

# ADVOCACY

## Addressing the jury (1)

“One has to strike the jugular  
and let the rest go”

Oliver Wendell Holmes

The final address to the jury is the point in the trial where the benefits of your labours in preparation should be realised. It is at this time that the persuasive force of your case strategy is fully exposed. It is the culmination of the trial and it is your last opportunity to present your client's case to the jury. It is obviously a crucial moment in the trial process.

What you say to the jury will be designed to have the greatest possible impact. You will wish to leave the jury members with their minds filled with the force of your arguments as they enter the jury room to consider their verdict. Your address will therefore need to be logical and forceful, yet concise and to the point.

In presenting your final address you should bear in mind that the jury is likely to be a different audience from that which filed into the jury box on day one of the trial. At that time the individual jurors were embarking upon something which was to them likely to be a novel experience involving all sorts of distractions and concerning a case about which they knew nothing. By the time of the final addresses all that will have changed. The members of the jury will have become familiar with the trappings of the Court. They will have heard all the evidence and will have formed opinions about the witnesses and their stories. They will have developed their own views as to the honesty and reliability of the witnesses called and whether they accept all or part of the evidence of each witness. They are likely to have formed at least tentative views as to the outcome of the proceedings.

At the time of your final address the members of the jury will have before

them all of the information that they are to receive and they will be looking to counsel for assistance and guidance in the deliberations they are about to undertake. They will be keenly interested in what you have to say. They will have questions in their minds that they will want you to answer. They will be less interested in oratorical flourish than in hearing argument that is directed to the crucial issues in the case and is logical and persuasive. Your challenge will be to present such an argument. The address will need to be such that it will shore up the views of jurors who are favourably inclined to the case you present, that will sway the undecided juror and will cause any unfavourable juror to rethink the position they have adopted.

The content of your address will have been determined in broad outline prior to the commencement of the trial. What you say at the end of the case will be informed by the case strategy developed

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in your early preparation. Changes will be made to accommodate matters that developed in the course of the hearing and which had not been anticipated. In addition you will be able to refer to the specific evidence of individual witnesses in order to bolster the points that you make. You will need to consider addressing points made by your opponent during the course of the case where that is necessary. However you should not regard it as necessary to address every issue raised in the case or every issue raised by your opponent. You should concentrate on the core issues and not get bogged down in unnecessary arguments on peripheral matters.



*Hon Justice Riley*

It will be necessary for you to confront the perceived weaknesses in your case as well as emphasising the strengths. You should not avoid issues that are matters for concern in the hope that the members of the jury will not notice. If there is a problem in your argument you can be confident that, insofar as the jury may not already be aware of it, either your opponent or the Judge in the course of summing up will draw the problem to their attention. You must confront those issues and provide the jury with an acceptable approach to them consistent with your case strategy.

If it is obvious that you have a problem then it may be desirable to frankly concede that to the jury. Having done so you can then proceed to inform them why it is that the problem is not of importance in the case or is not fatal to your arguments and why it is that a verdict in favour of your client is still available. If you fail to address such an issue it is likely to assume an even greater significance in the minds of the jury. It will be an important and negative point unanswered.

Of course you will draw the weaknesses of your opponent's argument to the attention of the jury thereby requiring your opponent to either address those issues or leave the matter unexplained before the jury.

Part 2 of this article will be in the January 2002 edition of *Balance*.