to detail on such matters as clothing and height.
4. Over 15% had the sequence in which the three simple events happened, wrong.
5. Approximately 70% recorded the conversations in a way that was substantially accurate; 30% were not.

Not surprisingly, many deponents fell into error by inserting what they believed to be correct, for example, "Barry Handley" was recorded as "Ken Handley". Another startling revelation was that the person who recorded most of the events with the greatest accuracy also recorded other events completely inaccurately with the same apparent precision. One barrister suspected a ruse, recognised that the last actress was a member of staff and he made a positive identification. The most chilling aspect of the whole exercise was that the person so positively identified was not involved at all.

The fertility of the human imagination may be demonstrated by some examples. Julie Farran, the secretary to the Registrar of the Bar Association, a young woman, 4'11" in height, was described as aged 20 to 55 years; having a height from small to tall; in one case, carrying a cleaner's bucket and mop (which she wasn't); in another carrying a shopping bag (which she wasn't); and in three cases wearing a wig (which she wasn't). Debbie George (of Counsel's Chambers) referred to a fax from Dublin: it became a telex to London, a fax from Holland, a fax from Ireland, a telex from Adelaide and finally

the return of a book on loan from the University of Dublin! Brian Fenech, who assists in the Bar, was variously described, not as an elevator man, but as a courier, repairman and maintenance man; with a purple jeep carrying, not a board rack, but a surf ski, a yellow surf board and ski racks.

The script designed to give offence was as follows:-

"You are a pack of over-priced yuppy dinky mother-fuckers."

"Would you leave."

"I am leaving, you tell that President of yours, Barry Handley, to shove the lot of you up his Bulli Pass."

Corruptions included "Shove it up his Kyber Pass"....."Stick something in his pipe"... "Stick the lot of you up his fucking arse"..... perhaps revealing more than was intended. One barrister would not descend to "vulgar expression" used to refer to persons who engage in "Oedipal sexual relations".

We again record our thanks to our actors who were volunteers. □ P.M. Donohoe

Re-Structuring the Attorney-General's Department

The Attorney-General has approved the restructuring of senior management and court support services areas of the N.S.W. Attorney General's Department to rationalise the delivery of administrative services to the Court System.

The structure of the Department has been significantly altered, and its capacity to service the Courts enhanced, through the creation of a Court Services Division under the supervision of a General Manager. At the same time the position of Deputy Secretary within the Department has been redesignated as Deputy Secretary and Director General of New South Wales Court Services, to assume accountability for the delivery of all services from the Department to the Court System.

Deputy Secretary and Director General
of N.S.W. Court Services - Mr. P.J. Webb
General Manager,

N.S.W. Court Services Division - Mr. T.B. Keady
Director, Higher Courts

and Support Services - Mr. I.P. Barnett
Director, Local Courts

and Support Services - Mr. J.A. Keating

The structure and functions of the remaining two divisions of the Department are unchanged. Mr. L.G. Glanfield is the Director of the Legislation and Policy Division and Mr. A.J.B. George is the Director of the Management Division. All Division Heads within the Department report through the Deputy Secretary and Director General of N.S.W. Court Services to the Secretary, Mr. T.W. Haines. □