SUMMATION AND JURY INSTRUCTIONS

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SUMMATION – CLOSING ARGUMENTS

Introduction

Closing arguments are the last opportunity to communicate directly with the jury. For that reason, it is imperative that the arguments logically and forcibly present your side's position on the contested issues and reasons your client is entitled to be given a verdict.

The closing argument must be organized and planned well in advance of trial preparing for closing arguments after the evidence is and should be limited to reviewing the specific evidence you will mention in your argument that supports your case in chief you also determine how to divide time between your closing and rebuttal arguments.

A. What to Include

It is axiomatic that counsel should develop a theme during voir dire and carry it through the opening statement, expound upon it in the evidence and use the fully developed theme as a cornerstone of her closing argument. The utilization of theme is an effective method of organizing and presenting the closing argument. Often you will find that the theme will be a topic that you and the client discussed during your initial meeting. For example, one may discuss the fact that no amount of money brings a grieving parents child back to life. However, the reality is that money is the only type of verdict our legal system allows a jury to word to the family whose child killed by the negligence of another.

When structuring your closing argument, you should focus on the issues that have the maximum impact on the jury. Time is very precious during the closing argument and should not be spent on superficial or frivolous issues. You can choose either a climax or an anti-climax for the presentation of strongest points. The climax argument begins with items of lesser impact, then builds and culminates with those of

maximum impact. The anti—climax argument is obviously just reversed. Counsel, however, should never allow issues of main impact to be diluted by blanketing them in the middle of an argument.

A common theme is corporate greed. The corporate grade theme states:

> "A Corporation has no heart, it has no soul, it has no nerve center, it has only bank accounts. Corporations exists solely to produce profits and communicate only in the language of accounting. But this Corporation must receive the message that the citizens of Arkansas will not tolerate corporate greed over consumer safety. As it yours in this case you will have the opportunity to send a crucial message to the Corporation."

B. Length and Style Tactics

It is very difficult to make your closing argument in fifteen minutes which is generally the amount of time a trial court grants for closing. You must constantly work on your closing arguments as you prepare for trial to have the main ideas presented to the jury while they are focused on your closing. In complex multi-day trials, you can request that the court extend the amount of time for your closing argument. Nonetheless, you must be mindful of the jury's ability to follow your argument and keep it as concise as possible.

A common style is to follow the rule of three which is sometimes referred to as the Triad. As a means of communicating rhythmically, memorably and persuasively, the rule of three is one of the most valuable tools available to trial lawyers. This is true because a conscious mind can best deal with three items in terms of reception, retention and recall. You will try to develop themes which contain three messages within the theme. Below are some of the well-known examples of triad rhythmic eloquence:

"Never in the field of human conflict was so much owned by so many to so few." (Winston Churchill)

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness." (Abraham Lincoln)

"We mutually pledge to each other our lives, our fortunes, and our sacred honor." (Thomas Jefferson)

"Duty-Honor-Country. Those three hallowed words reverently dictate what you ought to be, what you can be, and what you will be." (Gen. Douglas MacArthur)

Aristotle taught us that each speech should have a beginning, middle and an end. This is also called an introduction, body and conclusion. The rule of three can be a powerful tool in the arsenal of a skilled trial attorney. As advocates, we can effectively use the rule of three during the trilogy of persuasion, the three times that we directly address the jury: voir dire, opening statement and closing argument.

Another effective style of argument is the parallel structure. Parallel structure is an extremely effective technique during openings and closing. It is particularly useful in a catastrophic injury case. Consider the strength of this speech by Arkansas Senator William Fulbright.

"There are two Americas.

One is the America of Lincoln and Adlai Stephenson.

The other is the America of Teddy Roosevelt and Gen. MacArthur.

One is generous and humane, -the other narrowly egotistical;

One is modest and self-critical-the other arrogant and self-righteous;

One is sensible-the other romantic.

Applying this technique to a closing argument to give the following result.

We have two Gary Lloyds in this case.

One an energetic and active father-the other a bedridden paraplegic.

One a helpful and loving husband-the other a helpless patient.

One a hard-working provider-the other a financial burden on his family.

One a healthy happy Gary Lloyd before this defendant's tragic mistake; the other, Gary Lloyd for the next 40 years.

C. Use of Pace and Voice Inflection to Emphasize Key Elements

The use of pace and voice inflection for key elements is very important to anchor the jury's focus on the issue. For example, whenever I discuss money during a trial, I will go stand in a certain area in front of the jury. I will stand in the same spot during voir dire, opening, direct exam, cross-exam and closing arguments any time I discuss how much money we are asking the jury to return.

You can do the same thing for other issues such as liability or causation. You will find that by the end of trial, the jury will know what subject you are going to cover by the fact that you are moving to the certain spot.

You should use the same pace and voice inflection when you discuss these issues. You must maintain periodic eye contact with jurors.

Voice inflection should be used to display anger or disbelief.

"Can you believe that expert witness took their thousands of dollars to come in here and testify that the defendant's seat belt design was not faulty? How can the man sleep at night knowing that NHTSA has recalled this defective seat belt and this family is left without their husband and father?"

D. Addressing Weak Points of a Case

You must address the weak points of your case during closing. Every trial has some weakness. If the case did not have a weakness, the case would have settled before the jury was selected.

Confronting weaknesses has two advantages. First, your weaknesses are your opponent's strengths. By addressing them first, you can in part deflate his later argument so that the jury does not hear those points for the first time from your opponent, the way he wants them argued.

A jury will respect your honesty and candor when openly and candidly discussing those weaknesses. Since your credibility as an advocate is critically important, this consideration should not be downplayed. Remember that jurors, like everyone else, are influenced by who they like. Make sure that you earn and keep their trust.

Force your opponent to argue their weakness. A common method is to ask rhetorical questions during your argument that challenge your opponent to explain the weaknesses in their case.

"Why can't the defendant bring any corroboration from any other supporting witness? I'm sure that Mr. Smith, when he argues, will answer this question that we've all been asking and wondering about."

E. The Verdict Form/Jury Instructions – Clearly Asking for What You Want.

We will address the issue of general verdict forms versus itemized verdicts. We will discuss the merits of both type of verdict forms.[1]

[1] The author would like to acknowledge Howard Nations and Thomas A. Mauet for their contributions to this paper.