



Preventing Nuclear Verdicts: Workshop & Trial Academy
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Session Seven: Powerful Closing Arguments

Key Components of a Powerful Closing Argument for the Defense

Strong closing arguments remind the jury of key testimony and exhibits, while logically explaining how the evidence fits together to support the case. Closing arguments contain strong themes to tie the facts with the law to create a story for the jury. The theme should also encourage and suggest to the jury that they are doing the right thing. Effective closing arguments must be sincere and genuine. If the jury senses inauthenticity or deceit, the defense counsel loses credibility with the jury.ⁱ

Every closing argument must include the statement of the case, e.g., a theme, a summary of facts and issues, an explanation of the burden of proof, discussion of the law, overview of the evidence, discussion of liability, discussion of damages, an explanation of verdict forms, and the final summary of the argument.ⁱⁱ

Additionally, powerful closing arguments face bad evidence head on. The jury knows the evidence, and evading bad evidence provides an opportunity for plaintiff's counsel to highlight this failure to address the difficult facts of the case. Defense counsel should explain to the jury how the bad evidence is not sufficient to find in the plaintiff's favor. Defense counsel should continue to personalize the client, especially in the closing argument. A representative of the company should be present. Arguments become more effective in personalizing the client when defense counsel stands near this representative. Explain the good the corporate client does for society, and the impact of a nuclear verdict on the individual people the company is comprised of.

Powerful Pain and Suffering Arguments

Addressing non-pecuniary damages should be addressed proactively. The plaintiff's damages claim must be examined in detail to determine whether they can be defeated legally or factually. Defense counsel must demonstrate their number is fairer and more reasonable than the plaintiff's number.ⁱⁱⁱ

During the opening statement, defense counsel should tell the jury what the damages issues are, provide a description of the plaintiff's injuries, the plaintiff's claims of pain and suffering, and the plaintiff's quality of life. Defense counsel must remind the jury damages are meant to compensate the plaintiff for what they have lost. Damages are also limited to the amount of money a plaintiff is likely to spend in the remaining years of their life. Defense's arguments to pain and suffering must be logical so jurors can use their common sense in seeing why astronomical damage numbers are unreasonable.^{iv}

Another powerful argument is showing jurors the value of a dollar. Defense counsel can provide an effective illustration of what one million dollars looks like through comparison of statistical data. This provides perspective and grounds the plaintiff's astronomical number in reality.^v

How to Equip Jurors with Tools to Analyze Potential Damages Awards and Prevent a Nuclear Verdict

Defense counsel must begin equipping jurors with the tools to analyze damage awards during voir dire. Potential jurors should be informed only certain types of damages are recoverable depending on the relevant law, and these awards must be fair and reasonable. Defense counsel must encourage the potential jurors to be honest, fair, and be able to set their sympathies for the plaintiff aside and follow the law.

To help the jury analyze damages awards, evidence and visual aids may be used. Defense counsel must also warn the jury of potential red herrings and how plaintiff's counsel's red herrings may mislead them during trial. Defense counsel can also use experts to offer evidence of the nature of the plaintiff's injuries. Defense counsel can also provide a magnified copy of the verdict form so the jury can see each item of special damages. Defense counsel should write these figures for each element and contrast their numbers with the plaintiff's.

How to Package Compelling Evidence for the Defense

Due to the complexities and technicalities of many cases, defense counsel can use visual aids to simplify issues and help the jury understand the case. Visual aids help every member of the jury form the same

picture. Creating a story board can help the jury visualize the events which took place and examine the facts on their own. The jury can also compare what they are seeing to what the lawyer is saying. They also provide jurors with something to reference in case they forget what an attorney has said. Visual aids are typically memorable and are more salient in the juror's memory than listening to an attorney.^{vi}

Analogies are also helpful in packaging evidence memorable for jurors. Good analogies allow the listener to connect points of the analogy with the discussion of evidence highlighted. The analogy must be used cautiously, and counsel must ensure it applies to the case and presents the correct visual image.^{vii}

Arguing Silent Witnesses at Trial

Silent witnesses can be very effective in persuading a jury. A silent witness could be specific witnesses who did not testify to certain facts left unexplained, or a witness plaintiff's counsel did not call. A silent witness could also be the specific number of days a plaintiff failed to mitigate their damages. Silent witnesses often fill in the missing gaps in the case, and aspects of the case the jury still has questions about. This is persuasive because it typically highlights how the plaintiff left something out they did not want the jury to hear.

How to Tie Defense Trial Themes Together

The most effective way to tie defense themes together is through a narrative. Themes tie together the incident and all the people involved. The themes are a framework tied together through a story to help the jury see the bigger picture. Compelling stories consist of a beginning which introduces the characters and the conflict; the body, which adds more details as to what happened, and the resolution. Defense counsel should weave the themes involved in its specific case into this framework. The conflict and the themes should work together to point out inconsistencies with the plaintiff's version of events. Another framework to tie together themes is the "choice theme model." This model states the notion choices come with consequences. Here, the defense counsel wants to highlight how "had the plaintiff made a better choice, the accident could have been lessened."^{viii}

Why Closing Arguments Matter

Closing arguments are important because it is a final chance to advocate for your client, discuss the facts, issues, and law, and do so in a way which tells an interesting story. The information received in

the closing arguments is the last information the jurors will hear and is the last opportunity to influence their decision.^{ix} Closing arguments are effective when done right because they tie together weeks of information the jury has been listening to.

Share the Truth and Be Vulnerable

Defense counsel must be vulnerable and share the truth to avoid appearing detached. Defense counsel must share what they really believe about the case. The truth in every case is a plaintiff was injured or wronged in some way, and their life is now different as a result. Defense counsel cannot ignore this truth and must share how much they care about the plaintiff and their new challenges. Being vulnerable and honest with the jury helps defuse jury anger which in turn is effective in avoiding a nuclear verdict.

How to Tell the Story Plaintiff Does Not Want Exposed

Silent witnesses can help expose a story the plaintiff does not want to be heard. For example, a plaintiff failed to mitigate their damages. The plaintiff waited three days to receive medical treatment, 53 days to complain about the alleged shoulder injury, 59 days to report double vision to a doctor, and 480 days without receiving treatment for the alleged traumatic brain injury. This begins to tell a story of someone who may not be as hurt as they are claiming. In this case, another silent witness was the plaintiff's doctor of over 30 years who did not testify about how the plaintiff compared before versus after the accident. Exposing these stories through silent witnesses can be a crucial aspect to appealing to juror's common sense and ultimately achieving a defense verdict.

ⁱ David L. Sargent, *Dropping the Curtain – Closing Arguments*, 49 DRI For Def. 71 (2007).

ⁱⁱ Mary E. Alexander, Robert E. Cartwright, Jr., *Order and Elements of Closing, generally – Elements of Closing Argument*, 4 Litigating Tort Cases 44:14, (2020).

ⁱⁱⁱ C. Barry Montgomery, Bradley C. Harstadt, *The Most Difficult Argument – Putting a Number or Value on the Non-Economic Loss*, 46 No. 7 DRI For Def. 55, (2004) (hereinafter *Barry, Most Difficult*).

^{iv} *Barry, Most Difficult*.

^v *Barry, Most Difficult*.

^{vi} Jim M. Perdue, *Use of Visual Aids*, 3 Litigating Tort Cases 37:50 (2020).

^{vii} Jim M. Perdue, *Persuasive Techniques for the courtroom storyteller - Analogies*, 3 Litigating Tort Cases 37:49 (2020).

^{viii} Thomas C. Regan, *Go Forth and Conquer! Theme Development in Trial Practice*, 50 No. 9 DRI for Def. 30 (2008).

^{ix} Mary E. Alexander, Robert E. Cartwright, Jr., *Order and Elements of Closing, generally – Elements of Closing Argument – Concluding your Closing: The Final Five*, 4 Litigating Tort Cases 44:21, (2020).