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ORALITY IN DANISH COURTS

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Abstract

The distinction between text and speech is a longstanding concern in rhetoric. It is, however, also a concern in law, where it is explicitly codified – for example, in Danish procedural law, which requires that oral proceedings in court be delivered through ‘free presentation’. This provision is generally interpreted as prohibiting the reading of written manuscripts during oral pleadings, yet its rationale has not been examined in depth in the legal literature, nor has it been sufficiently discussed in relation to rhetorical knowledge about orality. This article investigates the notion of free presentation, its interpretation in legal doctrine, and the rationale underlying the requirement: why is it advantageous to proceed through free presentation in court? The study unfolds along two lines: a close reading of legal scholarship interpreting the rule, and an interview study with six experienced legal representatives who have argued cases both with and without manuscripts. The findings suggest that manuscript-based and unscripted proceedings differ not merely in delivery but in interactional dynamics, rhetorical form, and substantive content. Free presentation appears to facilitate greater responsiveness to judges and opposing counsel, encourage more focused and concise argumentation, and alter tone and attentiveness toward the parties involved. These results indicate that modes of preparation shape courtroom interaction and legal reasoning itself. The study thereby contributes to interdisciplinary dialogue between rhetoric and legal studies and offers new insight into how institutionalized norms of orality affect argumentation in practice.

Keywords: orality, legal rhetoric, courtroom advocacy, memoria



1. Introduction

Ever since Plato observed that writing offers, not truth, but only its semblance (Plato 1914, 274c), rhetoricians have long engaged with the relationship between text and speech. The difference between text and speech has been examined both in relation to speeches and to oral communication more broadly, linguistically, culturally and theoretically, and one may regard the discussion of the nature of orality as a core rhetorical issue (Alcidamas 2001; Ong 1996; Fafner 1997; Gabrielsen 2023). More surprising to a rhetorician is that discussions of orality also play a central role in the legal tradition. In Danish legal literature, one finds discussions of the nature of orality and the distinctive character of the spoken word, as well as reflections on the difference between oral and written conduct of proceedings. Despite the shared interest in the difference between text and speech, the two disciplinary traditions share very little knowledge. This is unfortunate, as legal knowledge about orality is also relevant to rhetoricians and vice versa.

In the legal tradition, however, orality is more than an academic topic, as it is also set out in law. The Danish Constitution states that “the administration of justice shall be public and oral to the widest extent possible” (Grundloven [The Constitutional Act of Denmark], § 65), and Retsplejeloven [the Danish Administration of Justice Act] § 148(2), further regulates how orality is to be managed in court: “In oral proceedings, free presentation shall be used”¹. The latter provision is not only legally relevant; it is also rhetorically interesting. Does this mean that, in Danish courts, legal representatives may not read from a prepared manuscript, thereby placing considerable rhetorical demands on them? More importantly, why does Danish law regulate not only the form (written or oral) but also the legal representatives’ manner of preparation and techniques of memoria? What considerations and rationales underlie the free presentation requirement in court, and might the answers to these questions also teach us something about orality in rhetorical contexts?

The free presentation requirement is the central focus of this article. I begin with a close reading of legal scholarship commenting on the requirement of free presentation. The aim is to identify what precisely is meant by free presentation and which considerations and rationales are highlighted in the various legal texts. As I show below, two considerations emerge: increased interaction between the parties and more focused and clearer communication in court. I then examine free presentation further by uncovering the above-mentioned considerations and rationales in relation to the parties’ legal representatives in court. Through an interview study involving six legal representatives with experience of arguing cases with and without a manuscript in court, I examine what free presentation looks like in practice: What differences do they experience when arguing from a full manuscript versus free presentation? And do their practical experiences reveal additional differences beyond those mentioned in the legal literature?

2. Orality and Free Presentation in the Legal Literature

If one consults the legal literature, it becomes clear that there is considerable agreement on how the provision should be interpreted: the provision contains a prohibition on reading aloud from a manuscript. Gomard and Kistrup, for example, put it this way: “Reading from a manuscript does not satisfy the requirement of orality” (Gomard and Kistrup 2020, 481; see also Gammeltoft-Hansen 1998, 54; Munch-Petersen 1993, 154; Christensen 2014, 4). Gomard and Kistrup further emphasize

¹ All translations from Danish into English are the author’s own, including translations of Danish legal texts and quotations from interviews.



that this naturally does not exempt the parties from preparing, and here we see another central point in the interpretation of the provision: section 148(2) should not be regarded as a prohibition of manuscripts as such, but as a prohibition on reading aloud from the prepared manuscript. In other words, it is the delivery that must be free; if a party can detach themselves from their manuscript in their oral submissions, this is not regarded as a breach of the requirement of free presentation (Kistrup 2019, 456; Garde and Høg 1991, 303; Hansen 1959, 96).

There are, however, several legal scholars who nuance the reading above. One example is Hansen, who points out that there are exceptions to the requirement: for “a self-represented litigant or a party represented by a legal representative who is not a lawyer, it is permitted to read from a prepared manuscript” (Hansen 1959, 95). Hansen underlines that parties differ, and that the extent to which the requirement of free presentation should be enforced must therefore also differ. Sune Fuglholm takes a similar view, although he reads the requirement less restrictively than Hansen: Fuglholm argues that fully written out manuscripts – especially for inexperienced legal representatives – may have several advantages, and that these may even outweigh the requirement of free presentation: “It may mean a shorter period of uninspiring reading aloud, but the reading of a well prepared and carefully considered manuscript is to be preferred to a legal representative who has stalled.” (Fuglholm 2019, 446). Ideals are one thing; practice is another – and Fuglholm’s pragmatic reading seems to underlie several of the legal texts consulted.

It is not only parties that differ; types of cases vary as well. As Garde and Høg point out, there are also types of cases that are not well suited to either oral proceedings or free presentation: “Extensive and/or complex accounting cases fit poorly within the traditional system’s requirement of orality...” (Garde and Høg 1991, 303). Accounting cases have therefore always had a special status in relation to the principle of orality, and thus indirectly also in relation to the requirement of free presentation (Spleth 1969, 63).

Matters become more complex when one tries to uncover the rationales behind the provision – that is, why free presentation is preferred to reading aloud in court. On this point, the legal literature points in several directions, and in several of the legal texts, it is not unfolded as an explicit and distinct focus. An example here is the preparatory works to the Administration of Justice Act, that is, the documents and texts drafted while a law is being created, and which are typically where one finds information about the considerations behind the law. In the preparatory works, the overarching principle of orality is explained by reference to open justice and the immediacy principle, whereas the requirement of free presentation is not addressed (Forarbejderne 1892). One might argue that the requirement of free presentation is embedded in the principle of immediacy, since this principle establishes that the judge should have direct and unmediated access to the information and evidence in the case – a requirement arguably better served by freely delivered oral submissions with the words delivered spontaneously than by reading from a script. However, I have not been able to find this reading in the legal literature, and it is therefore more reasonable to conclude that the preparatory works provide no explanation of the requirement of free presentation. Perhaps this is precisely why the rationale is interpreted rather differently in the legal literature that does comment on the provision.

In contrast to the preparatory works, one finds in Munch-Petersen’s major work on the Administration of Justice Act from 1923 several passages that address orality and, indirectly, the requirement of free presentation. Munch-Petersen focuses on the way in which oral proceedings increase the judge’s ability to direct the proceedings and clarify ambiguities: “In place of the rigid maxims that, under a fully written mode of proceeding, cast a dead hand over civil litigation, the judge can



personally direct the case, tailoring its course to the requirements of the individual matter and, by questioning the parties, removing ambiguities or deficiencies in their account.” (Munch-Petersen 1923, 154). Munch-Petersen does not explicitly mention free presentation, but in treating orality and free presentation as integrated, I read him as opening up a point of particular relevance to free presentation: it is clearly easier to adapt to the development of the case and answer spontaneous questions from the judge when one can detach oneself from the prepared manuscript and present one’s position more freely.

This rationale is implicit in several of the legal texts; it is echoed by Gomard and Kistrup, whose focus is on interaction between the parties rather than between the judge and the parties: “... the taking of evidence and remarks from the opposing party may make improvisation necessary. Reply and rejoinder after the main submissions during the oral proceedings cannot be fixed in advance” (Gomard and Kistrup 2020, 481). Although Gomard and Kistrup are here pointing to the follow-up submissions that the parties deliver in response to the opponent’s submissions, they at the same time underline a more general point: oral proceedings are not a static exercise that can be fully prepared in advance, which by definition makes it advantageous to be able to present the case more freely (Gomard and Kistrup 2020, 481). This is not a rationale that is explicitly developed in the legal literature in relation to the requirement of free presentation, but several texts point to the connection between interaction and orality, and thereby also between interaction and free orality.

A somewhat different interpretive frame is offered by Gammeltoft-Hansen. He does not focus on the wish for interaction, but on how free presentation makes the hearing vivid and personal: “To underline the enlivening function of the principle of orality, section 148(2) prescribes that, in oral proceedings, free presentation shall be used.” (Gammeltoft-Hansen 1998, 54). Nor does Gammeltoft-Hansen elaborate on what he means by “enliven” or why this is the rationale behind the provision, but he explicitly notes that it is especially the oral submissions that benefit from the free form, because it opens “an extra dimension in the parties’ ability to express their views” (Gammeltoft-Hansen 1998, 54). In Gammeltoft-Hansen’s view, the rationale behind free presentation is understood not as increasing spontaneity and interaction in court, but as enhancing the individual legal representative’s ability to explain their case.

A related interpretation of the requirement of free presentation is offered by former Supreme Court Justice Jens Peter Christensen. He writes: “The strength of orality is that it allows the lawyer, in simple and easily understandable language – what Grundtvig would call ‘the living word’ – to give a clear, concise overview of the case.” (Christensen 2014, 4). Christensen goes, however, a step further than Gammeltoft-Hansen by articulating what characterizes lively, free orality as opposed to reading out a manuscript: a clear, focused presentation of the parties’ cases. He makes the point explicitly, albeit in the negative: “The poor lawyer, on the other hand, loses himself in the many details of the case without distinguishing between major and minor points. What should have been an unscripted oral presentation becomes the reading aloud of manuscripts, documents and statutory provisions. For the judges, that sort of thing is of little help.” (Christensen 2014, 4). Whereas Gammeltoft-Hansen emphasizes that lively language enhances the parties’ ability to explain their case, Christensen emphasizes that free presentation increases understanding among those who must receive and decode the submissions (see also Fuglholm 2019, 447; Gomard and Kistrup 2020, 481).

Reading across the legal literature, one sees that while the principle of orality itself receives much attention, the implementation of the principle (orality qua free presentation) receives limited attention. The provision is delineated and understood through different concepts and rationales,



although two rationales in particular emerge: free presentation helps secure interaction in court, and free presentations generate more focused and readily understandable submissions. This brings us to the paper's second research question: can these rationales be found among legal representatives in court? And does a practical, actor-focused approach perhaps give us further insight into the difference between manuscript-based and unscripted submissions in court?

3. Case and Method: Free presentation in Cases on Compulsory Placement of Children

The interview study set out below is based on two group interviews with six legal representatives who, at the time, represented Ankestyrelsen [the National Social Appeals Board] in court. All six had appeared in a large number of cases - they themselves estimate 100–200 cases per person – and, more importantly, all had experience of arguing both with and without a full manuscript, which makes them relevant respondents in the present study. For a number of years, I was responsible for parts of the Appeals Board's litigation training and have, in another context, described the method the respondents use when they argue freely, that is, without fully written out manuscripts (Gabrielsen 2022). In brief, the method is: preparing the structure of the submission and the essence of the arguments, while the specific verbal formulations are not written out but delivered spontaneously.

Despite my earlier engagement with the Appeals Board, the present study does not amount to action research or related participatory research approaches. The study strives for reflexive objectivity (Kvale & Brinkmann 2015, 314), and the research interviews were conducted solely with the aim of gaining insight into practicing legal representatives' experience of the difference between a full manuscript and a freer, more unscripted style. The interviews were conducted as independent research interviews and were carried out with the consent of the Appeals Board.

The Appeals Board is a central government authority that handles appeals across various areas of law and types of cases. The six respondents, however, all appeared in cases concerning the compulsory placement of children and the regulation of parental contact. These cases are adjudicated in the district courts, where the Appeals Board represents the public authorities and a court-appointed lawyer represents the child and/or the parents. Cases on compulsory placement of children are, clearly, a special kind of case, and even though generalization from a single case can be legitimate (Flyvbjerg 2006; Halkier 2011), I do not claim my findings to be universal in Danish courtrooms. Several of the insights on interaction and focus can undoubtedly be transferred to other types of litigation and to rhetorical arenas beyond the courtroom, whereas other insights seem tied to the present type of case.

As stressed in the methodological literature, qualitative interviews are valued for the distinctive knowledge they generate about how respondents understand and experience their world, actions, and practices (Kvale 1994; Kvale & Brinkmann 2015). Although individual, in-depth interviews focused on respondents' worlds, might therefore appear to be the obvious choice in a study on legal practitioners' experiences of pleading, semi-structured group interviews were employed. Group interviews (and focus group interviews alike) have the advantage of facilitating the articulation of experiences that are not readily verbalized, as interaction among participants can create a "snowball effect," whereby hearing others' accounts stimulates reflection and expression (Harboe 2012; Halkier 2008; Wilkinson 1998, 190ff).

The "snowball effect" is particularly relevant in the present study, which focuses on legal practice. As pointed out in the legal literature, it is a domain that relies heavily on tacit knowledge, where



practitioners often act on skills acquired through imitation and experience, but find them difficult to articulate explicitly (Schaumburg-Müller 2015). As law professor and legal writing teacher Kristen Robbins-Tiscione observes in reflecting on her own teaching practice: “As a novice teacher, I noticed myself teaching writing more as imitation than as a skill grounded in argumentation theory [...] I was at a loss for the theory that explained what I knew intuitively, but could not articulate” (Robbins-Tiscione 2009, 3). This also appears to apply to the Appeals Board’s legal representatives: much of their training was acquired through imitation and best practice, and the knowledge thus obtained was sufficient for effective courtroom performance, though not necessarily easy to articulate. Group interviews therefore, helped respondents to formulate insights that were initially implicit by engaging with one another’s accounts.

Group interviews were selected over focus groups because the study required both respondent interaction and interviewer guidance. As discussed above, the importance of orality in court proceedings is well established in the legal literature, and the interviews were therefore designed to assess whether these theoretical insights could also be observed in practice. To ensure that themes identified in the legal literature remained central, group interviews were preferred, as interviewer intervention and imposed structure are typically less prominent in focus groups (Wilkinson 1998, 188ff). The same rationale guided the decision to organize the group interviews as two smaller groups (three respondents in each) rather than one larger group of six, since group size affects the researcher’s ability to moderate and structure the discussion (Morgan 1988, 43).

A semi-structured interview guide was employed to combine structured inquiry with spontaneous interaction. The interviews began with open, experience-based questions (e.g., “Why do you conduct oral argument without a manuscript?”, “Are there advantages to proceeding without a manuscript?”, “Do you still use full manuscripts at times, and if so, in what situations?”), followed by theoretically informed probes derived from the legal literature (e.g., “Is it easier to respond to new and unforeseen developments when proceeding without a manuscript?”).

4. Does Free Presentation Promote Interaction in Court?

As mentioned above, the requirement of free presentation can be understood as grounded in a concern for interaction: oral proceedings are an interactive process in which the parties must respond and reply to each other’s submissions and to the judges’ questions. This is easier when the parties are not dependent on full manuscripts and can act freely. This is borne out clearly by the respondents’ answers. When asked open-ended questions about why they prefer to argue without a full manuscript, it is precisely the scope for interaction that they highlight: “It’s easier to use the concrete points that are raised and work them into your own [submissions] when you haven’t written everything out in advance” (Respondent 3). That is the experience they all, in different ways, describe: it makes me “more flexible” (Respondent 1), “freer in my submission” (Respondent 2), and I can now “slot it [...] in where it makes sense” (Respondent 4). The wording differs, but the experience is the same: a non-manuscript-based, free approach makes it easier to adapt to the other actors in the courtroom.

This is especially clear when respondents compare their current practice with their earlier practice of using a full manuscript: “You have a manuscript and then something comes up that you need to include – where exactly are you going to put it?” (Respondent 5). Or as Respondent 6 adds: “That was my problem too. I always wrote it [when I used a manuscript] at the end, but then it was as if I didn’t get it into the hearing ... and then you’d forget it ... like, where was it supposed to



go?” In these comments, and others, the respondents describe how, with a manuscript, one easily loses overview of one’s own material – and how that is precisely why it is hard to incorporate points raised spontaneously by the other side. The manuscript is described as a kind of “closed structure” that easily breaks when new material is inserted: “Yes, your structure breaks” (Respondent 5), which at times even results in misstatements: “I would sometimes end up saying the wrong thing first and then add, ‘I know today we’re hearing that the father...’” (Respondent 6). It is, however, different when they use free presentation: it makes it easier to integrate new material and move information around in one’s oral submissions. Several respondents even report that, with the free presentation, they can transform the material on the spot, so that prepared arguments, for example, are reworked into rebuttals of the opponent’s arguments.

A second interaction-related aspect also emerges in the interviews. Several respondents note that the delivery format (manuscript/free) also affects their attention. Whereas a manuscript draws their attention towards the prepared text and the case files, the free presentation draws their attention towards the courtroom, its actors and the development of the case: “I think I have better focus on the case and on what’s happening in court when I don’t have a manuscript” (Respondent 2). The respondent also offers an explanation: “Because you’re freer, you probably also spend more energy on what’s being said in the courtroom – what the lawyers [the other side] say. Because that’s what they [the judges] are interested in: what do we say to everything the lawyer has said today?” (Respondent 2). Respondent 5 makes a similar point: “I do think you address them [the actors in court] much more [with the free presentation]. And you also get a response to a greater extent.” The free presentation draws the respondents’ attention towards the courtroom – and they also experience that attention being reciprocated to a greater extent.

These statements indicate that the difference between manuscript-based and free presentation is not merely formal, but also substantive. In other words, the difference is more extensive than a matter of note-taking technique or the slightly banal observation that a manuscript makes it easy to lose eye contact with the actors in court. The respondents suggest that it is the very contact with the court that is diminished when one proceeds on the basis of a full manuscript, because attention is directed more towards the prepared at the expense of the immediate. This is an insight already advanced by the Roman (legal) rhetorician Marcus Fabius Quintilian. In a longer passage on improvisation and manuscripts, he points out that manuscripts have the disadvantage (unless thoroughly internalized) of capturing us mentally: “our thoughts will run back to what we have elaborated in writing and will not permit us to try the fortune of the moment” (Quintilian 1921, X.vii). Manuscripts affect the speaker’s mental attention; the present study suggests the same applies in court.

Finally, respondents depict modern oral proceedings as a communicative situation that requires spontaneous and interactive competences to a high degree. The ability to interact and to adapt one’s material spontaneously is required not only when responding to the other side’s arguments – that is, in reply and rejoinder – but throughout the oral proceedings, for example because the other side withdraws claims on the day, or because the case develops: “I’ve had quite a few where you start in one place and end up somewhere completely different. I had a case the other week [...] I had actually planned to say quite a bit about the difficulties the children and the mother each had. But it ended up somewhere else, entirely because the mother herself went in and described so clearly how many difficulties her children had. And then it came to be about EU law. A written presentation for that case would have been a waste of time” (Respondent 3). The respondents also note that there are at times errors in the written documents, which means they must respond



spontaneously to new information in the case: “I’ve also had situations where the child ran away from the residential facility. So, you show up in court and suddenly you’re told that the child ran away [...] Then, all of a sudden, there’s a completely different focus than you thought there was” (Respondent 1). Or as Respondent 2 puts it, aptly: “I think it happens often. I actually think almost always. You have to be spontaneous.”

The high degree of unpredictability – and the attendant requirement to act spontaneously in court without the support of a planned manuscript – relates in particular to the specific case type, namely the compulsory placement of children. In these cases, the materially correct decision is the overriding focus, which is why new information is typically included on the day. This does not mean, however, that unpredictability and spontaneity are not general features of appearing in court. As we saw above in the review of the legal literature, spontaneity and interaction are described as general conditions of court proceedings – a point that can also be found in the legal-rhetorical literature. In several legal-rhetorical works, classical as well as modern, there is an insistence that one must master spontaneity in court, which Quintilian, for example, formulates as a non-negotiable requirement: “The man who fails to acquire this [the power of improvisation] had better, in my opinion, abandon the task of advocacy” (Quintilian 1921, X.vi; see also Beyer 2015). And the respondents’ statements suggest that both spontaneity and interaction in court seem easier to achieve when one proceeds by free presentation rather than from a full manuscript.

5. Does Free Presentation Sharpen Focus and Increase Willingness to Listen?

As noted above, most notably by former Supreme Court Justice Jens Peter Christensen, oral submissions delivered by free presentation are more concise and focused than the written materials the parties submit to the court. In doing so, he touches on a theme familiar in rhetorical literature: textual and oral communication are fundamentally different (Gabrielsen 2011, 28ff; Gabrielsen 2022; Ong 1982; Kjeldsen et al. 2019, 133ff.).

These differences are also clearly reflected in the respondents’ statements. They repeatedly note that the two modes of preparation generate two different kinds of submissions, including in terms of content: “Yes, definitely. It becomes less broad; I do think written submissions can range over a great many things, whereas the free one gets boiled down more” (Respondent 2). Respondent 4 offers the same characterization and adds an explanation: “I completely agree. When I write it down, I tend to include more because I want to be sure I’ve covered everything. Whereas when it’s freer, I take the essentials and try to speak from that” (Respondent 4). I understand the respondents as saying that a written approach tends to be more comprehensive, whereas the free, oral style more readily fosters selection of material: “In writing you’d go into more detail. The citizen has major difficulties in the form of this, this, this and this. And can’t manage this and that. And has problems here, here and here. Orally, I’d typically just say: we’re dealing with a set of parents who have significant emotional difficulties and, overall, personal difficulties which, among other things, show themselves in that they don’t turn up for the child ... as we can see from the contact notes” (Respondent 1). Put differently, the respondents indicate that how one prepares determines the content of the submissions.

Several respondents also describe the work processes involved in preparing manuscript-based versus free submissions: “And it’s also that when you sit and write and formulate, you can go off on a tangent – yes, you can quickly end up piling on a lot that isn’t really necessary ...” (Respondent 1).



Or as Respondent 5 puts it: "... when I prepare a free, non-manuscript-based submission, I make sure I've got a few key points. That makes it more straightforward. Whereas when I wrote it out, it wasn't always completely clear which point I wanted to drive home ... It became more of a list of information". As I understand the respondents, they experience not only that content is affected by the preparation; they experience that free, non-manuscript-based preparation produces oral submissions that are more concise and focused — and, one might add, closer to Jens Peter Christensen's ideal of giving judges something different from, and more than, the written materials.

For the respondents, it is less about ideals and more about what the free style actually does for them and for the judges at the moment: "It's more interesting to listen to ... And that is really why you're there ... sometimes you can get the thought: I'll just go up and say my bit, and then I've done my job. But if you stop and think why you're there, it's because there are three people who need to hear what we say – and actually take it in, right ... It's just more interesting to listen to ... when it's not so stiff" (Respondent 5). Respondent 2 goes a step further and reports how it also changes the judges' reactions: "For my part, I think it was that when I stood there with a manuscript, you'd stand there reading and turning pages, and I could see the child experts slump lower and lower ... they stopped writing and all that. It got so drawn out [...] that feeling that they didn't want to listen – that's what I got with a manuscript. It's pretty clear" (Respondent 2). As Respondent 3 puts it: "You are listened to more when it's free". Respondent 6 offers an example: "I had a situation the other day with an opposing party who was reading out. She paused, and the judge almost moved on to me ... where she said, 'No, no, I'm not finished.' It just became so heavy and – I think – the judge just wanted it over with". In short, the respondents experience increased willingness to listen when submissions are delivered by free presentation.

There is no basis in the present study to conclude that free presentation increases the judges' understanding, which is the claim Jens Peter Christensen tends towards. That would require audience research, however, there is no doubt that this is what the respondents themselves experience: "there's more listening" (Respondent 3); "you get, at least, a different kind of contact" (Respondent 2); "you also get those nods from the judges" (Respondent 6); "my audience just seems more receptive [when it's free]" (Respondent 6).

Overall, the respondents' answers indicate that there are substantive differences in the content of manuscript-based versus free presentation, and that these differences affect willingness to listen, presence, and perhaps even understanding. It is the material itself – the content and focus of the submissions – that is shaped by the preparation, which is why a submission drafted as a full manuscript does not become a free presentation just because the manuscript is memorized and delivered without reading. The respondents' statements rather support the view of text and speech elaborated by Walter Ong and found in the literature on oral legal cultures: text and speech involve different organizing principles and patterns of thought; accordingly, content – including legislation – is approached, formulated and understood differently in the two approaches (Ong 1982; Vesting 2018, 80ff).

6. Does Free Presentation Prompt a Different Tone Towards the Citizen?

When reading across the respondents' answers, another interesting point emerges. One not addressed in the legal literature on orality: namely that the attitude towards the citizen (the parents of the children placed in care) also appears to be affected by whether submissions are manuscript-based or delivered by free presentation.



This is particularly evident where the respondents address the citizens' difficulties, which in many cases form part of the grounds for placement. Several respondents note that they expressed themselves in a harsher tone when their submissions were based on a full manuscript: "When I had written submissions, I could sometimes feel it ... not nice ... or even downright intimidating, having to stand there and read out so many harsh things about someone when we can all see ... well, she [the citizen] has been sitting there crying for 20 minutes ... She can hardly cope any more, but now I have to read out my submission ... [...] I've gotten over that completely now by using the other style [free presentation]" (Respondent 2). The more textual the preparation, the more explicit it becomes, and the harsher the tone.

The respondents themselves are in no doubt: they experience the harsher tone as a general feature of the manuscript-based style: "Yes ... I think so" (Respondent 2); and "don't you think you get a bit more ... harsh when you write it?" (Respondent 1). Respondent 2 even lifts the assessment to the level of individuals at the Appeals Board, where some proceed with a full manuscript while others use free presentation: "... at the office [the Appeals Board], we all know that we have different styles in terms of how hard we go at the citizen. And lawyers [the other side] have said as much – that some are nicer, others where it bloody hurts. You can avoid that with this style [free presentation]" (Respondent 2). Respondent 2 has clearly reflected on why manuscript-based submissions become harsher in tone: "Yes, because you write it when you're not sitting in front of the citizen ... You address the case purely from the file. Whereas when you stand there and are either completely free or have written keywords, you also address the citizen: what situation are we in ... when we have to say these things ... I think that makes a real difference" (Respondent 2).

The explanation Respondent 2 offers is supported in the literature on the difference between text and speech. As rhetorician Christina Pontoppidan notes in her book on the nature of text, it is a basic condition of text that it is created in solitude – that is, in a different room and at a different time from the one the reader inhabits (Pontoppidan 2013, 12ff). When we write our reflections into a manuscript, the message rests on the case file and our mental image of the person we describe; in an oral communicative situation, we are in the same room as those we speak to – and, in this case, speak about (Gabrielsen and Christiansen 2010, 28ff.). This evidently affects words and tone, and the respondents themselves say how planned descriptions of the citizen must be changed and toned down when they meet the citizen physically in court. They do not themselves use the term 'empathy', yet their statements indicate that, in the live oral setting, they take the whole person more fully into account.

7. Conclusion: Free Presentation Makes a Difference

Free presentation makes a difference. Although the provision on free presentation by no means dominates the legal discussion of orality, the interview study identifies several reasons to pay closer attention to the provision. The ability to interact with the opponent and the judge, the ability to absorb and incorporate new information, and the ability to deliver a focused submission worth listening to are all affected by the preparation format. It is therefore puzzling that the provision does not attract greater attention and that it is not more consistently enforced in practice: reading aloud from a manuscript is today tolerated in many of the Danish courts, even though both the legal literature and the present study point to a number of advantages in using free presentation.

In this paper, I have focused on considerations already embedded in the legal literature. The interview study also identifies advantages of free, non-manuscript-based submissions that the



legal literature on orality does not address - above all, that the citizen's experience of the process may differ depending on whether information about them is set out in writing and at a distance or delivered orally and in the moment. However, the study also reveals further differences that warrant additional research: practitioners report (i) greater personal impact, (ii) reduced anxiety, and (iii) a stronger sense of meaning when appearing in court using free presentation; and (iv) preparation time is reduced by roughly half.

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