

A closing argument is a party's opportunity to make final statements of a case. It should not be used to present any new information. Rather, the closing should be used to point out the bias and inconsistencies in the prosecution's case. This can be done through explaining the significance of evidence, presenting a positive theory of the case, engaging jurors intellectually and emotionally and explaining why a jury should favor the defendant. In many ways a closing statement is similar to an opening statement, however the difference is that a closing focuses on concrete facts which have already been presented during trial.

Elements of a closing:

Explain why favor the D

A closing statement should explain to the jury why he should favor the defendant, and give the jury the tools to make those decisions. Your closing should anticipate juror's questions and answer them, but not be too focused on anticipating the prosecutor's argument or rebutting bad evidence. Stick to the main themes of your case and the evidence presented to establish the elements of those themes. Remember that the purpose of the closing is to validate the decision of the jurors who believe your side should win, and give them the tools to persuade others.

Evidence

While a closing argument is a summation of the evidence presented at trial, it should be more than just a rehashing of all the evidence. A summation is a reality based, knowledge based understanding of what the result should be. You want to give them more than a summation, and give them an argument which explains why they should interpret the evidence in your favor. Be careful not to go into too much detail otherwise you risk losing momentum and the attention of the fact finder. It should be a strong, fluid and persuasive presentation focusing on all the main points that help establish elements of the theory of the case including all logical inferences.

Theory

An effective closing statement should bring together the theme and theory of a case. The theory of a case is a combination of fact and law which in a common sense and emotional way leads the jury to conclude that a person has been wrongfully accused. The theory can be presented through the persuasive and fluid presentation of all evidentiary pieces which help to establish an element of the theory of the case.

Theme

The theme is a word, phrase or simple sentence that captures the controlling or dominant emotion or reality of the theory of the case. The theme must be brief and easily remembered by the jurors. For instance, the famous tagline from the OJ Simpson murder trial was, "If it doesn't fit, you must acquit," referring to the glove found at the scene of the crime which was too small for the defendant's hand and cast a reasonable doubt on whether the defendant was guilty. Make sure your

fact finder leaves the trial remembering at least one thing that encompasses the heart of your theory, a theory that your fact finder will have a difficult time ignoring during deliberations.

The first and last moments of a closing argument are the most memorable, so make the most of this time. Use it to advance the primary theme of your defense. An effective and common theme focuses on how a vote for your client is a vote for justice. You should remind the fact finder why he cares about your client and why voting in your favor would serve justice.

In the OJ Simpson case, his attorney started his closing statements appealing to the jurors' sense of justice: *MR. COCHRAN: The Defendant, Mr. Orenthal James Simpson, is now afforded an opportunity to argue the case, if you will, but I'm not going to argue with you, ladies and gentlemen. What I'm going to do is to try and discuss the reasonable inferences which I feel can be drawn from this evidence.*

Ultimately, it's what you determine to be the facts is what's going to be important, and all of us can live with that. You are empowered to do justice. You are empowered to ensure that this great system of ours works. Listen for a moment, will you, please. One of my favorite people in history is the great Frederick Douglas. He said shortly after the slaves were freed, quote, "In a composite nation like ours as before the law, there should be no rich, no poor, no high, no low, no white, no black, but common country, common citizenship, equal rights and a common destiny." This marvelous statement was made more than 100 years ago. It's an ideal worth striving for and one that we still strive for. We haven't reached this goal yet, but certainly in this great country of ours, we're trying. With a jury such as this, we hope we can do that in this particular case.

Notice how this attorney ties the jury's vote for the defendant to "ensuring that this great system of ours works". He has effectively made the jury care about the defendant as a victim whose injustice can be corrected by a vote in his favor.

Engage intellectually and emotionally

Engage your fact finder both intellectually and emotionally so he is drawn into your case and wants to find a way to favor the defendant. Use everyday scenarios that the fact finder can relate to, so your theory is based in tangible life experiences. This allows the fact finder to be sympathetic to your client's situation. For instance, it is much easier for to say in the abstract that killing someone is wrong, than it is to say killing someone in self defense is wrong. The more you draw the juror into your client's life, the easier it will be to persuade them.

Structure

A persuasive structure is one that is easy to follow, and often follows logic. You must keep the attention of your audience to persuade them, so a simple structure is most effective. It is often effective to start and end with appeals to emotion and sandwich an appeal to logic in between. Start with your biggest theme, and follow a logical roadmap to tie the evidence together.

Effective Delivery

Lastly, but very importantly, deliver your closing arguments effectively and persuasively. You want to engage the jurors, but don't go too over the top. Feel free to pull out all the stops in the last few moments of a closing, and bring out the drama in the case but be genuine. If the jury believes that you are not genuine, you will lose their trust and likely their vote.

Sample Closing

Clarence Darrow, a famous American civil rights attorney, gave one of history's most famous closing statements on May 11, 1926 in *People v. Henry Sweet*. Sweet was a black man living in Detroit at the height of racism in America. One night he was attacked by a group of white men and in his panic shot and killed one of his assailants. He was charged with murder, and the following is an excerpt from final moments of the closing statement given by Clarence Darrow:

Now, gentlemen, just one more word, and I am through with this case. I do not live in Detroit. But I have no feeling against this city. In fact, I shall always have the kindest remembrance of it, especially if this case results as I think and feel that it will. I am the last one to come here to stir up race hatred, or any other hatred. I do not believe in the law of hate. I may not be true to my ideals always, but I believe in the law of love, and I believe you can do nothing with hatred. I would like to see a time when man loves his fellow man, and forgets his color or his creed. We will never be civilized until that time comes.

I know the Negro race has a long road to go. I believe the life of the Negro race has been a life of tragedy, of injustice, of oppression. The law has made him equal, but man has not. And, after all, the last analysis is, what has man done?--and not what has the law done? I know there is a long road ahead of him, before he can take the place which I believe he should take. I know that before him there is suffering, sorrow, tribulation and death among the blacks, and perhaps the whites. I am sorry. I would do what I could to avert it. I would advise patience; I would advise toleration; I would advise understanding; I would advise all of those things which are necessary for men who live together.

Gentlemen, what do you think is your duty in this case? I have watched, day after day, these black, tense faces that have crowded this court. These black faces that now are looking to you twelve whites, feeling that the hopes and fears of a race are in your keeping.

This case is about to end, gentlemen. To them, it is life. Not one of their color sits on this jury. Their fate is in the hands of twelve whites. Their eyes are fixed on you, their hearts go out to you, and their hopes hang on your verdict.

This is all. I ask you, on behalf of this defendant, on behalf of these helpless ones who turn to you, and more than that,--on behalf of this great state, and this great city which must face this problem, and face it fairly,--I ask you, in the name of progress and of the human race, to return a verdict of not guilty in this case!

Notice how he focuses on just one theme that leads the jury to believe his client was wrongly accused- the theme of racism. He does not go into too much detail. He is able to appeal to the emotion of the juror and leave the jury feeling as if a vote against his client would be a vote against the injustice of racism that is at play here.

Conclusion

Remember, a closing argument is not a place for stating your beliefs or your opinions. Instead use your closing to point out the bias and inconsistencies in the prosecution's case. You can anticipate the prosecution's remarks and rebut them. Above all, be natural, genuine and sincere.

While a closing argument comes at the end of a trial, you should start developing your closing as soon as you get your case. In fact most closing arguments can be developed before the trial even begins. Your closing can then be used to shape the structure of your case throughout the trial.

Keep in mind that while a closing statement is made in the last moments of a trial, it is never too late to win or lose a case. A persuasive closing statement is especially important.

Appendix