

The Use of Powerful Presentation in the Introductory Phase of Early Neutral Evaluation Session

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Abstract:

This study was carried out with the purpose to ascertain the principles of powerful presentations that can be incorporated by the evaluator during the introductory phase of the early neutral evaluation session. This study highlights basic but yet significant principles of powerful presentation skills that can be incorporated into the practice of the evaluator especially at the introductory phase of the early neutral evaluation session. This study is expected to contribute to the carrying out of further intellectually reliable standards in determining other basic principles of presentation that support evaluators in becoming better and more persuasive presenters in a range of different situations.

Keywords: presentation; presentation skills; introductory phase, early neutral evaluation

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1. Introduction

Presentation is part and parcel of any alternative dispute resolution (ADR) processes. Early neutral evaluation (ENE) is one of such ADR processes which depend greatly on the presentation skills of the evaluator. ENE has been accepted as a reliable ADR mechanism by a majority of scholars such as Maycock (2001) and Nawi&Hak (2013). However, it has as yet to achieve global recognition compared to the much-sought-after mediation. In a typical ENE session, an experienced evaluator discusses the dispute and shares her view on the merits of each disputant's position. Through oral presentation, she will identify fundamental issues and predict the prospect of how the dispute is most likely to be decided if it is to be heard before the court. At times, more than one ENE session will be scheduled especially if the first session fails to deliver a satisfactory outcome. Being the manager (and host) of the ENE session, she makes her presentation before a group of individuals; consisting of the disputants, their respective attorneys and witnesses.

In reality, the evaluator faces her audience whose responses are sometimes difficult to be anticipated. It is noteworthy to state that a dispute which involves a complex subject matter often creates tension and frustration among the disputants. Such a state of affairs may cause problem to the evaluator in making her presentation. This is especially true if she is unable to convince the audience about her ability to handle the ENE session efficiently. No doubt, the evaluator is appointed among individuals (such as senior lawyers and former judges) with impeccable knowledge in certain area(s) of law. However, the mastery of a massive amount of legal authorities alone would not guarantee the success of the ENE session if she lacks the 'know-how' on how to demonstrate a powerful presentation especially at the introductory stage of the ENE session. Therefore, she may end up feeling dreadful at the remainder of the day if she is ill-prepared or fails to produce a hefty impact on her audience.

There is in existence literature on the importance of effective presentation skills for other professionals such as on the use of effective presentation skill among nurses in carrying out their duties (Spinks, 2015; Foulkes, 2015), physician-physician communication (Haber & Lingard, 2001) and the use of persuasive skills by mediators (Honeyman, 1990). However, little information is known about the same for the evaluators under the ENE program. The ENE session under a court program, is generally conducted based on standard procedure set by the court such as the ENE Program under the U.S. District Court of the Northern District of California (ADR L.R. 5). Without sound theoretical guidance, the evaluator is bound to learn her mistake through trial and error.

Similar to any other court ADR program, the introduction of ENE as a form of court dispute resolution is targeted at reducing the number of trials. The ENE session is held early in the litigation process (Zakiyy& Hassan, 2014). Thus, the anticipated use of ENE is expected to reduce the number of court cases at the pretrial stage. In addition, it is vital for the evaluator, in managing the ENE session to possess knowledge about the powerful presentation in order to ensure that the disputants (their respective attorneys and witnesses) are motivated and interested to sit throughout the whole ENE session. This study might also benefit the court's ENE program in discovering more basic theories on presentation that can be incorporated into its current training program for would-be evaluators.

Under the foregoing concern, this study endeavours to take a close look at literature that can shed light on basic presentation skills that can be mastered by the evaluator in making a powerful presentation at the introductory stage (or known as the opening address) of the ENE session.

2. Objectives of the Study

The main objective of the study is to evaluate the relevant basic theories relating to attracting the audience to listen to the evaluator's presentation during the ENE session. The specific objectives are as follows:

- (i) To identify the principles of powerful presentations at the beginning stage of a presentation;
- (ii) To identify the relevant principles that are in concord with the ENE program and can be adopted by the evaluator in making her presentation at the introductory stage of the ENE session.

3. Methodology of the Study

The study was based mainly on the review of relevant secondary data and information. The main sources of data were the literature on presentation skills and ENE apart from other related information obtained from the internet.

4. Findings and discussion

In the study, the customary guides to the conduct of the introductory stage in an ENE session have been discussed. In addition, the analysis of the literature showed that there are crucial measures to improve a person's presentation at the beginning of a presentation. These measures are found to be consistent with the practice of the evaluator in the ENE session.

4.1 Introductory Stage of the ENE Session

According to Stradley, Ronan Stevens & Young, LLP, the introductory phase of the ENE session requires the evaluator to introduce herself and provide information and remarks about the dispute. Engro and Lenihan (2008) highlight that the ENE process requires the evaluator to follow certain procedural steps in a chronological manner; specifically:

- The evaluator makes an opening presentation;
- The disputants present their respective claims/defences;
- The disputants provide responsive presentations;
- The evaluator raises questions for clarification;
- The evaluator ascertains possible stipulations; and to end with;
- The evaluator ascertaining fundamental disputes.

Based on the foregoing, it is noted that the ENE session involves participation from both the presenter and the audience (in their capacity as her listeners) in the process of sending and receiving messages.

According to Brazil (2012a), it is customary for the evaluator as the host of the ENE session to include the following points in her presentation:

- Emphasise on why the evaluator and the parties (the audience) are present at the ENE session. What are the setbacks of using litigation
- The reason the evaluator agrees to serve as an evaluator;
- Why he was selected by the court to perform this service (based on or expertise, experience etc.) especially if the court program requires him to describe her background and qualifications);
- The procedure to be adhered;
- The principal rules that apply such as no cross-examination of witnesses, no rules of evidence and strict confidentiality.

Brazil (2012b) also highlights that the flow of events under the U.S. District Court, Northern District of California ENE process requires the evaluator to inform the parties about the following matters:

- A joint meeting of counsel and clients and presentations by counsel and the encouragement of participation by disputants;
- The evaluator will ask questions;
- The evaluator will identify areas of agreement/disagreement;
- The evaluator will leave to prepare written evaluation;
- The parties will have the option of either to receive the evaluator's evaluation or to go directly into settlement discussions;
- The evaluator will not have any ex-parte communication about merits until the evaluation is written; and
- The evaluator will assist with case development planning.

4.2 Powerful Presentation at the Introductory Stage of Presentation

Dale Carnegie (2015) advises on 8 easy ways that can be used by the presenter in preparing her presentation, namely:

- Make brief notes of the interesting things you want to mention;
- Avoid writing out the presentation;
- Avoid memorising the presentation word per word;
- Fill presentation with illustrations and examples;
- Know far more about the subject than the presenter can use
- Rehearse the presentation with friends;
- Stop being up-set about delivering but find ways to improve it; and
- Do not emulate other presenter.

4.2.1 Connecting with the audience

Many scholars emphasise on the need to demonstrate connectivity between the presenter and her audience (as her listeners). This is to ensure that the audience are paying attention to what is being delivered to them. According to Templeton & Fitzgerald (1999a), in the beginning, the audience is usually alert and would anticipate the presenter to present with poise and confidence. They stress that the first three minutes of

presentation would enable the audience to evaluate the presenter's credibility. They further lay down the criteria of powerful introductory presentation as follows:

- The introduction must be connected to the presenter's message;
- The presenter must endeavour to present a historical or anecdotal reference by referring to an event related to her topic of presentation; and
- The presenter must analyse her audience; and
- The presenter must determine the purpose statement by considering what he wants his audience to know, feel and do

In furtherance of that, according to Templeton and Fitzgerald (1999b), there are three reasons for speaking, namely to persuade, to inform (or teach), or to entertain; and that the speaker's ultimate goal has generally included a combination of these 3 reasons. This view is consistent with the purpose statement of conducting the ENE session.

Templeton and Fitzgerald (1999c) also advise that it is imperative to choose a suitable method of presentation according to different situation and to keep focus on the topic of presentation by writing down the points for emphasis in the presentation. This point is consistent with the practice of the evaluator during the introductory stage of the ENE session.

4.2.2 Interaction with the audience

Abrams (2006a) emphasises that the presenter must learn to 'break the ice' at the introductory stage of a presentation by asking a few questions to the audience. This would help the presenter to customise her content right from the beginning.

On the other hand, Tierney (1999a) states that a presentation usually consists of a beginning, a middle and an end. Thus, she advises that it is imperative for the presenter to:

- Demonstrate a good first impression to the audience, such as by giving a smile and then proceed with a well-prepared opening speech;
- engage in motivational technics such as using a quotation, asking questions, telling a story and show a well-designed visual;
- State the purpose of her presentation before her audience, the impact of the subject matter, provide them with a reason for departing with information within their knowledge and to connect her subject matter to their responsibilities; and
- Explain to the audience about the approach being used by her to support her view or position and what she intends to do and the length of time she needs to complete her task.

Most scholars embrace the perspective that it is of the essence for the presenter to earn her audience confidence in herself. Abrams (2006b) also acknowledged the view of Tierney (1999) about the importance of demonstrating good body language that communicates confidence, sincerity and enthusiasm. One effective method to establish bond with the audience is to maintain eye contact (Abrams, 2006c). This is

consistent with the practice of ENE where the evaluator would emphasize on making the audience feel comfortable and not stressful.

4.2.3 Audience analysis

In terms of analysing the audience, Munter and Russel (2002) postulate that it is vital for the presenter to analyse the primary, key influencers and opinion leaders who are present as audience, in the following manner:

- **Primary audience:**

As a group, the presenter would ask them about their background and obtain information about the size of the audience, their age range, education or work experience and other demographic data such as gender, race and culture

As individuals: the presenter collects her data by using similar methods as in the group or talk to someone who knows the group or who may assist her to learn about various individuals.

- **Key influencers:**

Consist of key decision makers who are directly involved and possess influence in decision-making. Assessing them would be easier if the presenter have presented to them before.

- **Opinion leaders:**

Consist of individuals who influence the group indirectly. Hence, the presenter must figure out whether they are capable of determining the group's opinion.

4.3 Connection between the literature on presentation skills and the accustomed practice of the ENE Session

As mentioned by Brazil (2012c), the evaluator's introductory remarks can attract favourable and unfavourable response from the audience. Notably, each listener possesses differing level of education or knowledge and ways of observing matters (Verdeber&Verdeber, 2008). In this connection, the need to interact with and analyze the audience as stated earlier in the result are consistent with the tasks of the evaluator at the beginning of the ENE session whereby she need to host the session with poise and confidence; endeavor to forge cordial relationship with her listener and be cautious with her body language.

It is also customary for the evaluator under a court program to seek those who attended the ENE session to introduce themselves to enable her and others to get acquainted with each other and for her to analyse the key witnesses. This practice is consistent with the advice given by Munter and Russell (2002b) who posit that it is vital to analyse the primary, key influencers and opinion leaders who are present as audience.

In furtherance to that, according to Templeton and Fitzgerald (1999d), there are three reasons for speaking, namely to persuade, to inform (or teach), or to entertain; and that the speaker's ultimate goal is generally include a combination of these 3 reasons. The importance of purpose statement as emphasised by Templeton & Fitzgerald (1999e) is also in harmony with the practice of evaluator under the ENE program at the initial presentation (as shown under the flow of event under the ENE process). This is because the evaluator has to earn the parties' confidence in her and also convince them to appreciate the opportunities that the ENE session can offer to them in the hope to reach an amicable settlement or the road map to the future conduct

of their dispute. This view is consistent with the purpose statement of conducting the ENE session as mentioned in the ENE flow process, especially to inform the parties about the flow of events under the ENE process and her intention to accomplish it.

Similarly, the tips on preparation of the opening address as suggested by Carnegie (2015b) are consistent with suggested practice for not only the evaluator but also by the litigator. The prohibition as suggested by Carnegie especially on the avoidance of rehearsing a written speech is similarly accepted in the litigation world which relates to the presentation of the opening and closing address by the attorney when conducting a trial. For example, Mauet and McCrimmon (2001) advise against the use of a prepared text which will be used in verbatim. Naturally, an evaluator who reads out a prepared text lacks genuine interaction with the audience and may not be viewed as the experienced neutral party who is able to lead the disputants (their respective attorneys and witnesses) to discuss about the reality of their case and even possible settlement plans for their dispute.

5. Limitations and Future Research

The findings for the study may best be considered preliminary. This is because the theoretical guides on presentation skills were seen from a limited number of aspects and obtained from a limited number of literatures on presentation skills even though it can be argued that basic principles on presentation skills would suffice.

In summation, this study did not attempt to hold the views of practitioners and current evaluators for which the inclusion of their views might be able to contribute immensely to the exploration of better and more powerful presentation skills apart from detecting the divergence and convergence of views between the practical and theoretical aspects in managing the ENE session.

6. Conclusion

The goal of having a reliable powerful presentation guideline for evaluators is not just to equip them with essential presentation skills, but to impart healthy practices and increase their sensitivity in hosting the ENE session in their best possible effort. Thus, in the learning process, both theoretical and practical presentation skills should be consciously emphasized. By doing so, evaluators can acquire the basic skills to powerful presentation, as well as experience and acknowledgment from the public as reliable and skillful evaluators who are able to tackle complex legal and non-legal issues at ease.

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