

5 Surefire Ways To Nail Your Closing Arguments

By **Kira Lerner**

Law360, New York (June 27, 2014, 4:55 PM ET) -- The closing argument isn't just an attorney's last chance to piece together arguments and evidence: It may be the most important part of the trial, period.

No matter the type of client — whether it's a criminal defendant or a plaintiff in a product liability suit — an attorney's goal during the closing argument is to remind the jury of his or her strongest arguments, explain why the opposing party's claims are incorrect, and appeal to the jurors' reason.

The closing argument can make or break a case, so Bill Curtis, a plaintiffs' attorney with personal injury firm Curtis Law Group, says he focuses much of his attention throughout a trial on how he will deliver his closing argument.

"When I'm first looking at a case and trying to decide whether to take it or not, part of my brain is thinking about, 'How would you present this in a closing argument?'" he said. "Any trial lawyer who is eventually going to be trying the case is thinking of that from the very beginning."

Curtis says every trial lawyer's ultimate goal is to piece together the evidence and deliver to 12 total strangers an argument that makes them moved, enraged or upset enough to help the client.

Here are five ways to deliver a closing argument the jury won't forget:

Tell a Story

Jurors, like all people, best remember things when they are told in story form, Curtis says. Rather than throwing miscellaneous pieces of information around the courtroom, delivering an argument with a narrative arc will help the jury remember the important facts.

Timothy O'Brien, a product liability attorney with Levin Papantonio Thomas Mitchell Rafferty & Proctor PA, says that in addition to a beginning, middle and end, the closing argument should also have a theme in order to keep the jury engaged and thinking about how the story will end.

"They're looking for the resolution, and really, the jury is the resolution," O'Brien said.

Similarly, it's important for attorneys in criminal cases to build a story based on the evidence. Eric Sitarchuk, co-chair of Morgan Lewis & Bockius LLP's white collar practice, says he tries to explain the sequence of events in a way that's as consistent with the government's evidence as possible, or one that suggests an alternative narrative of what happened.

David Apfel, a white collar and criminal defense partner at Goodwin Procter LLP, says the first line of the closing should communicate the theme and grab the jury's attention.

Keep It Simple

The key in complex cases, like many of the pharmaceutical lawsuits O'Brien has tried, is to make the topic appear simple. In order to do that, it's important to earn the jury's trust.

"You're making an analogy, and you're asking them to take a leap of faith to believe you as a lawyer that the complex situation is as simple as you're making it out to be," O'Brien said.

For example, in the last Fosamax case he tried, O'Brien says there was a "casserole" of papers for the jury to consider when determining whether the drug caused osteonecrosis of the plaintiff's jaw. To simplify the facts for the closing argument, O'Brien he narrowed it down to one important witness.

"Her doctor said it caused it," he said he told the jury. "Everyone who contradicts that is being paid to contradict it. Who are we to second-guess the treating doctor?"

Apfel said he tries to pitch his closing arguments to the level of an educated middle school student and not speak in a way that only the one juror who happens to have a doctorate degree would understand.

The best way to simplify complicated issues could also be using a few demonstrative aids, although attorneys cautioned that using too many visuals as crutches can create barriers between the lawyer and the jury.

Connect with the Jury

When Curtis is representing plaintiffs in product liability lawsuits, he said it's crucial to make the jury feel that the case is relevant to them and that the alleged injury could happen in their world.

"If it threatens them too, then they're going to be motivated to do something, and they're going to want to make sure that it doesn't happen to them," he said. "They do that by doing the right thing in terms of holding the guilty party responsible for their conduct and doing so in a fashion that it sends a message."

In criminal cases, humanizing the defendant is also an easy way to ensure the jurors can relate and project themselves into the defendant's situation, Sitarchuk says.

In every closing argument he gives, Apfel says he likes to make the jury think, laugh and cry.

"Unless [defendants] are humanized, then there is little chance, especially in white collar work, that they will be acquitted," he said.

Another way to connect is to impress upon the jury the importance of what they're doing and the impact their decision will have, Apfel says.

Know Your Jurors

When you get before the jury to deliver the closing argument, you are wrapping up a relationship that you have been building with each juror throughout the trial.

"By the time you're actually giving the close, you've already spent days and days, perhaps

weeks or months, with this jury," Curtis said. "It's not like you're walking into an auditorium with 12 people you've never met and you're starting the speech right then and there."

By knowing the jurors, attorneys can keep in mind how their lives may differ from the client's life and perspective and can make sure they don't say anything that could potentially offend the jurors.

"You really have to understand the prejudices and biases as best you can of everyone who is sitting in that jury box and play to whatever those prejudices or biases are, because if you don't, they're going to work against you," O'Brien said.

O'Brien says he goes about this by remembering the jurors' responses during voir dire and by having someone in the courtroom take note of every response the jurors give to each piece of evidence throughout the trial.

Know Your Personal Style

The way an attorney presents his or her closing argument needs to be consistent with the way he or she has been throughout the trial and consistent with who he or she is as an attorney, Curtis said.

"Juries are perhaps the greatest ever bullshit detectors because they see through that kind of stuff," he said. "They recognize when someone is acting rather than being genuine with them."

In the end, it's crucial that the jury trusts the attorney and believes that he or she is credible. Sitarchuk said attorneys can lose credibility by raising their voice or attempting to add unnecessary dramatic flair to their arguments.

"You want that to punctuate certain points and do it a way that the jury understands it reflects how you feel and why you feel so strongly about that particular issue," he said.

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