

How to Write a More Effective Closing Argument

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Ever wish you could be in the deliberation room with the jurors to respond to their objections and argue with their logic? While attorneys will never be allowed in the deliberation room, if your closing arguments are done effectively, you can arm jurors to fight for you and to state counter-arguments that you would want to state yourself.

By the time you reach closing arguments, jurors are tired. They do not want to hear you repeat the evidence (and many of them will resent you for insulting their intelligence by doing so) and many of them have already made up their minds. The first task, therefore, of closing arguments is to get the jurors to listen.

Jurors often feel overwhelmed by the evidence, unprepared on how to make a life-altering decision, and fearful that they will make the wrong decision. By helping jurors understand how to do a job they have likely never been faced with -deciding on a verdict - you will grab their attention. Tell your jurors that when they go into the deliberation room, they will have TWO jobs.

At this point, jurors will tune in because they previously thought they had only one job – to make a decision. Tell them that one job is to decide the case, but that first, they will have to explain to each other why they feel the way they do and that for the next few minutes, you'd like to give them some ways to do just that.¹ Now the jurors will listen to you because you're going to guide them through a daunting task. With jurors now paying attention, there are three goals to keep in mind when crafting a closing argument.

One goal of closing argument is to bring undecided jurors closer to your side. To do this, provide them with clear, simple evidence that supports the decision you're asking them to make. By closing, jurors are looking for a roadmap by which to organize all of the evidence, so provide that for them. You'll also need to "massage" the jury instructions, which means going through them in non-legal language. Jury instructions are often confusing for attorneys, let alone lay people, so tell your jurors in everyday language what the instructions mean and how they apply to the facts in the case. Show

them how to fit the evidence to the instructions and why that fit means that you win.²

A second goal of closing arguments is to arm the jurors who are already leaning in your favor so they can stand up to those who are against you and argue for you in the deliberation room. Boil your case down to a few determinate issues. If you present a myriad of issues and facts, jurors will decide for themselves which ones are important enough to be remembered or will get lost in the details that they will lose any coherent sense of the case. Instead, make the choice for them by presenting 4-7 key issues, using the rest of your evidence to support those issues.

As hard as it is to boil the case down, keep in mind that jurors usually base their decisions on a small number of key facts or issues. You want to be the one to decide which issues those are.³

When presenting these key issues, give jurors one liner arguments that they can use in deliberations when other jurors challenge them. For example, the issue of insurance coverage is often brought up in deliberations and can be

a problem for the plaintiff if jurors consider it in making their decision. Tell jurors that their damages figure is to be based solely on the evidence in the case and explain how the jury instructions mandate that. Then tell them that if anyone in deliberations says something such as “well, he might have insurance to cover that,” they should respond that “nothing other than the evidence of harms and losses can be considered” If you keep your phrasing specific and limited to the key issues, you can arm jurors to fight for you when you cannot be there.⁴

A third goal of closing argument is to soften the resistance of unfavorable jurors. The goal is *not* to change their minds. Other jurors will have a better chance of changing their minds than you will. If you haven’t won them over within the timeline of a trial, you won’t be able to do it during closing and any attempt to argue with these jurors will only turn them further against you. Instead, work on softening their resistance to you so your jurors will have an easier time changing their minds. One way to do this is to leave open multiple suggestions for motives involved in the case. Present things as a suggestion rather than a must-believe. This will prevent your case from resting on one critical point. For example, if there is question as to why the defendant was rushing home from work when the accident occurred, present multiple possibilities: “Was it because he wanted to be home for dinner? Was he drunk? Did he have a birthday party for his son to get home to? We don’t know. But we do know that he rushed home.” By presenting suggestions, you take away any objections about motive that may arise during deliberations.⁵

Aside from the above three goals, one major part of closing arguments is the discussion of damages. While the issue of how to discuss damages and the figures for a damage award is often tricky and debated, there are some tips

which can help strengthen your chances of a good verdict. Whether through the use of video tapes, charts, reiteration of expert testimony, or other visual methods, make your jury understand the total nature for the injuries now and over time. It is not enough to state that your client needs therapy. Explain what the therapy is, how it works, why it is needed, how it will help, how long it will take to help, whether it will cure the problem or is a lifelong issues, and what will happen if the therapy is not provided. If it applies, explain to jurors the dynamic nature of your client’s injuries so they can evaluate monetary needs as time progresses. The tricky nature of asking for money lies in balancing a large enough figure with the risk of seeming overreaching. Jurors need to feel that money will actually help.

You have to portray your client as badly injured and in need of a lot of money while making sure you don’t make out a hopeless situation. If jurors feel the situation is hopeless, that the client is so badly injured that nothing will do much to repair the damage, they will be less apt to give money since they see no good in doing so. Show the jurors that while your client has been badly harmed, he can be helped if a lot of things are done (and then list and explain those things).⁶

Finally, make sure jurors understand that your client cannot come back for more money. If they decide on a verdict that is too low to cover your client’s needs, it is your client who suffers. Explain that your client did not sign up to gamble on an uncertain future. The defendant chose to act in a certain way which hurt your client and your client is not the one who should have to worry about the money running out. This will make jurors think long and hard about how much money it will really take to make sure your client has enough to cover expenses without worry. Turn this argument into a one-liner to arm jurors for deliberations. Tell them that if any-

one says in deliberations “that should probably be enough,” they should say “the plaintiff didn’t sign up to worry about the money running out.”⁷

By using one-liners, providing jurors with arguments to defend their positions, you can arm jurors to fight for you in deliberations. Be careful not to overwhelm them with too many one-liners that they lose track of the focus of the case and forget what you’ve said. Boil your case down to key issues for the jurors or they will do it for you (and likely not in the same way you would like).

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Endnotes

¹ DAVID BALL, *Theater Tips and Strategies for Jury Trials* (3rd ed. 2003).

² *Id.*

³ Shelley C. Spiecker & Debra L. Worthington, *The Influence of Opening Statement/Closing Argument Organizational Strategy on Juror Verdict and Damage Awards*, 27 LAW & HUM. BEH. 27 (2003).

⁴ Ball, *supra*.

⁵ *Id.*

⁶ DAVID BALL, *David Ball on Damages: The Essential Update* (2005).

⁷ *Id.*