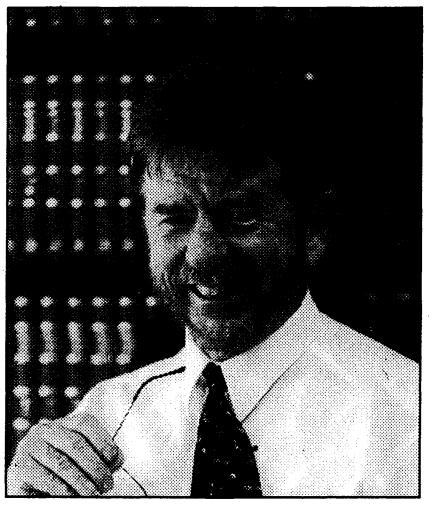
Addressing the judge

Much of what has been said in relation to the presentation of a closing address to a jury has equal application to such an address presented to a judge or magistrate sitting alone. However it is obviously necessary to remember that the two are quite different exercises involving quite different tribunals. Different approaches to the content of the address and the style of presentation will be called for.



Hon Justice Riley

Some of the more obvious differences between a tribunal consisting of a judge and jury and that constituted by a judge or magistrate alone point up the need for a different approach in some areas of your address. Whilst members of the jury panel are not legally trained and are doomed to sit and listen to both counsel in silence, a judge or magistrate will be well trained and likely to be willing to enter into discussion or debate with you. The jury has the freedom to present a verdict unaccompanied by any identification of the reasoning process undertaken. It will not be called upon to justify the verdict it delivers.

A judge or magistrate must publish a reasoned basis for reaching his or her conclusion. The jury is likely to be less concerned with listening to debate on nice issues of law than it is with determining issues of fact. It will not be concerned with the value of its decision as a precedent for other matters.

As with the address to the jury, counsel making an address to a judge or magistrate should be selective in the material to be included. You should not present every argument just because it is available. You should not address every issue just because it is there.

You should be selective in the issues you address and only direct your attention to those that are necessary for the proper presentation of your case. Sir Robert Menzies said in his book *Afternoon Light*:

> *There can be nothing more irritating to a judge than to have before him an advocate who cannot distinguish good argument from bad, who argues everything, who recognises and concedes no weakness in his case, who goes on and on and finally leaves the court with a confused mess of ideas and arguments from which the judge must endeavour to extract some relevance and some help. There are some such advocates. Either they have not adequately mastered their case and isolated the points upon which judgment will turn; or they are afraid to exercise their own judgment by discarding bad arguments; or they weakly believe that the quantity of their words will, in the ears of their client, make up for the paucity of the quality.*

In debating an issue of law before a judge or magistrate you should, insofar as you are able, confine yourself to the principal authorities. There is no need to cite a multitude of authorities all going to establish the same point. If the High Court has spoken on the issue then it is sufficient to refer to what the High Court has said.

You will only need to go to other authorities if the point or points are not adequately covered by the authority to which you refer. Your argument is unlikely to be made stronger by reference to multiple authorities all to the same effect.

It is undesirable to read lengthy slabs of judgments to the court. It is preferable to identify the principle and the location at which the principle can be found. If there is a concise enunciation of the principle then you may wish to read that. If there is not you may wish to summarise the effect of the authorities that you have provided to the court and provide references within the reports to where relevant passages may be found.

One approach to your final address is to place yourself in the position of the judge or magistrate and provide the information that you think would be useful if you were the one being called upon to deliver a reasoned judgment.

The delivery of a well reasoned decision can be an onerous task and the judge or magistrate will appreciate any assistance that can be provided in attending to that task.

The provision of written submissions is, in most cases, beneficial. The beauty of written submissions is that they require counsel to identify and focus on the issues that need to be addressed. They call for a concise and convincing presentation of the problem and of the solution. They focus the mind of counsel upon what is important.

Properly prepared, the submissions will identify in a clear and concise form the issues to which the judge must turn his or her attention and provide an intellectually satisfying method of dealing with those issues in a manner that will lead to a favourable result for your client. You will have been successful in this regard when you recognise the thrust of your submissions reflected in the judgment.

The effective use of written submissions is a useful tool in achieving a successful outcome. It is a part of the armory of a good advocate.