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Communications in Court with Emotionally Disturbed People

Magistrate Clive Alsop and Deputy Chief Magistrate Jelena Popovic
Magistrates Court Victoria

INTRODUCTION

We have a combined life experience of 113 years, and have been magistrates for a combined total of 30 years. We don't know it all, and often scratch our heads wondering whether we handled something in the best way. However, we have learnt a few tips over the journey, particularly with the help of presentations from Dr. Ogloff and our former Disability Officer, Anne Condon.

Dr Ogloff's suggestions have been of enormous assistance to Victorian judicial officers over the past few years and with his permission, we have attached them to this paper for your assistance.

We also need to confess that we are truly blessed at both of the Courts where we usually preside in that we have available to us the CISP program.

Briefly, CISP, (Courts Integrated Services Program) is an integrated model of support and services provided at the pre-sentence stage primarily for persons charged with criminal offences at Melbourne, Sunshine and La Trobe Magistrates' Courts. Defendants are referred for an assessment to determine the level of intervention and nature of services required. Referrals can be made by police officers, lawyers, the defendants themselves, other services, court staff and magistrates. For defendants in custody, the assessing officer prepares a report for the Magistrate presiding over the bail application, and if bail is granted, participation on the CISP program becomes a condition of bail.

CISP is comprised of teams who can provide assistance in the following areas:

- Drug and alcohol issues
- Homelessness
- Mental impairment (mental illness, personality disorders, acquired brain injury and intellectual disability)
- Youth Justice for defendants under 21 years
- Aboriginal Liaison.

The level of intervention for person accepted onto the program can range from referral to community agencies to intensive case management. Program officers are considered to be ‘Officers of the Court’. This designation is important: it allows the CISP officer to communicate any information to the court without there being concerns in relation to breaches of professional privilege or confidentiality. We always advise the defendant that notwithstanding the CISP officer’s supportive role, they are obligated to inform us and the police informant as to his/her compliance with the CISP program. They are able to provide case management, referral to treatment agencies, brokered treatment in the areas of drug and alcohol treatment, housing, mental health and disability services and acquired brain injury services among others.

Each participant has an individually developed case management plan which sets out all the services arranged for the defendant either internally or with outside agencies. A CISP officer, generally one with expertise in the defendant’s main presenting problem, is assigned to monitor progress. Judicial supervision is also encouraged, with progress reports provided to the presiding magistrate for each court appearance.

Case-managed defendants usually remain on the program for 3 to 4 months, although from time to time, longer periods may be required to ensure that appropriate treatment is in place.

A FEW TIPS:

We suspect that the higher the jurisdiction, the less frequently the judicial officer will experience unrepresented, volatile, emotionally disturbed litigants. For example, Jelena was briefly a member of the Small Claims and Residential Tenancies tribunals where it was common to have upset parties appearing. We suspect that the judicial officers of the Magistrates’ Court, Federal Magistrates’ Service and Family Court have greater experience with dealing with difficult parties than the courts of higher jurisdiction.

One of the alarming aspects of dealing with disturbed litigants is the fact that situations often erupt spontaneously and without warning. It is therefore important to be armed with a few techniques to manage them when they arise as there is often very little time to think through what the appropriate action or reaction should be.

We strongly urge that the best approach with emotionally disturbed litigants is to stay calm, and to address them calmly.

One of the mistakes judicial officers make is to make sure that they are very obviously exerting power and control – for example: “Another outburst and you will be charged with contempt”. This approach rarely calms the situation. It is much more effective to speak conversationally and to diffuse whatever abundance of emotion the litigant is exhibiting.

We have been taught an excellent technique by one of our experienced colleagues; namely, to maintain steady eye contact with emotionally disturbed litigants. The technique enables you to keep better control of the situation.

Body language is also important. We were recently reminded by a Koori Court officer about how off-putting it is when a judicial officer folds their arms across his or her body. It is an antagonistic gesture which conveys annoyance and which can exacerbate a party's frustration or heighten their sense of powerlessness. On the other hand, a gently raised hand can often stop a party from speaking. One needs to be aware of how his or her gestures and body language is affecting the dynamic in the courtroom.

EXAMPLES FROM BITTER EXPERIENCE

Here are a few scenarios (from our hard won experience) with some suggestions as to how they might be dealt with.

a. COPING WITH THE SUDDEN OUTBURST

We have all had the experience of being sworn at by a disgruntled or unwell litigant. Clive was recently referred to as a ' _____ little tin-God _____'.

There are three effective ways of dealing with these sorts of outbursts. One is to simply to ignore them and continue with the case. This method sometimes fails as the person who uttered the remark hasn't got the response they sought so continues to make a scene.

The second is simply to leave the bench; saying, as you leave, that you will return when the person is ready to behave. This also works well for badly behaved legal representatives.

The third approach, if you are quick enough, is to make a remark which diffuses the situation. Jelena was recently called a "fat old bitch" by a defendant she had just sentenced. Jelena replied "Old is a bit harsh, isn't it?", which caused the defendant to laugh and to lose his rancour. This had the double effect of not only diffusing the developing tension but also enable her to keep obvious control of the situation.

Jelena also presided over a case a few years ago where 4 defendants were charged with one of the Gangland murders. The courtroom was crowded with the accused's relatives, Purana Taskforce officers, media and the general public. One of the accused was well known as someone who played up in court (for example, legend has it that he had thrown a bag of excreta at a jury). As predicted, he did arc up and start making a nuisance of himself which made it impossible for the application to continue. Jelena simply addressed him personally and asked him to "Chill". He was quite surprised, laughed, and remained quiet for the duration of the proceeding.

b. COPING WITH BOISTEROUS CHILDREN

In the Melbourne Magistrates Court, Jelena has rarely been required to cope with boisterous children, usually having the luxury of Court Network volunteers to assist with keeping the children out of Court. Clive's example is of an instance where a defendant came to court with 5 out-of-control kids. He despaired! The only tactic Jelena can think of and has used where the children have not been able to remain outside the care of a third person is to provide the children with a pen and paper and ask them to draw something specific and ask them if they could please be quiet for just a moment so that their parent's case can be finished. Again, trying to exert control rarely works. Some judicial officers are not able to cope with the additional noise and disturbance made by children. Obviously it is a matter of personal preference, though we usually find it easier and quicker to allow the children to be close to their parent (including coming into the witness box with them when they are giving evidence) and occupied with a task.

We are not comfortable having young children present during criminal proceedings, particularly if their parent is in the dock. Generally, we will ensure that arrangements are made to have the children to be out of court during those proceedings. If a term of imprisonment must be imposed, the children must be out of court and arrangements put in place for the immediate care of the children (See Flat Out Inc and Victorian Association for the Care and Resettlement of Offenders (VACRO), Discussion Paper, *Children: Unintended Victims of Legal Process- a Review of policies and legislation affecting children with incarcerated parents*, (2006)).

c. MANAGING ANXIOUS LITIGANTS

Highly anxious parties often need to be given an opportunity to settle down. Almost all of the persons who appear before us are at best nervous and are possibly terrified. This terror can sometimes be so severe in its effect as to manifest itself as a major disability. A technique Jelena employs in Adult Parole Board hearings is to invite the parolee to take a moment to look around the room to see who is there, and then introduce every-one in the room, including herself. A similar technique in a court room is simply to take a few moments to allow the person to familiarise themselves with the environment, and perhaps to engage in a brief, inconsequential conversation, (eg football results, weather, traffic) to assist the person to overcome their nerves. The effectiveness in this approach is simply that it assists in the demystification of the process and of the judicial officer – it seems to 'normalise' the court process.

One of the many things we have learnt from presiding over Koori Court hearings is that adopting this type of approach has the effect of encouraging active participation and reducing both fear and antagonism.

d. **MANAGING LITIGANTS WHO KEEP TALKING OR TALK OVER PEOPLE**

You know the ones: this is their day in court, and by crikey they are going to have their say.

Our usual approach is to let them have a bit of a rant in the beginning, then explain what the rules are: that is, one person speaks at a time and every-one gets a fair go. Allowing a bit of a rant is effective because you can always say, “You’ve had a decent go, now it’s my turn”. Another effective technique is the previously mentioned one of the use of body language such as raising your hand in a “stop” motion.

On the rare occasions these techniques haven’t worked and the noise and agitation are escalating, we have reverted to the technique of leaving the bench.

Dealing with emotionally disturbed people, especially for judicial officers (very few of whom are trained as psychologists) can be extremely wearing. In dealing with these matters, Clive often harks back to the best advice he received on his appointment to the Magistrates’ Court Bench, namely:

“NEVER LOSE YOUR TEMPER!”

To do so would only destroy the possibility of any benefit flowing from the hearing, but could also have a lasting effect on one’s overall reputation. Actually, this is a timely reminder: if only we could remember it when dealing with irksome counsel!

e. **MANAGING EXTREME INEBRIATION**

None of us is qualified to assess the capacity of a person affected by drugs or alcohol to retain or comprehend information. We do not believe that it is appropriate to hear a matter if a person presents as being substance or alcohol affected.

Most courts now have first-aid trained court support staff available, and many have a psychiatric nurse or similarly trained specialist trained staff who are able to be called upon to assist. When these were not available to us in the past, our practice was to adjourn the proceedings or remand the defendant for a day or so, with priority, so that they could be dealt with as early as possible on the return date.

Since the introduction of CISP, we have been able to be more constructive due to the court being so much better resourced. We ask the CISP officer to come into the courtroom, introduce them to the affected person and ask the affected person to go with the CISP officer and talk to them. Generally, the CISP officer reports to us in open court either verbally or in writing, the nature and extent of the presenting issue and what measures can immediately put in place to assist. The CISP officer’s training in general communication usually enables the defendant to leave the court building understanding the details of any adjournment and the need to attend further court dates or appointments with the CISP officer of other agency.

As we have mentioned, we have been truly blessed with the CISP program. Clive has had a recent experience of CISP's direct influence on the application of the principles of therapeutic jurisprudence. He released a defendant on bail with stringent conditions, including supervision by the CISP team. The defendant was complying with conditions and appeared to be progressing well for two weeks whereupon he fell (plummeted) off the wagon. The CISP manager was contacted by a colleague who told her of the defendant's excessive alcohol intake. The CISP officer immediately relayed the information to Clive and the informant. Within 20 minutes, a prosecutor made an application to revoke bail which was granted. The next day, the CISP officer was advised by a medical officer who assessed the defendant that had the bail not been revoked, the defendant would have died within two days.

We are also concerned about persons in the court who are "on the nod". We generally ask court security to usher them outside and see whether they need any first-aid or medical assistance.

f. MANAGING THREATS

There are several categories of 'threats' – ranging from the entirely empty threats of a disgruntled litigant who is simply venting, to frightening threats from well-connected criminals. Finding the appropriate response will depend on an accurate assessment of the nature of the threat.

The 'venting' threat requires little response, and it is suggested the options of either ignoring the utterance or leaving the bench are appropriate.

A more serious threat, such as some-one in the court making a gun shape out of their hands and pointing it at you requires an escalated response. In such an instance, one might ask the bench clerk to either call security or ask defence counsel and the prosecutor and informant (if there is one in the courtroom) to discuss a matter in chambers. The police can then be advised of the threat and can take the appropriate action.

If the threat is a very serious one, the matter is best reported to the police for investigation. We are fortunate in Victoria in that we have a procedure for contacting the specialist protective services unit of Victoria Police. We would hope that each State has a similar protocol.

g. MANAGING BEREAVED FAMILY MEMBERS

It is extremely important that we be advised in advance of a case which may have involved a death. We have both had the experience in a busy Mention List of hearing a run-of-the-mill traffic charge such as Careless Driving only to hear during the reading of the Summary that it resulted in a fatality (or in one case, two fatalities) and that the family of the deceased is in the Court.

Where possible, prosecutors should tag any case that involves a death, and ensure in advance that the court co-ordinating registrar be made aware of this, particularly if bereaved family members are in attendance. This enables arrangements to be put in place to ensure that the matter is able to be dealt with sensitively. It is particularly

important also to ensure the safety of the accused or accused's family if they are also in attendance.

Our skills as practitioners of therapeutic jurisprudence come to the fore in these instances. From time to time, and only after very careful consideration of the appropriateness of such an approach, one technique is to attend to the formal requirements of the hearing, and then to address the family about the tragedy of their loss and to take some time to explain again the rationale for our decision. Occasionally, it may be necessary to consider speaking to the family in Chambers (in the presence of a clerk and the legal practitioners).

h. MANAGING INAPPROPRIATE BEHAVIOUR

From time to time, we have experienced bizarre behaviour in court from defendants who have been described as having "Complex Needs". This behaviour has taken the form of attempting to undress in the dock and trying to defecate in the dock. The only appropriate course of action is to leave the bench with as much dignity as one can muster and instruct the clerk to vacate the court.

i. THE MUTE LITIGANT

On several occasions, we have been required to preside over cases where the defendants have remained mute.

One defendant was on bail, and we were able to refer him immediately to the CISP office for assistance. He was unrepresented and was clearly over-awed by the courtroom. He responded well to the CISP officer and was assessed as being appropriate for services under the CISP program (mental health, homelessness and Social Security issues were identified as key priorities). This defendant was quite garrulous in his interaction with the CISP officer, but continued to remain mute in court.

Another defendant was in custody in a padded (Muirhead) cell in an almost catatonic state. He had been assessed by psychiatric services as being personality disordered and attention-seeking rather than psychotic. He was not appropriately clothed and was covered in a canvas smock, was refusing to come into court and would not see Legal Aid or CISP staff. Court was convened in the Custody Centre with the magistrate going to see him. It was explained that he would be remanded for his own safety until he provided details of where he lived and how he supported himself. He was remanded for 7 days. By the return date, the defendant ceased his catatonic behaviour and had instructed lawyers that he wanted to plead guilty. His case was determined and he was released from custody.

CONCLUSION

There are no magic answers, and no right way or wrong way in dealing with disturbed or agitated parties. What we hope we have demonstrated is that patience, tolerance, commonsense and good humour can hold a judicial officer in good stead when confronted with difficult situations.

CONDUCT OF HEARINGS WHERE A PERSON WITH MENTAL IMPAIRMENT GIVES EVIDENCE OR IS SELF REPRESENTED

Dealing with difficult people - the do's & don'ts

DO

- Endeavour to de-escalate the behaviour. Don't patronise or go along with delusional behaviour. Continually assess the subject for change in mood behaviour ie look for anger or aggression etc.
- Ensure that personal safe is adequately maintained between you and the subject (this is not generally a big problem in Court - it can be more of a problem over the counter).
- Be calm
- Give firm clear directions and don't patronise
- If the subject is angry or disturbed, they may already be very confused. The confusion may cause them to have trouble making even the simplest decision. Take advantage of that confusion by issuing very simple orders such as "sit down" or say the subject's name. This technique may work when people are getting very irate, confused, argumentative, ranting. Using a person's name repetitively may dissipate their anger. (that is, calmly reiterating it, for example, Steven, Steven – use of the forename is recommended)
- Only one person should talk to the subject at a time. If everybody talks at once, the person may get more confused, angry, frightened.
- Respond to the subject's feelings rather than the content of what there saying; for example, your response could be:
 - "You look scared; this must be upsetting or difficult for you".
 - Don't try to argue with the subject. Another example would be dealing with persons who might be hallucinating - what you could say in these circumstances is:
 - "This must be very frightening for you".
 - You should be focusing on their feelings:
 - "I can see why you are angry".
 - Try to talk them back with firm clear directions.

- Be helpful. People respond to simple basic things, for example ask questions about their personal comfort:
“Would you like a drink? Would you like a break?”
- Time out. The person may benefit from having some time away from the stressful situation. Take a break.
- Use distraction, that is, interrupt the subject by asking a routine question, and in this way try to get them back on track.
- In only the most extreme situations when all else has failed, a show of force may be necessary. This is the very last resort. If used too early it could escalate the persons behaviour. But “show of force” really means that’s the time to call in security or another of people to remove the person.

DON'T

- Don't join in behaviour related to the person’s mental illness; for example, when they are delusional, don't agree with them in whatever it is they are expressing as their thoughts
- Don't stare: staring may be interpreted as a threat
- Don't confuse the subject - only one person ought to deal with the subject at a time
- Don't give multiple choices - only give one choice at a time - multiple choices increase the subject's confusion
- Don't whisper, joke or laugh as the subject may be hypersensitive and these behaviours on our part may elevate the degree of their anxiety and make them even more suspicious. In extreme situations, it may lead to violence
- Don't deceive the subjects. Being deceptive or patronising can increase a subject’s fear and suspicion. The subject will be likely to discover the dishonesty and remember it in any future contacts between you
- Don't touch the individual when you are dealing with stressed and upset individuals. Touching them may increase their fear, anxiety and can possibly lead to violence

Effective communication skills

- Be calm and direct in your instructions to the subject
- Use simple acknowledgments. If the subject tells you something, pay attention. If you want to steer the subject away from what they are saying, say things like:
 “Thanks, but we need to move on”
- Give them general leads - that is ask them questions to get off the topic
- Use broad openings, such as:
 “How did that make you feel?”
Use the broad openings to try to steer the subject to a different topic
- Seek clarification; for example:
 “I’m not sure I understood what you are saying, how about we have a break and you tell me again?”
- Make positive use of your authority. Capitalise on your authority by showing the individual who is in charge, for example:
 “I’m speaking now.”
- Give firm simple directions. Although people need to be made to feel comfortable, it is best to acknowledge formality. It could backfire on persons if they attempted to be a friend to the subject, particularly if something unpleasant has to be decided in relation to the subject. Research has established that clear legal procedures make people feel that they have had a fair hearing.
- Ensure that you pay attention to the cues.
- Make sure that the subject is following what has been said. A technique to use is to ask the person if they understand, and then ask them to tell you what they said in their own words