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Legal Aid Queensland
44 Herschel Street, Brisbane

ADVOCACY IN THE MAGISTRATES COURTS

Judge Marshall Irwin
Chief Magistrate

Magistrates Courts are the courts of first instance in the judicial structure throughout Australia.[1] The Queensland Magistrates Court is often referred to as "The Peoples Court". This is because it is the court that the majority of people who come before Queensland Courts will have contact with.

Approximately 96% of people who are charged with criminal offences come before it. Therefore it is the court where most of the community form their impression of the Queensland criminal justice system. For these reasons many regard it as the most important court in the judicial structure.

The Chief Justice of Queensland, the Honourable Paul de Jersey has put it this way – "The reality is the Magistrates Court is a massively important court, and it's also the court where most of the people of Queensland from day to day see the judiciary at work."[2]

Magistrates are entitled to the same respect and assistance from advocates as is received by the other courts in the judicial structure.

Our court has recently sought to reinforce this proposition by agreeing with the Bar Association of Queensland that from 4

February 2008, counsel are expected to robe in the Queensland Magistrates Court for all:

- trials and contested hearings in which oral evidence will be addressed; and
- sentencing proceedings in the criminal jurisdiction,

When counsel is aware that the other party will be represented by counsel.

When robing counsel will wear gowns, bar jackets, collars and tabs or jabots, but wigs will not be worn. It will also be subject to any contrary direction in respect of a particular place for holding a Magistrates Court to take into account factors such as the nature of the location, the lack of air-conditioning or a particular magistrates own practice.

I hope that counsel who work within the Legal Aid Queensland practice will also robe in these circumstances if they come within the scope of the Bar Association protocol.

The principles that I will share with you, are based on personal experience gained over 30 years in appearing for both the prosecution and defence at all levels of the judicial structure in Queensland, in working with investigative agencies such as the National Crime Authority and the Criminal Justice Commission, and more recently as a member of the judiciary.

These practical tips about advocacy in the Magistrates Court have also been developed in consultation with my colleagues in the Queensland magistracy.

The 4 P's

Advocacy in the Magistrates Court, whether as prosecutor or as defence counsel involves applying the 4 P's.

- Punctuality;
- Presentation;
- Preparation; and
- Precision.

These principles can be expressed in one further *P* word, of being *professional*. They are essential to the effective presentation of

cases in the Magistrates Court and also the foundation of advocacy in the other courts in the judicial structure.

In an address to the Queensland Bar Association Conference on 16 February 2008 Dr David Bennett AO QC, Solicitor-General for the Commonwealth of Australia referred to the 3 M's of advocacy – Milieu, Manner and Method. I will mention some of these in the course of this paper.

Punctuality

An important aspect of showing the Magistrates Court the same respect as the other courts in the judicial structure is being ready to start on time.

The Magistrates Court generally commences earlier than other courts. In some parts of the state it commences as early as 8:30am.

The Arrest Courts generally commence at 9:00am. This is because of the large volume of matters which are dealt with daily. In some arrest courts, such as Brisbane and Southport there will often be in excess of one hundred and fifty matters listed each day. The expeditious and orderly discharge of the jurisdiction of the Magistrates Court therefore requires that courts start early and on time. Both the Bench and legal practitioners will be less likely to make mistakes when fresh at the start of the day than if matters are still being dealt with at 5:00pm.

Over the past year trial courts in Brisbane have also commenced from 9:00 am with a magistrate in court 20 in the Brisbane Magistrates Court at 363 George Street allocating out matters to the other magistrates. This has been done to ensure that cases begin as early as possible and there is less chance that they will not be completed within the day.

Magistrates appreciate that there will be circumstances beyond the control of advocates which make it difficult to start on time, eg a witness who should be the subject of a conference arrives late. In these circumstances it is still essential to appear before the court at the appointed time to explain the difficulty. It is important to afford the magistrate the courtesy of making his or her own decision as to whether to stand the matter down until later in the day. The magistrate is likely to be less frustrated and more

receptive to submissions if he or she is informed about what is happening. Early notice of any difficulty will enable the work for the day to be restructured so that time is not lost in completing the court list, in the interests of all persons appearing before the court, including other advocates.

If it becomes apparent before the day on which a matter is listed for hearing that there is a difficulty with the case which may require an adjournment it is important for the prosecutor and the defence representative to contact the court and arrange for it to be mentioned at the earliest available opportunity, and not to wait until the morning that the matter is listed to ask for an adjournment. Providing this courtesy to the court will enable another matter to be listed in the place of the case. As a result the court's time and the time of other practitioners will not be lost. Again the court is likely to be more receptive to an adjournment request made in advance of the hearing date.

However it would be wrong to assume that the court will always grant an adjournment, even where the parties have reached an agreement to this effect. Magistrates do not appreciate being confronted with unilateral statements by the parties that a case is to be adjourned. As part of regulating the proceedings of the court, magistrates like to make their own decision on these issues. Therefore it is important to place proper reasons before the court in support of an adjournment submission and be prepared to support it with evidence.

For example if the reason for seeking the adjournment is that your client is incapacitated through illness a medical report or certificate should be provided. If this is not possible at least contact the medical practitioner so you can satisfy the magistrate that you have verified your client's account.

The court may not necessarily consider it a proper reason for an adjournment that a particular barrister who has been briefed is unavailable, because it may consider that there are many other competent counsel who can be briefed, particularly in larger cities like Brisbane.

If it is necessary for you to apply for an adjournment on the morning that a matter is mentioned in an arrest court or call over court, upon arrival the court clerk should be advised of this fact and

every effort will be made to mention the matter early in the proceedings. Whenever possible the court will first deal with applications for adjournments in which legal representatives appear.

However it can only do this if the legal representatives are punctual and make themselves known to the clerk before the proceedings start. If legal representatives approach the court in this manner, they will find that magistrates appreciate that they will have other matters to attend to whether in another court or in their chambers or offices, and will do their best to meet their convenience by mentioning the matters as early as possible.

Presentation

Announcing your appearance

Legal representatives should announce their appearance in each matter in which they appear in the Magistrates Court. It is important to speak clearly and to spell their name.

Appearance slips are not provided in the Magistrates Court as this would generally be impractical because of the volume of matters handled. It is important that the names of legal representatives be accurately recorded on the court file by the magistrate and in any transcript which is later made of the proceedings. This is the case whether the legal representative is well known to the magistrate or not. It is also a matter of courtesy to the court. Therefore I can probably add another *P* word to the list of advocacy attributes – *"politeness".* In other words civility is important both towards opponents and the court.

This is the subject of Practice Direction No 8 of 2006 that was issued on 2 November 2006. Similar directions have been issued by the Supreme and District Courts.

The Practice Direction makes it clear that if a legal representative is appearing at a callover or a bulk review sitting and the court elects to consecutively deal with multiple matters involving that person, he or she need only announce an appearance at the commencement of the first of these matters.

Addressing the court

Since 12 November 2004 Queensland magistrates have been addressed as "Your Honour". This is in consequence of Practice Direction No 9 of 2004.

This Practice Direction reflects that with the passing of the *Magistrates Act* 1991 Queensland magistrates emerged from the public sector to be independent judicial officers in the full sense of the word. This position was enhanced in mid 2000 when the title "stipendiary" was dropped and they became simply magistrates.

It also created uniformity in the mode of address of all Queensland judicial officers and thereby removed the confusion which resulted in judges of the higher courts being referred to as "Your Worship" and magistrates being referred to as "Your Honour". Although I suspect that no magistrate will object to occasionally being referred to as "Your Majesty" as is sometimes the case by self represented litigants.

This mode of address is also in keeping with that used in the case of Federal Magistrates.

Dress in the court

There has recently been discussion of the appropriate mode of dress for advocates appearing in court, particularly by female practitioners.

This will not be an issue in those cases involving barristers to which the robing protocol applies.

However in other cases Dr Bennett regards the clothing worn by practitioners as part of the "Milieu" of the court. His advice is to apply a central tenet of all good advocacy – *know your court.* Therefore he suggests dressing for particular judicial officers:

- for a conservative judge - dress conservatively
- for a younger, more idiosyncratic judge, - you can dress more flamboyantly.

My advice is to dress in a manner that shows respect for the authority of the court. Consistently with what I have said it is essential that advocates who are not wearing robes dress in the same manner as when appearing before other courts. Generally this will involve wearing a suit or a coat and tie. There is no excuse not to do so when appearing in airconditioned courtrooms. Where courts are sitting in hot and humid conditions without airconditioning concessions will be made. Even in these

circumstances the dress standard must be neat and tidy with males wearing properly knotted ties and buttoned cuffs.

Manner of appearance
I cannot do better than to repeat Dr Bennett's observations about the "Manner" of an advocates presentation.

He counsels against addressing a court with folded arms or with hands in pockets. This is because it looks arrogant.
He also says that although it is appropriate to use hand gestures to emphasis a point to the court, this should not involve pointing a finger at the judicial officer – in particular don't do so while holding a pen in your hand.

As not all courts have microphones it is important to use your voice carefully – not too loud and not too soft, but medium pitched so that the judicial officer can hear clearly.

Preparation
Professionalism in the presentation of a case to the court requires that practitioners prepare carefully and are in a position to provide assistance to the court.

Proper preparation prevents poor performance. It will ensure that you know what you are saying and why. To quote the Honourable Justice Carmody of the Family Court of Australia:

> "if you fail to plan then plan to fail." [3]

It is essential in conducting summary hearings and committals that you:

- Are familiar with the legislation relevant to the case;
- Bring an up to date copy of the legislation to court;
- Are able to provide a photocopy of the relevant legislation and cases to the court – and there is nothing wrong with highlighting the pertinent passages[4].

The number of legal websites available should make it a simple matter to have access to the most up to date reprint of the relevant legislation, and also any subsequent amendments.
As both a practitioner and a magistrate I have found a valuable starting point for the preparation of a case or a judgement is to

make a list of the elements of the offence and to note the maximum penalty.

The Honourable Justice Hayne of the High Court of Australia said in his address to the Queensland Bar Association Conference on 4 March 2006 that the essential starting point for the usually experienced advocates who appear before that court is the relevant statute. This illustrates my point that the same principles and quality of representation are to be expected at all levels of the judicial structure. Therefore the adoption of best practice in the Magistrates Court will hold you in good stead when appearing as an advocate in other courts.

Preparation also requires that you get to 'know about the case' intimately. This includes organising the brief in a manner that enables you to know exactly where to find what you need at a particular time during the hearing. There is no rule on how to organise a brief, other than to do "what works for you".

Justice Carmody advises that you read and re-read relevant parts of your brief – mark them and be able to find them on your feet. He also suggests, and I agree that when you are conducting a trial, you should write your closing address before calling your first witness[5].

Your pre-hearing preparation should also focus on identifying an order of witnesses, and what exhibits they will produce and in what order. The exhibits can then be placed in a sequence which enables them to be efficiently tendered in court. Nothing takes away more from the professionalism and credibility of an advocate's presentation than being seen to be fumbling at the bar table looking for a statement in a brief or for an exhibit. It is also important to ensure that anyone who instructs or assists you knows your plan as to the sequence of witnesses, and production of exhibits, and where to locate them.

Your preparation should make you sufficiently familiar with the brief to enable you to meet any eventuality which may arise during the hearing. It will ensure that you will not be taken by surprise and will be able to adapt your presentation to the manner in which the case unfolds. It will enable you to focus your production of evidence on the issues that arise, and therefore address what will be important to the court in making its decision.

It is essential to hold conferences with important witnesses before the hearing. Most statements will require clarification, and it is important for you to know what the witnesses will in fact say as opposed to what is recorded in their statements. This is another element of ensuring that you are not taken by surprise. In some cases the information you receive at conference may disclose another line of inquiry, and may require an addendum statement to be obtained.

The holding of a conference is also an element in the witness not being taken by surprise. This is particularly important as many witnesses have no prior experience of giving evidence. It enables you to remove some of their apprehension by explaining how the proceedings will unfold, asking them some of the questions that they may be asked in court, and explaining to them how to approach answering questions. This is not to suggest the answers, but to assist them to appreciate that they should, for example answer the question asked, and not to provide information which is not required by the question. It is also an opportunity to reinforce that they must tell the truth and they must not guess or speculate if they do not know the answer.

The conference will also cause many witnesses to focus on what they recall about the events for the first time since they gave their statement. Many witnesses will have put, or tried to put the events out of their minds. It will therefore enable them to have thought about these matters before they give evidence, rather than thinking about them for the first time in the witness box.

I emphasise however that witnesses should not be coached or have words put into their mouth by the advocate who is calling them.

In giving you this advice I am not forgetting that my role as a judicial officer requires me to be impartial as between the prosecution and defence.

It is important for all advocates to appreciate that proper preparation of witnesses to give evidence ensures that the hearing proceeds more smoothly and expeditiously. And as the person charged with the statutory responsibility for ensuring that the jurisdiction of the Magistrates Court is exercised in an orderly and

expeditious manner, I have a legitimate interest in ensuring that the court's time is not wasted.

It is also essential to be properly prepared to assist the court on sentence. In particular it is essential that you:

- Are familiar with the relevant legislative sentencing principles;
- Are able to address the court about:
  - the maximum penalty for the relevant offence;
  - the sentencing range applicable in the circumstances of the case;
  - setting a parole release date or a parole eligibility date;
  - the circumstances of previous convictions for like offences; and
  - the recording or non-recording of a conviction.

- Are able to provide comparative sentences (including sentencing schedules) to the court;

- Refer to the cases by their proper citation.
- Are able to verify your client's instructions if requested to do so by the court; and
- Ensure that a reference tendered expressly recognises that the author knows the purpose for which it is given.

While there may be no need to assist the magistrate on these issues or on sentencing ranges (or to provide comparative sentences) for offences which regularly come before the court such as public nuisance, it is essential to be prepared to assist the magistrate where this is not the case, and to be ready to accurately provide assistance to the court when it is requested on such issues. However, it is also important not to pretend to know the answer by making a guess at it.

On 26 December 2006 the Criminal Division of the English Court of Appeal stated in *R v Cain and Others* that it was unacceptable for the defence and prosecution counsel not to ascertain and be prepared to assist a judge with the statutory provisions governing sentencing in order to ensure that the judge did not impose a sentence which was unlawful. Importantly it was said that this was equally applicable to those appearing in Magistrates Courts.

The Court of Appeal observed that sentencing had become a complex matter and a judge would often not see the papers very long before the hearing and did not have the time for preparation that the advocates should enjoy. In these circumstances a judge relied on the advocates to assist with sentencing.

This is even more so in the Magistrates Court where magistrates generally know nothing about a case until it is mentioned before them, particularly where pleas of guilty are entered in busy arrest and callover courts where time is of the essence. Magistrates typically do not see any papers other than the Bench Charge Sheet or complaint prior to sentence.
The fact is that no magistrate can be expected to know every section or every penalty in each of the 200 or more pieces of diverse legislation which can potentially come before him or her. In addition a magistrate may not be familiar with particular legislation because he or she is newly appointed.

Unfortunately there have been cases in which magistrates have been referred to an incorrect penalty (from an outdated copy of legislation) or asked to deal summarily with matters which can only be dealt with on indictment. This is because practitioners had not checked the legislation first, and have left the issue entirely to the magistrate.

Section 12(2) of the Queensland *Penalties and Sentences Act 1992* provides that:

> "In considering whether or not to record a conviction, a court must have regard to all the circumstances of the case,
> including -
>
> (c) the impact that recording a conviction will have on the offender's –
>
> ……..
>
> b) economic or social wellbeing; or
>
> c) chances of finding employment."

In *R v Ndizeye* [2006) QCA 537 Jerrard JA observed that the Queensland Court of Appeal has not yet specified the extent to which information or evidence should be put before a sentencing judge to raise these matters for consideration.

However advocates should be guided by two decisions referred to by Jerrard JA in that case – *R v Bain* [1997] QCA 35 and *R v Cay and Others; Exparte A-G (Qld)* [2005] QCA 467.

In *Bain* the judgement of the court included the statement:

> "There was (and is) no evidence that recording a conviction would have any impact on her economic or social wellbeing or her chances of finding employment. A bare possibility that a conviction may affect her prospects is insufficient."

In *Cay* de Jersey CJ took a similar view, saying that the legislation invites attention to what would, or would be likely to ensue in the case at hand, were a conviction recorded, and not to mere possibilities. He added that:

> "Prudence dictates that where this issue is to arise, Counsel should properly inform the court of the offender's interests in relation to employment, and his relevant educational qualifications and past work experience, etc, so that a conclusion may be drawn as to the fields of endeavour realistically open to him; and provide a proper foundation for any contention a conviction would foreclose or jeopardise a particular avenue of employment."

In that case Keane JA took what Jerrard JA described as "a perhaps less vigorous approach" as follows:

> "…. the sound exercise of the discretion conferred by s12 of the Act has never been said to require the identification of specific employment opportunities which will be lost to an offender if a conviction is recorded. While a specific employment opportunity or opportunities should usually be identified if the discretion is to be exercised in favour of an offender, it is not an essential requirement.
> …. s12(2)(c) does not refer to the offender's prospects of obtaining employment with a particular employer or even in a particular field of endeavour."

McKenzie J said:

> "Ordinarily the word "will" in that context would imply that at least it must be able to be demonstrated with a reasonable degree of confidence that those elements of an offender's life would be impacted on by the recording of a conviction. The notion of impact on the offender's "chances of finding

> employment" is another way of describing the impact of a conviction on the opportunity to find employment in the future or the potentiality of finding employment in the future.
>
> In cases involving young offenders, there is often uncertainty about their future direction in life. Perhaps, because of this, the concept may, in practice, often be less rigorously applied than in the case of a person whose lifestyle and probable employment opportunities are more predictable."

I have previously given an example of a situation in which it is necessary that you are able to verify your client's instructions in relation to incapacity to attend at court due to a medical condition. Other examples of this, which may arise on a sentence or on a bail application in a criminal proceeding are submissions that the court should approach the matter on the basis that your client has a job to go to or has accommodation arranged. Every effort should be made to obtain written confirmation of this which can be tendered to the court, or at least to confirm this by direct contact with the person reputed to be able to provide this support. Your submissions will possess greater weight in these circumstances. Similarly, a reference relied on to support your argument will be given greater weight if it is expressly stated by the author that he or she knows that it is given for the purpose of a court proceeding and also knows the nature of that proceeding.

Each of these examples of diligent preparation requires no less than would be expected by a judge in a Supreme or District Court.

Further, in any case in which *costs* are sought it is important that at the conclusion of the proceeding you are in a position to:

- present a Schedule of Costs.

Precision

In presenting a case it is essential to identify the issues in question and address them in a manner that is succinct and to the point. As Justice Carmody says:

> "keep it simple and succinct, clear and concise. Don't obfuscate."[6]

Do not waste time asking repetitive questions or pursuing irrelevant issues. Similarly ensure that submissions at the conclusion of the evidence are precisely directed to the issues in dispute.

It is essential to treat witnesses with respect, including those whom you are cross-examining. Do not call them "witness" or use their Christian/given names. Instead refer to them as Mr, Ms, Doctor, Constable or whatever their appropriate title is.

Do not ask leading questions during evidence-in-chief except on formal matters or matters which are not in issue. Answers to such questions on matters in issue do not carry much weight with the court. It will be all the better if a witness volunteers an answer without the words being put in his/her mouth. In a similar vein do not keep repeating a question if you are not getting the answer that you expect.

You are not addressing a jury in the Magistrates Court. Therefore don't waste time in addressing issues about the onus or standard of proof which the magistrate can be expected to know other than in exceptional cases, eg. where there is a reverse onus provision. More will be achieved by going to the central issue and direct submissions on fact and law to it. Legal representatives should be as concise as they properly can. A magistrate may have to hear a number of trials on a given day, and will not appreciate submissions which waste his or her time.

The necessity of *going to the heart of the matter* was another point made by Hayne J in his address to the Bar Association Conference. And speaking at the Dame Ann Ebsworth Memorial Lecture in London, in February 2006, Kirby J said in relation to the mountains of information now available to courts that "a groan can sometimes be heard begging for the return of the days when one of the true skills of the advocate was discernment: the decision to cut away irrelevant or insignificant materials unlikely to help the decision-maker to come to the desired outcome." He added that the internet is of "enormous value" to an advocate when used selectively but that "It is not so valuable if it is used indiscriminately to generate masses of unread or ill considered material." He quoted former Chief Justice of the High Court, Sir Gerard Brennan, who said that "technology is but a tool for the well-trained analytical

mind." From a practical point of view, as Hayne J also observed, it is important to remember that bad points can infect good points.

Again to adopt the words of Justice Carmody:

> "Apply the "John West" test rigorously viz, pick your best (points) and reject the rest. It is a mistake to put too many arguments because there is a danger that the rejection of the weaker ones may undermine those that are stronger. If it doesn't fit on 2 pages it's probably not worth mentioning."[7]

In determining whether your argument is weak, Dr Bennett's test, again adopting the *know your court* principle, is whether the particular judicial officer is likely to think it is weak. In counselling caution against abandoning weak points he suggested that it is always possible to mention weak points in passing to gauge the judicial officer's reaction.

Therefore it is essential when making submissions for advocates to order their thoughts and present them in a logical manner, and as I have indicated organise the papers and documents which are to be referred to or tendered.

In the view of Dr Bennett speeches should not be written out in longhand because this is hard to read. He considers that it is best prepared in 20 point type with capitalised letters. Although his preference is to prepare only headings because it is not always possible to predict the direction in which the argument will go. If authorities are referred to it is better to use copies which can be handed to the court rather than books. He emphasises that long passages should not be read and not to be afraid to summarise.

When it comes to sentence it is important to remember that the Magistrates Court is an extremely busy court with limited time to deal with each sentence. Aim submissions on sentence directly at the result which it is sought to achieve. I have always found that it is good practice to advise the court at the outset, of the sentencing option or options that are sought on behalf of a client. This will ensure that the court has an immediate understanding of the thrust of the submissions. It provides a foundation on which to structure the submissions in support of the contention to be made and allows the court to focus on what the advocate is trying to achieve. It would also ensure that the submissions are directed only to those matters that are truly relevant to the court's determination,

and that the submissions are not so general as to be of no real assistance in making this determination. In some cases it will reduce the time involved because the court will indicate that the sentencing option you are proposing is exactly what it was already considering.

The submissions should also recognise and be relevant to the sentencing principles, whether in the Queensland *Penalties and Sentences Act* and *Juvenile Justice Act 1992,* or for Federal offences, the *Crimes Act 1914.* Although the court can be expected to appreciate the principle to which a submission relates without it always being necessary to designate the paragraph containing the particular principle.

Once again the principle is to *know your court* so as to address issues and provide the information which from experience are known to be required by the particular judicial officer to whom submissions are being made.

Advocacy is the art of persuasion. According to Professor George Hampel, it "involves creating or changing a perception to influence the result."[8]
Dr Bennett classifies this as the "Matter" and makes the important point that advocacy is not an oral examination to show off your knowledge.

The fundamental role of the advocate "is not to enlarge the intellectual horizon. His (or her) task is to seduce, to seize the mind for a pre-determined end, not to explore paths to truth."[9]

Dr Bennett urges advocates to familiarise themselves with the judicial reasoning process so as to think in advance about what the court's preliminary view is likely to be and the factors which might have influenced it to this position. Then it is necessary to think about the arguments which will bring the court around to your way of thinking – and in particular what is the first thing to say. As he says that is something that you will do everyday in seeking to influence persons such as partners, parents and children.

Therefore ask yourself what is the idea, principle or outcome you are trying to sell and build a rapport with the buyer (the court). Know where you are going, get the court's attention quickly and take the judge with you. Good advocates are solution providers.

They have credibility and integrity. They don't only supply the answer but a logical route for getting there.[10]

Of course you will find that you will generally not be able to make your submissions without interruption. Judicial officers will want to test their own thinking and your propositions. This will often involve testing your propositions by reference to extremes.

These questions give a window into the mind of the judicial officer. Dr Bennett suggests that it is generally better to answer questions when asked. He also suggests that most questions are predictable. As such competent advocates will have thought about them in advance and will have come to court with an answer.

Never make an argument to the court on law or fact that does not carry weight in your own mind, or make a submission in a criminal case for a sentence which is not consistent with a clearly established sentencing range. And be prepared to make concessions where appropriate. This is important in establishing your credibility before magistrates as a young practitioner and maintaining it as you become more senior.

The court must feel confident in the submissions made to it. It is important to remember that you will often be appearing before the same magistrate, and even if you are not, that magistrates share their experiences. If you establish a reputation for making unwarranted or over the top submissions, your future submissions are likely to be given less weight by the judiciary. On the other hand you will find that magistrates are more likely to accept your submissions in other cases once your credibility has been established. Therefore you will find that you get a much better result if courts can trust you.

Written submissions

According to Justice Carmody:

> "Court time is precious and, like water, cannot be wasted. Judicial resources are becoming scarcer and must be used cost efficiently. Well developed written submissions supplemented (not repeated) in oral submissions contribute to the economy of court processes and procedures."[11]

This is the case in the Magistrates Court just as it is in other courts.

He suggests that you heed the advice of William Strunck in *The Elements of Style.* [12]

> "Vigorous writing is concise. A sentence should contain no unnecessary words, a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts. This requires not that the writer make all his sentences short, or that he avoid all detail and previous subjects only in outline, but that every word tell. Many expressions in common violate this principle."

Dr Bennett addresses written submissions as "Method." He emphasises that they commence with a numbered table of contents and that oral submissions should keep to these numbers.

Justice Carmody refers to the need to conclude with a clearly worded and succinct summary of your address which emphasises the main reasons why a decision should be made in your favour, and not to forget draft orders.[13]

I emphasise that it is just as essential to hand up draft orders in a Magistrates Court as in any other court.

Conclusion

The Queensland Magistrates Court is the people's court and as such is a very important component in the judicial structure of the state. It is the court in which you are likely to spend much of your time as a practitioner.

It is the court where most members of the community will form their perceptions of the criminal justice system. It is the aim of the court to maintain standards, and to ensure that it acts effectively and efficiently so that the many people who have contact with it perceive the Queensland justice system as fair and equitable.

The practitioners who appear before the court are integral to achieving this. It is therefore essential that you are professional in your dealings with the court by observing the 4 *P's* of punctuality, presentation, preparation and precision and therefore, being professional. By being so you will in turn establish your credibility with the court.

I hope that these tips for advocacy in the Magistrates Court will be of value to you now and throughout your careers in all courts.

Now it is time to adopt another important principle of advocacy – having made my points I will sit down. Hopefully I have quit while I am ahead!

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[1] The Hon. Justice J B Thomas, "Ethics of Magistrates" (1991) 6 5 A L J 387, 389
[2] The Sunday Mail, "The wearing of robes by barristers will increase respect for our Magistrates Court," 17 February, 2008, 61
[3] The Hon. Justice T. Carmody, "Written Advocacy in the Family Court," Queensland Bar Association Conference, 17 March 2007, 6
[4] Ibid, page 7
[5] Ibid, pages 6 and 7
[6] Ibid, page 7
[7] Ibid, page 6
[8] Ibid, page 2, quoting from M.D. Kirby, "The future of appellant advocacy" (2006) 27 ABR 141
[9] Ibid, page 3, quoting from Felix Frankfurther "Mr Justice Jackson" (1955) 68 Harrard Law Review, line 37, 939
[10] Ibid, page 7
[11] Ibid, page 3
[12] Ibid, page 8, 3rd ed, Maxmillan Publishing, NY (1979)
[13] Ibid, page 8