

JEI Week 2024

Turks & Caicos Island
September 16th – 20th

THE SUMMATION

“It Must Make Sense!”

A Practical Guide to Jury Directions

Presented by: The Honourable Mme Justice of Appeal A. Yorke-Soo Hon J.A.,
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ART OR SKILL?



AUDIENCE AND PURPOSE

Court of Appeal - At all costs, get the law right.

Jury Panel – Inform, instruct and explain .

Individual Juror/s - Inform, instruct and explain to the
juryman on the bus

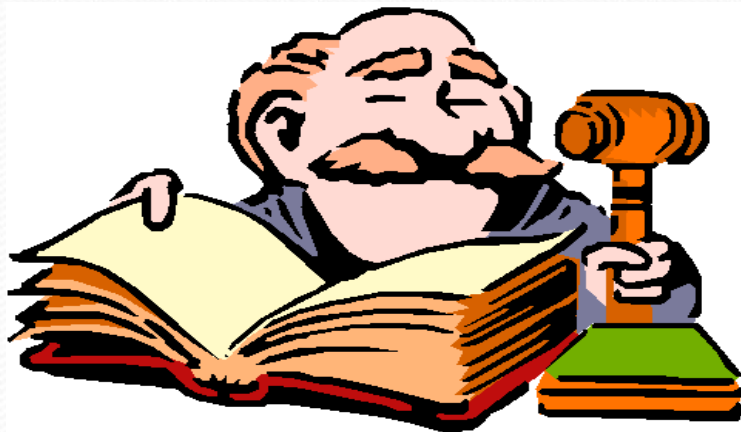
John Public



COMMUNICATION STYLE

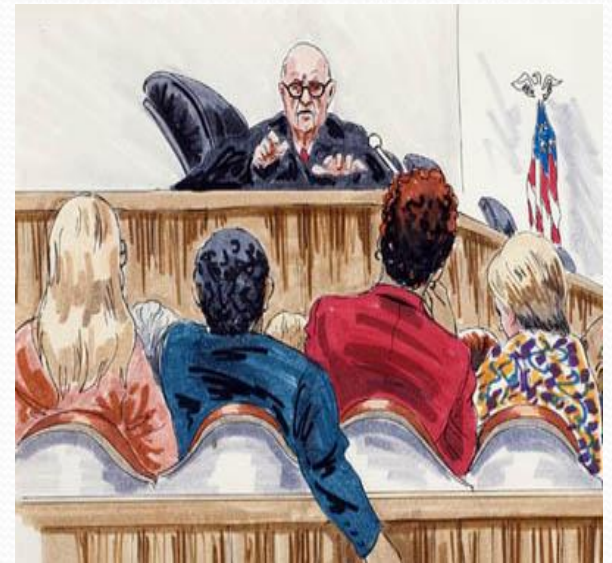
Determined by your target audience.

- a) Reading from text.
- b) Speaking ex tempore after glancing at notes .
- c) Reading from text with ex tempore explanations
- d) “Off the top of my head”



COMMUNICATION FACTORS

- Body Language - Relaxed posture, eye contact, control personal idiosyncrasies.
- Speech and language – clear and concise, avoid mindless repetition, tone and volume, simple language.
- Attentiveness/Monitoring - Observe audience to gauge comprehension. Further explanation may be necessary.



IT'S ALL IN THE TIMING

When to begin – Immediately after addresses?



Next morning?

Couple of days later?

If and when to break – Length driven

Issue driven

Other circumstances



When to end – Jury retirement – hour of the day, day of the week, other circumstances.

PREPARATION OF SUMMATION

- ✓ Maintain a check list.
- ✓ Draft as trial progresses.
- ✓ Allow time for mature deliberation.
- ✓ Discuss with fellow judges.
- ✓ Précis evidence to essentials.
- ✓ Consult with counsel on specific directions – *Ensor Hearing*



SUMMING-UP CHECKLIST

General

- Function of judge and jury
- Burden and standard of proof
- Separate treatment of counts
- Separate treatment of accused
- Ingredients of each offence including, as appropriate: intention/ recklessness/ dishonesty, etc
- Joint responsibility
- Defences, as appropriate: alibi, self-defence, accident, etc



Various aspects of evidence

- Circumstantial evidence
- Admissibility of evidence of co-accused
- Plea of co-accused
- Good/bad character
- Hostile witness
- Complainant in sexual cases— child witnesses – video evidence
- Accomplice
- Supporting evidence
- Delay
- Identification
- Lies
- Police interviews
- Inferences from silence at interview
- Inferences from silence at court

SUMMING UP POINTS



- Not unnecessarily long and repetitive: *Cassell and another v The Queen* [Montserrat] [2016] UKPC 19
- Where there is a special plea
- If issues are simple, case short, not fatal for evidence not to be reviewed: *R v Attfield* [1961] 3 All ER 243
- Defence to be put fairly and adequately: *Henderson v R* BZ 2008 CA 7; *Anderson v The Queen* BZ 2012 CA 15

SUMMING UP POINTS

- Judge is entitled to comment on the facts
- Judicial comments – *Brown v Outram Cr. App. 18 & 20 of 2013*
- Under no circumstances must counsel interrupt judge during summing up. The time to raise any issues is after summing up: *Randall (2002) 60 WIR 103*
- If there is an error in the summing up, the prosecutor has a duty to assist the judge *R v McVey [1988] Crim LR 127*
- Under no circumstances should jury be directed to return a verdict of guilty.



THE LAW

VERBATIM OR FREESTYLE?

*In the present case, the Recorder elected to adopt the not uncommon practice of rehearsing a direction on self-defence which was couched in entirely general terms and in this case very largely borrowed from the specimen provided at the time for judges by the Judicial Studies Board. There is of course nothing wrong with that, provided two things happen. The first is that **the jury is not troubled with aspects of the general law which do not arise on the facts of the case and on the issues raised by the evidence**, and the second that **the jury is, where necessary, given some help about the way the law works when applied to the competing versions of the facts which they have to consider**. Both those two rules are fundamental to the business of summing-up. Summings-up, as has often been said, are not written for law students; they are written for jurors. [Emphases ours]*

Keane & Anor, R. V [2010] EWCA Crim 2514 (19 October 2010)

THE LAW

General directions - Every case
Functions, burden and standard of proof,
assessing evidence, inconsistencies,
definition of offence.

Specific directions – Additional for
particular case.

Rational Order of directions

Avoid **unnecessary directions** – eg.
Circumstantial evidence, inferences
where there are none on the evidence.



THE EVIDENCE

First summarise the respective cases. What is each side saying? Tell the stories

Rehearse only the evidence necessary to address the law/issues in the case.

Short case = Short evidence summary **BUT**

Long case \neq Long evidence summary

Location, location, location - **En bloc or interspersed with law**

Be economical with opinions on evidence.

ASSISTING THE JURY

- Distinct from statement of law or review of evidence.
- Two-part exercise
 1. Putting the evidence for state and accused in context, identifying specific bits of evidence that may be significant.
 2. Focussing on the fact-finding function.



ASSISTING THE JURY

FACT FINDING

- ❖ Facts in dispute/Facts not in dispute.
- ❖ Distinguish between credibility and reliability.
- ❖ Treat with demeanour.
- ❖ Explain value of consistency and internal and external inconsistency.
- ❖ Plausibility.
- ❖ Warn about possible personal bias.
- ❖ Motive to be truthful or deceptive.
- ❖ Bad character.



CONCLUSION

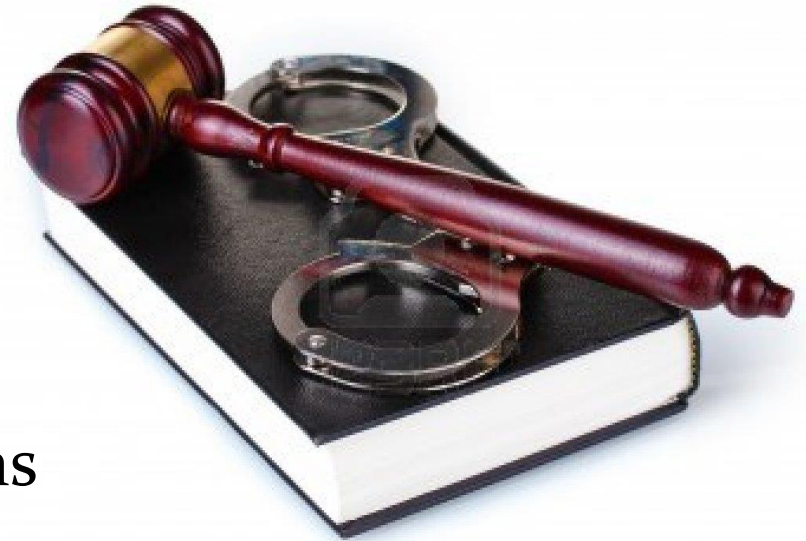
Possible verdicts

Multiple counts

Counsels' comments/suggestions

Correcting error (R v Moon 1969 1WLR 1705)

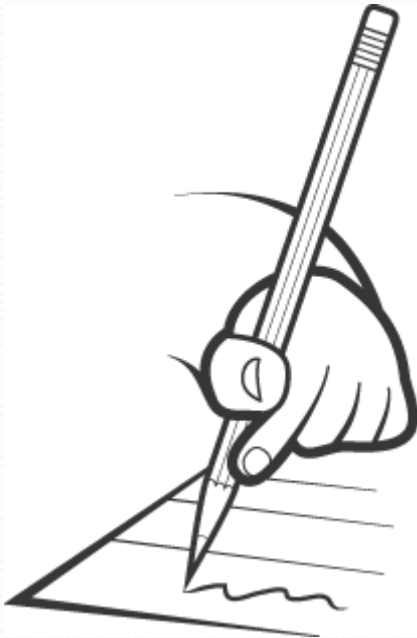
Time limit





MATTERS ARISING

WRITTEN DIRECTIONS



It is not a practice in Belize to render written directions to the jury

See *Criminal Benchbook for Barbados, Belize and Guyana* at pg 694

WRITTEN DIRECTIONS

When Are They Given?

- Judge to decide after considering:
 1. After Consultation with Counsel
 2. In Matters of SUBSTANTIAL COMPLEXITY
 3. In lengthy cases
 4. Written route to verdict



WRITTEN DIRECTIONS

When Are They Given?

“26. This was not an easy case to sum-up, and no complaint has been made to us about the summing-up, but there was a lot of law for the jury to remember, and the evidence was not easy to distil. Legal directions had to be given, and were given correctly in relation to murder, manslaughter, robbery, joint enterprise, self-defence, lies, the rule against hearsay and a dying declaration, and good character, but nothing was reduced to writing in the form of a series of questions or a note which the jury could take with them. In a case of this complexity, and in particular in a situation where it was knowing in advance that the deliberations would be interrupted, we consider that to be regrettable.”

--- Green [2005] EWCA Crim 2513

WRITTEN DIRECTIONS

The Content

- The jury should be informed that the document is not intended to be a replacement for, but an addition to, the legal directions given orally.
- Care must be taken to ensure that:
 - The written direction are accurate and without the possibility of misunderstanding
 - The oral elaboration does not conflict with the written directions.

WRITTEN DIRECTIONS

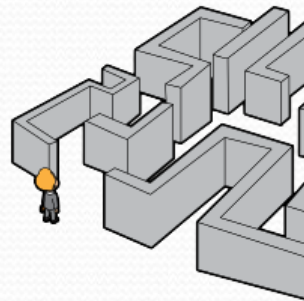
Benefits

- Improves jurors' comprehension
- Reduces deliberation time
- Assists in resolving disputes between jurors
- Helps identify the final issues in the trial



ROUTE TO VERDICT

- A written Route to Verdict is different from a direction in law.
- A written Route to Verdict is a logical sequence of questions framed which address essential legal issues to be assessed by the jury in order to arrive at verdict(s).



DIRECTIONS TO RETIRE

To avoid conveying to the jury that the case is so open-and-shut that they need not retire, **judges should (at the end of their summing-up) say to the jury words to this effect:**

"Members of the jury, the law requires that you be now given the option of either returning a verdict without retiring, or retiring to consider your verdict. This option is given to the jury in every case."

The **clerk of the court** should then put the following question to the jury:

"Members of the jury, do you wish after consultation to return a verdict immediately, or do you wish to retire to consider your verdict?"

See: Winston Solomon v The State (1999) 57 WIR 432



LATE RETIREMENT

The late retirement of the jury in a capital case is undesirable.

It is better to adjourn and sum up afresh the next day so as to avoid a late retirement.

See: *Holder v The State (1996) 49 WIR 450*



FURTHER DIRECTIONS

- Where the jury requires further directions, should consult with advocates.
- Provided that the original direction was accurate and comprehensible, it should be repeated in the same terms.
- Any further explanation which is required should be crafted so as to minimize the danger of confusion.



THE END