



Maximize your closing argument

Outline how you will sum it all up for the jury; here's what to include in that outline.



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You have put on your case and your jury has been instructed. It has been a long, grueling trial and you have to surpass only one more hurdle before the Court gives your jury the case. Make the most of your final opportunity to convince your jury to render your verdict for your client.

Begin work on your closing argument before you put on even one shred of evidence

Prepare your closing outline in advance. Include key jury instructions, elements and legal theories. Fill it in at the end of each day of evidence, while the key testimony, witness expressions and courtroom dramas are still fresh in your mind. This approach has three advantages: (1) it provides a checklist you will use as you put on your case as well as remind you each day of the remaining evidence necessary to prove your case; (2) it eliminates the need to review weeks' worth of notes about testimony and evidence the night before your closing; (3) it gives you credibility with the jury as a historian as you accurately take them back to important moments in the trial. This in turn can make the jury more willing to accept your version of the case.

Refer back to your notes from voir dire

Your notes will remind you of juror interests and connections between individual jurors – especially your leaders. Use that information to arm your leaders with talking points for the jury room.

For example, if your leader is a teacher who has talked about the importance of her students standing up in the face of peer pressure, you can remind her of that in closing when talking about your burden of proof. Look at her as you remind the jury “if you hear a fellow juror say she cannot return a verdict for the plaintiff be-

cause she is not totally convinced, you can stand up and remind her that is not our burden. Our burden is only to prove something is more likely true than not true. And if your fellow juror insists on not following the law, you can let the bailiff know. You have sat through this whole case and, now, you have the right to have it decided based on the correct law and facts.” Use your voir dire notes and your observations throughout the case to anticipate the doubts the jury may express about your case. In closing argument, give the concrete answers *you* would give the jury if you were standing in the jury room with them during deliberations.

Use the admitted evidence

Encourage jurors to use it in their deliberations, remind them what it stands for, and show them what they will conclude from it. Remember, you cannot show anything that has not been admitted or shown to the jury. For example, you cannot show a medical text if the excerpts you used with the witness were not admitted into evidence. However, so long as the judge allows it, you may interweave passages from other sources that were not introduced into evidence, such as from literature or the Bible. Be creative. Use this non-evidence to appeal to the emotions and human experience of your jury.

Use key jury instructions in your argument

Do not expect your jury to sift through thousands of words of instruction to figure out which applies most in your case – tell them! Explain common (to attorneys) legal terms using everyday knowledge and experience. Think in advance how to use lay examples to explain terms like *circumstantial evidence* and *substantial factor*.

If you follow this practical framework, your closing argument can be the powerful, convincing presentation



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it needs to be as your jury leaves to decide your case.

How to talk about damages

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Talk about damages – really talk about damages! Jurors will not talk about damages if you do not talk about damages.

Special and general damages

Define *special damages* as damages to the pocketbook. Use a concrete example: If a negligent delivery person dropped a sewing machine with a 10-year life expectancy at \$500,000 per year and now the machine can earn only \$200,000 per year, no one would fail to award \$300,000 per year for the 10-year life expectancy. Remind your jury that they are to use the same analysis with your human plaintiff.

Define *general damages* as damages to the human being. Explain *reward* versus *compensation* by turning back the hands of time to when your plaintiff would conclude he would accept his in-

jury, with the pain and degradation of his life, in exchange for the compensation provided. Ask rhetorically whether it is fair to conclude your plaintiff would willingly go through these traumatic events for the compensation contemplated by the jury. If so, the award of damages would constitute a “reward.” However, if your plaintiff would instead respond, “I want my life. I want my future. I want my occupation, my hopes, my dreams. I don’t want the money that you’re offering me. It is not enough,” then the compensation contemplated is inadequate and therefore unjust as a matter of law.

Remind your jury of the effect of time on the body. As we get older, our bodies and health become more precious. Our feelings of personal power are directly associated with how we feel about ourselves.

With some cases (read: juries), it is appropriate to compare your human plaintiff to a corporate plaintiff. If Acme Company lost a factory due to negligence, no one would hesitate to award \$20 million or \$30 million if that was necessary to compensate Acme. Remind your jury [that] we do justice in the same way here, using the same concepts and measurements.

Finally, when you reach the point in your argument where you are ready to

talk about the numbers, take the special verdict form and place it on an overhead projector for the jury to see. Slowly and clearly fill out the verdict form, with your numbers, as you explain the evidence that justifies each number. This allows the jury to feel more comfortable doing the same thing, with the same numbers, when they go back to deliberate soon after you finish.

William Veen founded The Veen Firm, P.C. as a sole practitioner in 1975, gradually developing it into a firm of more than 40 attorneys and staff who represent severely injured workers and consumers. He is a member of the American Board of Trial Advocates and he was honored as the Trial Lawyer of the Year by the San Francisco Trial Lawyers Association in 2003.

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