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SURVIVING THE WILD WEST: ADVOCACY IN THE MAGISTRATES' COURT

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Topics

- Persuasive advocacy
 - Plea in mitigation
 - Bail applications
 - Closing speeches
- Witness handling
 - Examination in chief
 - Cross-examination
 - Re-examination
- Q&A

Persuasive advocacy overview

You need to remember to tell the **STORY**:

Structure

Tone

Outcome

Realistic

You

Plea in Mitigation

Headings

- Credit
- Sentencing Guidelines
- Offence Mitigation
- Offender Mitigation
- Proposal

Bail Applications

Things to consider:

- Presumption of Bail (most of the time!)
- Respond to the specific objections raised
- Common Conditions
 - Residence
 - Curfew
 - Non-Contact
 - Exclusion
- You can get creative with conditions too

Closing Speeches

- Adapt to your audience (DJ v Mags)
- Burden and Standard of Proof
- Highlight inconsistencies
- Focus on your strong points
- Be authentic

Examination in Chief

- Proof, preamble and putting your witness at ease
- Importance of chronology and relevance
- A single question should elicit a single answer.
- "Piggybacking"
- Exhibits
- Dramatic or necessary pauses
- Credibility – impression is everything

Cross-Examination

The Seven Cs

- **Calm** – aggression is counterproductive. Play the ball, not the man.
- **Concise** – questions should be clear, not convoluted and serve a purpose.
- **Closed** - never ask open questions unless you are sure that any possible answer won't be damaging.
- **Control** - establish as early as possible and maintain by blocking escape routes.
- **Challenge** - challenge the evidence you need to. Stand your ground if answers are equivocal or evasive.
- **Closing** - remember any comments you want to make in closing you need to have put to the witness.
- **Cessation** - if you get a good answer, don't risk a bad answer by asking one question too many. Know when to stop and when to sit down.

Re-Examination

- It is not a second bite of the cherry.
- Is it necessary?
- Will it make matters worse?

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Questions and answers

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