

Preparing and delivering an effective closing argument to a jury

By: Adam T. Boston

While there is no recipe that can guarantee success in the courtroom, your chances of obtaining a successful outcome will increase if you keep in mind the following practice pointers when preparing for your next closing argument.

- **Be yourself.** Find your own style and do not try to be someone or something you are not. A jury will always see through you if you are not being yourself.
- **Know your time limits.** It is critical that you know your time limits so that you understand how and when to emphasize certain aspects of your argument. If you don't pay attention to your time limit you may be cut off by the judge before you get your most important points across.
- **Thank the jury, but do not overdo it.** It is vital to thank the jury for their service at the onset of the trial and at the start of your closing argument. Not only is it courteous, but it will also remind the jury why they are there and what their job will be once you have finished your argument. If members of a jury feel appreciated, they will be more likely to listen to you and come to a favorable result. If a jury feels unappreciated, they are more likely to simply want to go home rather than spend the time to come to a just result. Additionally, remind jurors of the promises they made during voir dire, such as agreeing that bias and sympathy would play no role in deliberations.
- **Have a conversation.** Delivering a closing argument is not an exercise in theatrics, but rather a chance to tell your side of the story. Use your time with the jury wisely and let them know what you are thinking and why it makes sense. For example, start off with something like "Now that both sides of the evidence have been presented let's talk about what we have heard" or "remember the evidence?" Although you always want to argue your case, you never want a jury to feel like you are telling them what to do. By conversing with the jury, you will appeal to their common sense and they will not feel like they are being "lawyered." In the game of persuasion, subtlety is always effective.
- **Skip the "legalese."** Using legalese may impress your peers, but your jury will be confused, and confusion rarely leads to a favorable verdict. Remember that you are speaking with individuals who may have very little experience with the law, let alone a trial. If you want the jury to understand your case, make it as easy as possible for them by using simple language. A good technique is to use analogies that will help the jury relate to the concept you are trying to convey.
- **Tell the jury whether this is a criminal or civil case.** It is vital that you explain to the jury the difference between a civil case and a criminal case. Unless a juror has been involved in a trial previously, he or she may not understand the different standards of proof unique to each case. By laying out the differences between a civil and criminal case, you will be focusing the jury on the job at hand and how they should view the evidence.
- **Utilize the first minute.** It is vital to catch the jury's attention right from the beginning. Do not be afraid to be energetic and enthusiastic. Be firm and confident rather than apologetic or defensive. Within the first minutes of your argument, the jury needs to know why you should win. Doing so will provide the jury a context from which to judge the rest of your argument. Also, because jurors's attention span may fade as your argument gets longer, you want the first words out of your

mouth to be the last ones a jury will remember.

- **Never read a closing argument.** If you want the jury to believe that your theory of the case makes sense, you must know it inside and out. The best way to be believable is to know your case so well that you do not need to read it off of a piece of paper. If you absolutely must have an aid, try small flashcards or consider a PowerPoint presentation to keep you on track and aware of your arguments. A PowerPoint presentation also provides the added advantage of keeping the jury amused and focused on your argument.
- **Restate your theory.** The most important aspect of the closing argument is your theory of the case. Your theory must be practical, incorporate all of the evidence, and resonate with common sense. Simply stating your theory is not sufficient, however. You must reinforce your theory throughout your closing. Similar to a job interview, where you may have three “selling points” that you emphasize repeatedly, a closing argument requires persistence. You want to argue your case without telling the jury what to do.
- **Obtain input from others.** Above all, remember that your theory of the case must resonate with common sense. One helpful tip is to run your theory by a colleague, friend, spouse or even one of your parents. Simply put, if you cannot persuade your parents (i.e. your biggest fans) that your argument makes more sense than your opponent’s, you certainly will not be able to persuade a jury.
- **Give an overview.** Before you enlighten the jury with your explanation of how the evidence fits together, be sure to give the jury a roadmap of where you will be taking them. Doing so will let you reinforce your theory upfront and will make it easier to walk them through the evidence as you would like it presented.
- **Know your elements.** Set forth the elements of the claim or crime at issue and slowly walk the jury through each piece of evidence applicable to each element. This is especially true in document-intensive cases where you may have numerous boxes of material for the jury to review. Go through each piece of evidence that you feel is relevant to your case. Tell the jury how you want them to view it, how it fits into your theory, and why it is important for them to view it the way you want them to. Doing so will provide the jury with a sense of what evidence is important and what the evidence means. You do not want twelve people sitting in a deliberation room staring at multiple boxes of legal documents without the slightest idea of where to begin or, more importantly, how to interpret what is inside.
- **Reinforce the legal standard.** After you have set forth the elements of the claim or crime, tell the jury again what the legal standards are, what they mean, and why they are important. Most of all, let the jury know why you should win based on the law. As much as you may want to appeal to the jury’s emotions, it is still critical to remind them of the legal issues in the case. Finally, remember to remind the jury that the lawyers’s words are not evidence.
- **Use the jury instructions to your advantage.** It is important to highlight the instructions the jury will receive while you are stating the elements of the claim or crime. By highlighting the judge’s instructions, you will be helping the jury to understand your legal theory and will make their job easier. It is important that the jury knows what you want them to do when they are deliberating. Additionally, understanding the instructions will also help to identify what parts of your theory should be stressed most to the jury.
- **Recognize your weaknesses.** There are very few cases that are truly “air-tight.” It is important to address weaknesses in your theory, especially obvious ones. You

do not want jurors to think you are hiding something. Tell the jury what the weaknesses in your case are, and then tell them why each one does not affect the merits of your theory. By explaining your weaknesses, you may be able to turn a negative into a positive.

- **Identify your opponent's weaknesses.** One way to make your weaknesses look less significant is to compare them to the weaknesses in your opponent's theory. Your goal should be to force him or her to refute what you have said. You must be very cautious, however, and anticipate what your opponent's response will be. You never want to question the other side if you know he or she may have a better, more reasonable explanation than the one you presented.
- **Be aware of who gets the last shot.** Knowing when to highlight the weaknesses in your opponent's argument is as important as knowing how to do it. If you know that you have the last shot at the jury, do not be afraid to question your opponent's theory or weaknesses in his or her case. Conversely, if you argue first and know that your opponent will have that last shot at the jury, tread carefully. You never want to encounter a scenario where you end your closing argument asking what you thought to be brilliant rhetorical questions, and then have your opponent stand up and answer them.
- **Know the four corners.** Incorporate all of the relevant information. For your argument to make sense, it is vital that you incorporate all the facts, the elements of the claims, your theory, and all probable hypothetical theories that reasonable jurors may develop. By incorporating all the facts and explaining why your theory makes the most sense under a number of scenarios, it will be easier for the jury to not only understand but also truly believe your argument.
- **Appeal to each juror's emotion.** No matter how grand your theory, in the end, jurors simply want to do the right thing. Try to understand what the jury is thinking and feeling and attempt to appeal to those emotions. Understanding your jury takes time, and requires that you pay attention from the start of the trial. Take note of the jurors's reactions to the testimony and other evidence. In your closing argument, use the knowledge you have learned from watching the jury to appeal to the emotions or opinions you think they may have developed over the course of the trial. Simply put, if you want the jury to understand you and believe in your theory, you must demonstrate to the jury that you understand them and their concerns.
- **Use stimulating visual aids.** The use of visual aids can be an effective way of communicating your closing argument to the jury. Visual aids also serve to hold the jury's attention. It is important to know where to place your visual aids before you begin. Make sure that the jury can see clearly. If you are going to use visual aids such as videos, laptop presentations or audio equipment, make sure it works before you begin. For example, you could ask to test it out the night before or early in the morning. It is also a good idea to ask the clerk's office if the courthouse has an information technology department or if anyone there is responsible for it.
- **Know your wardrobe!** You always want to make sure that you look your best. However, dressing to impress may not always be best! Showing up to court in a flashy designer suit may win you accolades from your peers, but it may distract a jury or convey an unintended or undesirable impression. Above all, use common sense.
- **Understand the local rules.** It is vital that you understand the local rules and

customs of the court in which you are conducting the trial. Some effective ways to gain knowledge of these rules are to ask colleagues about their experiences in that court, observe several hearings or arguments in that court, or talk to the judge's clerk or staff attorney.

Preparation is key. You cannot prepare an effective closing argument the night before. In order to prepare and deliver an effective closing argument, you must be thinking about it from the moment the case is placed on your desk. Whether you are taking a deposition, reading a document, or cross-examining a witness, it is important to always be thinking about your closing argument and how you are going to utilize all the information you have gathered. In the end, an effective closing argument starts at the beginning.

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