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The Critical Importance of Giving Directions in Closing Argument

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Closing argument is an attorney's last opportunity to talk to jurors before they march off into deliberations and decide the fate of the parties, making it a profoundly important part of trial. Compounding the stress that comes with this critically important moment, attorneys often have little time to prepare for closing unless they are fortunate enough to have the trial schedule result in them having a weekend off before closing arguments on Monday. In other words, the very moment in which attorneys are supposed to make sense of all of the chaos and complexities that have arisen over the course of trial is also the moment for which attorneys have the least amount of time to prepare.

In light of this common scenario, the purpose of this article is to highlight some simple steps attorneys can take to ensure that their closing argument is powerful and effectively arms the client's advocates on the jury to take control of deliberations and drive home a favorable verdict.

The nearly universal finding from all of our mock trial research over the years is that it is so critical to arm your advocates on the jury with the tools to take control of the discussion in deliberations, shut down opposing views, and navigate the distractions in the case. In this respect, the goal is a little different than simply persuading jurors. Closing is, in many ways, more about teaching them how to deliberate than persuading them. This is a critical distinction that is often lost in closing arguments.

Persuasion alone simply does not cut it. A persuaded juror does not necessarily translate to an influential juror. Understanding and being persuaded by an argument is very different from being able to confidently re-articulate an argument. This is where attorneys who only focus on persuasion run into trouble. A persuaded juror who is not adequately armed to effectively argue your client's position is a problem. If the juror is not confident in his or her ability to re-articulate your key arguments, he or she may simply remain quiet in deliberations. Even worse, an inadequately-armed advocate may undermine your client's position in deliberations by advancing a non-sensical argument or by mis-applying certain evidence to a particular argument. This creates losses for your client in deliberations and builds momentum for the other side, which is often all it takes to produce an adverse verdict.

In this respect, it is important to provide your advocates on the jury guidance in closing argument and show them how they are supposed to deliberate. The goal is to give them a process by showing them where to start, which evidence to focus on, which jury instructions to look at, and how to answer each question on the verdict form. Often, the best way to accomplish this is by having your closing argument mimic what you want the deliberations to look like. In other words, start your closing argument where you want jurors to start their



deliberations and progress in the same order, and using the same logic, that you would like them to use in their deliberations.

This can often be more difficult than it sounds because it requires the attorneys to reduce the case to its most basic logical steps. Jurors need to see the “A+B=C” structure on each element of the case. The most common way in which we show this with our clients in closing argument is by taking the first issue we want them to talk about and showing them what we think is the key jury instruction for that issue. We will literally show the jury instruction on a PowerPoint slide and highlight key language that we want them to focus on in that instruction. This accomplishes two goals: first, it helps jurors understand what they *should* be considering; and second, it helps arm your advocates by showing them what they need to tell everyone else on the jury to consider when the discussion turns to this issue.

Sometimes, this involves multiple layers of instructions. For example, in a simple negligence case, you might start by showing the definition of negligence in the jury instruction, which typically has some variation of the phrase “reasonable care.” Following that, you will probably want to show them another instruction that defines reasonable care. In this way, it is often important to piece the instructions together in order to help the jurors understand the logic of the legal argument, which is not necessarily obvious to most jurors.

Once the legal standard is established and jurors understand what they are supposed to decide, the next step is to highlight the evidence that shows them how to make that decision. Just like with the jury instructions, PowerPoint can play an important role in this. It is always more powerful for jurors to see the evidence with their own eyes rather than rely on the your description of it. Consequently, you may want to show exhibits with “call-outs” on various slides. For example, you might want to show the front page of a contract and then show a particular provision or two that you believe supports your position in the case.

Another thing to consider is showing actual testimony from the trial. Consequently, you should strongly consider ordering daily transcripts of the trial. One of the most effective things you can do in closing argument is show key admissions from the other side’s witnesses. While you can certainly describe the testimony that occurred, it is much more impactful for jurors to see the actual testimony from the trial transcript with their own eyes and see the exact words that were said. Additionally, research has consistently shown that this kind of visual presentation of the evidence significantly impacts the retention of the information. Some studies show this visual presentation can increase retention by up to 55%. This is important because, if your goal is to arm your jurors to effectively argue your case in deliberations, the first thing they have to do is remember the key evidence.

The goal with this is to show patterns. In other words, if you are trying to show that your client exercised reasonable care, then you should show a series of exhibits and testimony call-outs back-to-back that reinforce this argument. Once you have established this pattern and shown your jurors which exhibits and testimony they should focus on when decided that issue, you should move on to the next issue and repeat. The key in doing so is to have clear transitions between each issue. One of the most common problems in deliberations is when jurors fail to



understand which evidence applies to which issue. This may sound ridiculous since it is perfectly clear to the attorney who has been living in the trenches of discovery for months if not years, but it can be very difficult for a juror who has been bombarded with a lot of complex information over a sort period of time to know what goes where and why. This is your job as the attorney.

In conclusion, it is critically important for attorneys to step back in closing argument and think of their role as being more of an argument coach. Your goal in closing is to show jurors how to argue and arm your advocates on the jury with the tools to take control of deliberations, drive a favorable process, shut down opposing arguments, and persuade others that the most sensible verdict is the one that favors your client.

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