
CRAFTING A CLOSING ARGUMENT

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How can trial lawyers develop persuasive and effective closing arguments that will resonate with jurors? Here is a step-by-step guide to developing and organizing winning closing arguments that will give jurors all the tools they need to decide a case in your client's favor.

Crafting a Closing Argument

by Linda L. Listrom

Let's begin by talking about what closing argument is not. Closing argument is not the time in the trial to begin to tell the jury your story. Nor is closing argument the first time you articulate your theory or themes. If you have tried the case properly, you began the trial by telling the jury a story in opening statement. And this story was thematic—that is, it connected to key values possessed by most jurors. As the trial progressed, you developed the evidence that supported that story. If you have failed to tell a thematic story, and if you have failed to develop the evidence that proves that story, you cannot win the case in closing argument. If you have tried the case properly, closing argument will be an extension of everything else you have done during the trial. If you have tried the case improperly, closing argument will be irrelevant.

The purpose of closing argument is to give the jurors the tools they need to reach a verdict. In a well-tryed case, both the plaintiff and defendant will have themes, and each party's themes will resonate with at least some of the jurors. For this reason, when the jurors begin their deliberations, it is likely that they will be divided, with some favoring the plaintiff and some favoring the defendant. As they deliberate, the stronger jurors will become advocates who attempt to persuade the others to their view of the case. To do this, these jurors will use what they have heard in closing argument. In closing argument, then, you must tell the jurors what is important to their decision, and why. You must also explain what is unimportant, and why. You must remind them of the evidence they heard during the trial and explain why this evidence entitles you to a verdict. In short, you must give the jurors the ammunition they need to argue your case effectively to the other jurors.

Closing argument is the only time in the trial when you can do this effectively. In contrast to other phases of the trial,

in closing argument you are permitted to argue. This means you can not only remind the jurors about the evidence they have heard but also explain to them why it is important to the decision they must make. Argument is a powerful tool.

Your decision as to how to organize the closing argument is crucial for several reasons. First, and most obviously, a well-organized closing argument is easier for the jury to follow. This is particularly important if your case is complex or your closing argument will be lengthy. Second, and even more importantly, organizing the closing argument gives you a tool to emphasize what is most important to your case. Organized properly, the closing argument will emphasize the strengths of your case and minimize its weaknesses. The rest of this article discusses suggestions for effectively organizing your closing argument.

Organize your argument by topic. The topical method of organization allows you to organize and present the facts in the manner that is most persuasive—which is not necessarily chronological. Sometimes we are instinctively drawn to chronological organization because we have heard so often that during a trial we must tell the jurors a story. What better way to tell a story than chronologically? But when you organize your closing argument this way, you may be forced to juxtapose two events that occurred close together in time, even though they are completely unrelated to each other. As a result, the point that you are trying to make may become muddled or even lost. Organizing your argument around key topics gives you the flexibility to present the facts in a way that is most persuasive.

Focus on theory, themes, and story. Ask yourself why the jury should return a verdict in favor of your client. You should be able to answer this question in a sentence or two. If there is more than one reason, which are the two or three most persuasive ones? The answers to these questions will be your topics for closing argument.

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For example, let's assume that you represent the plaintiff in a personal injury case. The plaintiff, a high school student, suffered serious injuries when he was struck by a city bus at a busy intersection. The plaintiff and the defendant disagree about how the accident occurred. The plaintiff contends that the bus driver was nearing the end of his shift and was in a hurry to finish his route. He ran the light at the intersection and collided with the plaintiff, who was crossing the street. The defendant contends that the plaintiff, not the bus driver, was careless.

As counsel for the plaintiff, you will want to divide your opening argument into three topics: First, talk about the plaintiff. Remind the jurors that the plaintiff was full of promise. He was an honor student at his high school and captain of the basketball team. On Sundays he volunteered his time at a soup kitchen run by a local church. During his senior year, before the accident, he had applied to Harvard, where he hoped to be a premed student. Second, explain what happened at the intersection. Remind the jury of your theory—that the bus driver ran the red light—and describe in detail the evidence that supports this theory. Third, describe the plaintiff's injuries. Remind the jury that as a result of the accident, the plaintiff is confined to a wheelchair—unable to walk; describe how this has affected the plaintiff's life and his future. By covering these topics, you will discuss all of the evidence that is legally sufficient to entitle you to a verdict.

If you represent the defendant, you should organize your closing argument around your own topics rather than simply respond to the points made by counsel for the plaintiff. You probably should not talk about the plaintiff's personal qualities and accomplishments. The jurors probably like and sympathize with him, and this is a strength in his case that, as counsel for the defendant, you do not want to emphasize. Instead, take the position that no matter how good a person the plaintiff is, and no matter how serious his injuries, he is not entitled to recover if his carelessness caused the accident. You should choose topics that emphasize what you consider to be important about the case.

You may choose to divide the argument into two topics: what the plaintiff did and what the bus driver did. This method of organization allows you to compare and contrast the behaviors of the plaintiff and the bus driver. Under the first topic, describe the evidence that proves that the plaintiff was negligent; explain that earlier in the day he had taken a final exam in chemistry and he knew it had not gone well. As he walked home, he worried about his final grade in that course and how it might affect his prospects for admission to Harvard. To help take his mind off his troubles, he turned on his iPod and cranked up the volume. He was listening to one of his favorite songs, singing along, when he stepped into the intersection. Distracted, he did not see the bus and did not notice that the light had just turned red. At this point you should move on to the second topic and remind the jurors about what the bus driver did. The bus driver pulled up to the curb and opened the doors of the bus so that two passengers, a mother and her small child, could board. He watched as the passengers dropped their fares into his fare box. He waited patiently for his two new passengers to take their seats. He looked up and noticed that the light was turning green. He checked his mirrors before easing the bus away from the curb and into the intersection.

You can see from this example how the topic method of organization allows each party to play to its strengths. The strengths of the plaintiff's case are the plaintiff himself and his serious injuries. Both themes are emphasized in the closing argument. The strengths of the defendant's case are the careless, inattentive behavior of the plaintiff and the careful, attentive behavior of the bus driver. By comparing and contrasting the conduct of the plaintiff with the conduct of the bus driver, you emphasize these aspects of the case for the defense.

In arranging your topics in order, use the principles of primacy and recency. Research teaches us that jurors are most likely to remember what they hear first in your argument and what they hear last, so they are likely to be most attentive at the beginning of your closing argument and at the end. Utilize these principles of primacy and recency in organizing your closing argument. If you have three topics, discuss the two strongest topics first and last. The plaintiff's argument in the foregoing hypothetical provides a good illustration of this point. One of the plaintiff's strongest topics is the plaintiff himself, so counsel for the plaintiff should begin his argument with this topic. A second strong topic is the horrific nature of the injuries, which is a good ending topic for the argument. Of the three topics counsel for the plaintiff has chosen, the weakest is what caused the accident because, unlike topics one and two, the evidence on this topic is disputed. As counsel for the plaintiff, you do not want to end your closing argument on such a defensive note. Thus, position this topic in the middle and, when you reach that point, explain your theory as to what caused the accident and offer the evidence that supports it. Then rebut the defendant's theory and end the closing argument on a strong point—the undisputed evidence about the plaintiff's injuries.

Build up your theory before rebutting your opponent's theory. In closing argument you must give the jurors a reason to return a verdict in favor of your client. In a civil case, your reason must be something other than "my opponent is wrong." Whether you represent the plaintiff or defendant, you must help the jury understand why a verdict in favor of your client is a fair result. You must present an affirmative view of the case the jurors will embrace and use to reach their verdict. In closing argument, start by building your affirmative case and then, and only then, rebutting your opponent's view of the case. Your task is relatively straightforward if you represent the plaintiff: Spend your initial argument discussing your affirmative topics and wait to challenge the defendant's theory in rebuttal. Your task is somewhat more complicated if you represent the defendant. Here, you must challenge the plaintiff's theory—and you have only one argument in which to do so. But do not rebut the plaintiff's theory until you have first presented your own theory and argued the evidence that supports it. You may want to begin your closing argument with a brief, unequivocal denial of the plaintiff's theory: "The plaintiff claims that my client was negligent. The plaintiff is wrong. And I am going to show you why." But once you give this brief denial, you should move immediately to a discussion of your theory. Hence, in the foregoing example, as counsel for the defendant, begin by discussing the evidence that shows the plaintiff was careless before you discuss the plaintiff's theory that the bus driver was negligent.

In rebuttal, use your agenda, not the defendant's. If

you represent the plaintiff, you can prepare a detailed outline for your initial argument in advance, but it is more difficult to plan your rebuttal. You will not know what points you need to rebut until you have heard the defendant's argument. What you should not do, however, is make a list of the defendant's arguments in the order in which the defendant makes them and go through the list rebutting each one in that order. By doing this, you would be ignoring *your* agenda—the topics that *you* believe are important—and, instead, using the defendant's agenda—the topics he believes are important. If you do this, your rebuttal will inevitably sound defensive. Instead, organize your rebuttal argument around the same topics that you used in your opening argument.

To prepare for rebuttal, begin by creating a chart on a pad of paper. Draw a line down the middle of the paper, creating two columns. In the first column write a rough outline of your opening argument, listing each of your topics and your key points under each topic. Leave plenty of space between topics. Then, as you hear the defendant's argument, write down each point made by the defendant in the first column. As you do so, you will have to decide where the point best fits into the organizational framework of your opening argument. Once you have found a place for the defendant's argument, briefly note your responses in the second column, next to that argument. When the defendant completes his closing argument, you will have an outline for your rebuttal. Go through your topics in order, just as you did in your initial argument, and begin each topic by restating your key point. If the defendant ignored the topic in his rebuttal, tell the jurors so. If the defendant made an argument that relates to that topic, state the argument and then state your response. Using this method, you will respond to each of the defendant's arguments and, at the same time, remind the jurors of your key themes.

Tell the jury how you have organized your argument.

It will be much easier for the jurors to follow your argument and remember your key points if you use signposts to guide them. There are several ways that you can use signposts in your closing argument. The simplest way is to explain at the beginning how you have organized the argument: "I am going to be talking about three different topics. First I will talk about . . . then I will talk about . . . and finally I will talk about . . ." An even better approach is to list your topics on a demonstrative exhibit labeled *Plaintiff's Closing Argument* or *Defendant's Closing Argument*. List the topics on a board prepared in advance by a graphics consultant, or simply write the topics on an easel notepad. At the beginning of your argument, you can refer to the exhibit and its list of topics. Display this exhibit throughout the argument. You can then use it to transition from one topic to the next: "That concludes our discussion of the first topic, *what the plaintiff did*. Now let's move on to the second topic, *what the defendant did*." With this device the jury will always know where you are in your argument, where you have been, and where you are going next.

Once you have selected your topics and arranged them in the most persuasive order, you are ready to select the content for your closing argument. Following are some suggestions for how to make those choices.

Frame the issues for the jury. In closing argument it is your job to tell the jurors what they must decide. You should explain to the jurors what is important to their decision and,

also, what is *not*. Rarely, if ever, are all the facts in dispute. Often, the plaintiff and defendant disagree not about what the facts are, but about which facts or issues are most important. If, in your view, the jury need only decide one issue in your favor, tell them so. If your opposing counsel is confusing the jury by arguing a point that is irrelevant, explain why it is irrelevant. For example, in our hypothetical case involving the bus accident, as counsel for the defendant, you might want to concede that the plaintiff suffered serious injuries but argue that this is beside the point. The issue that the jury must decide is who was at fault. If the plaintiff caused the accident, he is not entitled to recover, no matter how serious his injuries. In short, as an advocate, your job is to frame all this for the jurors so that when they retire to their deliberations, they know exactly what they need to decide.

Be selective. You do not need to describe every piece of evidence during your closing argument. In any trial the parties present facts that are not particularly relevant. If you have chosen your topics correctly, you can then use those topics as a guide. For each topic, you will want to discuss the evidence that relates to that topic. Any evidence that does not relate to one of your topics is unimportant to your argument and can probably be ignored. Does this mean that you must use every piece of evidence that relates to one of your topics? Not necessarily. In deciding how much evidence to use to support a topic, ask yourself, is this topic in dispute? If not, you probably should describe your best evidence on the topic, but you do not need to remind the jurors of every piece of evidence they have heard. On the other hand, if the issue is in dispute, remind the jury about all the evidence that supports your position. For example, in our hypothetical case, as plaintiff's counsel you should spend some time reminding the jurors about the extent of the plaintiff's personal qualities, but spend more time arguing your theory as to who caused the accident.

Use your best, most persuasive, evidence. The best evidence is, of course, an admission by the opposing party, whether in a document or in testimony. Undisputed evidence is also very persuasive; in almost every trial, at least some of the evidence will be undisputed. Equally important but often overlooked is evidence that is persuasive based upon common sense and everyday experience. For example, most of us—and most jurors, too—have seen teenagers walking down the street, listening to iPods, oblivious to the world around them. It makes sense that someone who is listening to an iPod would not notice that a traffic light had changed from green to red. This fact is powerful evidence for the defendant because it is consistent with what the jurors have learned about the world outside the courtroom.

Show the jury the evidence. Do not just tell the jurors about the evidence. Show it to them. Do not assume that just because they saw a document earlier in the trial, they remember it now. If a document is important to your theory, show it to the jurors again in closing argument. If you are using a courtroom presentation system, document camera, or overhead projector, display the document on the screen. Remind the jurors about what the document says by highlighting a key passage and reading it to them, slowly and with emphasis. Then explain to the jurors why that document is so important. Similarly, if a witness gave important testimony, read from the trial transcript or, better yet, display the transcript on a screen, highlight the key testimony, and read it to

them. The witness's precise words, as recorded in the trial transcript, are much more effective than your paraphrase of testimony. When you read from the transcript, also remind the jurors who the witness is by connecting the witness to the case. The jurors may not be able to connect names with testimony. They may not remember *Mr. Jones*. But they will probably remember him if you explain, "You remember Mr. Jones. He was the store clerk who was standing on the curb when the plaintiff tried to cross the street. He saw everything that happened."

Use jury instructions and verdict forms. In most jurisdictions, there is a jury instruction conference in advance of closing argument. If you know how the judge is going to instruct the jury, you can use the jury instructions in closing argument. Of course, you do not want to use all of them or even most of them. How do you choose which ones to use? Think of the jury instructions as another piece of supporting information. If a jury instruction provides support on an important topic in your argument, you may want to read from or refer to it. For example, in our hypothetical, the judge may be planning to instruct the jury on either contributory or comparative negligence. In your closing argument as defense counsel, you will of course want to explain all the evidence that shows that the plaintiff was negligent. This argument will be even more effective if you also explain to the jury that the trial court will instruct them that contributory negligence is a defense to the plaintiff's claim. But a word of caution is in order. If you have not had your jury instruction conference before closing argument, it can be hazardous to refer to anticipated jury instructions in closing argument. If you tell the jurors that the judge will instruct them in a particular way and he does not, the jurors may conclude that the judge does not agree with your case.

Do not ignore bad facts. The jury will undoubtedly remember them. Rather than ignore the bad facts, explain why a bad fact does not matter. In our hypothetical example, it may be true that the plaintiff was listening to his iPod when he stepped into the intersection. But the plaintiff would argue that does not matter, because the pedestrian witness saw that the light was still green when the plaintiff stepped into the intersection. Whether the plaintiff was distracted is irrelevant.

Resolve conflicts in the evidence. Sometimes the evidence is in conflict. In these situations, you should argue to the jury why your evidence should be believed. For example, if the testimony of the witness contradicts a contemporaneous memorandum or letter, counsel should argue to the jury that the document, written at the time of the events in question, is more reliable than the witness's memory of what happened five years ago. Whenever possible, you should try to reconcile the conflicting testimony of witnesses without accusing one of the witnesses of lying. Jurors are reluctant to conclude that a witness lied. Moreover, jurors often must base such a conclusion on their impressions of the witness, which are necessarily subjective. Although you may be convinced that the opposing party is lying, it is difficult for you to know how the jurors have reacted to the witness. Usually, it is possible to resolve conflicts in the evidence without making this accusation. For example, assume in our hypothetical case that there are two eyewitnesses to the accident. One is a pedestrian who was walking toward the intersection, just a few feet behind the plaintiff. She testified that the

light was still green when the plaintiff stepped into the intersection. The second was a passenger seated on the bus, six rows from the front. He testified that the bus driver had the green light when the accident occurred. As counsel for the plaintiff, you should not attack the integrity of the passenger on the bus. Instead, argue that the pedestrian had a better opportunity than the passenger to see the stoplight and the accident.

As counsel for the defendant, anticipate the plaintiff's rebuttal argument. In most jurisdictions a civil case has three closing arguments. The plaintiff's argument is first, followed by the defendant's argument, which is then followed by the plaintiff's rebuttal argument. Under this format the defendant faces a challenge: He argues only once. After the defendant argues, the plaintiff has an opportunity to rebut that argument. As counsel for the defendant, you must to some extent anticipate the plaintiff's rebuttal and respond to the plaintiff's arguments before he makes them. But if you anticipate an argument and counsel for the plaintiff does not make this argument on rebuttal, you have unnecessarily undermined your own case. Moreover, it is difficult to anticipate the plaintiff's arguments without sounding defensive. On balance, you should anticipate and rebut the plaintiff's key arguments, but do not try to anticipate each and every argument that he may make. Take care to organize your closing argument so that you do not end on a defensive note, rebutting the plaintiff's theory. For example, in our hypothetical case, let's assume that it is undisputed that the plaintiff failed a chemistry exam earlier in the day and was listening to music and singing as he approached the intersection. As counsel for the defendant, you might want to begin your argument with the topic *what the bus driver did*. After you explain your affirmative theory and the evidence that supports it, you would then, under this same topic, rebut the plaintiff's theory as to the actions of the bus driver. End your argument with the topic *what the plaintiff did*. Under this topic, you would describe the unrebutted evidence about the plaintiff's behavior. This organizational structure enables you to begin strong and end strong, while at the same time rebutting the plaintiff's theory.

Consider motive. In most civil cases, motive is legally irrelevant: It is not a legal element of the plaintiff's case and it is not a legal element of an affirmative defense. When the judge instructs the jury, he will not instruct them that they must find motive. But jury research tells us that the jurors always ask *why*? Why did the plaintiff behave in this way? Why did the defendant behave in this way? To persuade the jurors, you must give them an answer to these questions. In our hypothetical example, there is a reason why the plaintiff might not have noticed that the stoplight had turned red; he was distracted by the music playing on his iPod. As counsel for the defendant, you could prove your case without using this evidence. But your case will be more persuasive if you provide an answer to the question of why it happened that way. If the jurors understand that there was a reason for the plaintiff to be distracted, they are more likely to believe that he carelessly stepped into the intersection after the light turned red. When the jurors understand that there is a reason for a party to act in a particular way, they are more likely to find that the party did in fact act that way. If there is motive, the story becomes more logical and therefore more persuasive.

Use demonstrative exhibits. During closing argument, you can use any demonstrative exhibit that you have used earlier during the trial. You do not, however, have to use all your demonstrative exhibits during closing—nor, indeed, any of them. By the time you reach closing argument, you may have used a particular exhibit so many times that it no longer has any impact on the jury. So be selective. Use a demonstrative exhibit only if you think it will make a difference. In addition to the demonstrative exhibits that you have used throughout the trial, you can create demonstrative exhibits specifically for closing argument. And, unlike the demonstrative exhibits you used during witness examination, the demonstrative exhibits that you create for closing argument can and should be argumentative. At this stage of the trial, the only restriction on demonstrative exhibits is that they must be based on the evidence. One of the best demonstratives for closing argument is a summary or list of the key pieces of evidence on a particular topic. Another effective demonstrative exhibit for closing is a list of the opposing party's arguments on a particular point, along with your responses to each argument.

As counsel for the defendant, decide whether to argue damages. Unless the trial has been bifurcated, the plaintiff's lawyer should always argue damages. But the defense lawyer has a choice. Some defense lawyers are loath to argue damages. They fear that any discussion of damages implicitly carries with it an admission of liability. Most defense lawyers, however, are not willing to put all their eggs in the liability basket. They recognize that in most cases there is at least some risk that the jury will return a verdict for the plaintiff on liability and that, for this reason, it would be imprudent to ignore damages. To a certain extent, this is a strategic question that you will need to resolve long before closing argument. During the discovery phase of the case, you will have to decide whether to contest damages and, if so, whether to offer an alternative damages calculation. If you have contested damages during trial by, for example, calling your own damages expert, you will probably want to argue damages in closing. If you have presented an alternative damages calculation, you will probably want to argue it in closing. If you do choose to argue damages, you will face some challenges in organizing your argument. Using logic as your guide, you would begin the argument by arguing the liability issues and conclude by arguing damages. This approach, however, presents two problems: not only are you ending your argument on a defensive point, but you also are ending with an argument that assumes that the defendant is liable. The solution for this problem varies, depending upon the facts of your case and the points that you plan to argue. But keep in mind that it is crucial to end your argument on a topic other than damages.

After you have organized your topics and selected the evidence you want to highlight, it's showtime. Here are some suggestions for making your presentation effective and persuasive.

Be yourself. You have your own style. Use it. Do not copy someone else's. You may admire an accomplished trial lawyer who has an informal, conversational style of argument. He weaves into his argument humor and stories about life in his home state of Alabama. Unless you are from Alabama, and unless you can use humor naturally and effectively, do not emulate him. You will undermine your

credibility with the jury by coming across as phony and insincere. You are better off choosing a style that comes naturally to you even if that means you give a formal and highly logical argument without any funny stories.

Do not read your closing argument. Do not prepare a script and read from it. If you do, your delivery will be boring and monotonous; it will lack energy and passion, and moreover, you will not be able to make eye contact with the jurors. Unless you are looking at the jurors, you cannot read their reactions. Throughout closing you should be watching the jurors carefully, noting how each one reacts and making adjustments accordingly. If a juror seems puzzled by a point, you should stop and explain further. If a juror seems bored, you may want to get his attention by, for example, moving out from behind the lectern. If you are glued to a script, you cannot make these necessary adjustments.

Give your closing argument from an outline. Although you should not write out your closing argument word for word and read it, this does not mean that your closing argument should be spontaneous. To the contrary, it should be carefully planned. The best way to take advantage of careful planning but leave room for some spontaneity is to prepare an outline for your closing argument. List in shorthand form all the points you plan to make and the order in which you plan to make them.

An outline offers two advantages. First, it gives you a crutch. Some lawyers are able to give an entire closing argument without using notes but most of us cannot comfortably do that. If you have a well-organized outline, you can use it when you need it. You may be able to argue for five or ten minutes from memory, without looking at your outline. When you need to refresh your memory, you can refer to the outline. It is easier to find your place in an outline than in a script. For closing argument I put my outline in a small three-ring binder. I divide the outline into topics, insert a tabbed divider in front of each topic, and label each divider. I usually know my closing argument well enough that I can argue comfortably for ten or 15 minutes without looking at the outline. Typically, I will try to argue one entire topic before returning to the outline. When I finish one topic, I pause and use the tabbed divider to flip to the next. I begin arguing this next topic with my outline in front of me. As I get comfortable with the new topic, I move away from the outline again, returning to it later when I need it.

Second, an outline gives you flexibility. If, while watching the jurors, you feel that some of them are not yet fully persuaded about a particular point, you can embellish with additional detail. If, after hearing the plaintiff's argument, you need to add an argument, you can do it. In fact, when I prepare my closing argument outline, I usually insert blank pages at critical points throughout. If I decide to add a point, I write the new point in the appropriate blank space within my outline. Then, when I stand up to argue, I have not only a list of the additional points I want to make but also an outline that tells me when to make these points.

Memorize your beginning and ending. The first few minutes and the last few minutes of your closing argument are critical. In the first few minutes of the closing, you must grab the jurors' attention. In the last few minutes of the closing, you must hold their attention while you build toward a powerful conclusion. To grab and hold the jurors' attention, you must maintain eye contact with them. It goes without

saying that you cannot make eye contact with the jurors if you are looking at your outline. The beginning and ending of your argument are sufficiently important that you should script them in advance. These moments are too important to trust your ability to be extemporaneous—script the beginning and ending and memorize the script.

Move around. Done properly, movement can add interest and emphasis to your closing argument. For example, when you walk over to an easel displaying a chart, you emphasize to the jurors that the chart is important. By walking to the chart, you also break up monotony. By moving away from the chart, you signal a transition. You can use this type of movement to tell the jurors that you are starting a topic. Some judges require you to remain at the lectern, but most do not. Even the most conservative judges will allow you to step from behind the lectern and stand to one side of it. Even if this is the only movement that is permitted, you can use it to emphasize a point.

Some lawyers use movement as a “marker.” Throughout the trial, whenever something important is happening, they walk over to and stand in a particular spot. For example, whenever a witness says something important, the lawyer may move out from behind the lectern and stand immediately to the right of it. In this way, the lawyer conditions the jurors over time to pay attention whenever he stands in that spot. If you develop a marker during the trial, you can also use it effectively in closing argument to emphasize key points.

As with anything else, do not overdo it. Movement is effective only if used selectively for emphasis. If you are constantly in motion, you are not emphasizing anything and appear frenetic to the jury.

Vary your voice. You can also add interest and emphasis to your closing argument by varying the speed, volume, tone, and inflection of your voice. Once again, the key is variety. A lawyer who speaks in a slow monotone is boring. But so is a lawyer who speaks loudly at the same rapid pace throughout his argument. In fact, one of the most effective, and underused, tools in closing argument is silence. By pausing before you make a point, you signal to the jury: Listen carefully; this is important. By pausing after you make a point, you give the jury time to reflect on what has been said.

Use gestures. Most of us have natural gestures. Use the gestures that come naturally to you, but avoid using the same gesture over and over. A single repetitive gesture can become annoying and distracting. The best way to avoid this problem is to watch yourself on videotape. It will probably be a painful experience, but you will see exactly what gestures you use and how frequently you use them.

Insert nonverbal cues into your outline. Most of us do not make good spontaneous use of movement, pauses, and gestures. But, like the content of your closing argument, the delivery can also be planned in advance. When you prepare the outline, identify the points you want to emphasize and decide how you want to emphasize them. Then write nonverbal cues, such as *pause here* or *step away from podium* in your outline. When you practice your closing, practice not only the words but also the movement, the changes in your voice, and your gestures. This practice will make you more effective and also help to teach you new and better habits. Over time, you may find that variation in movement, voice,

and gesture come more naturally to you.

In closing argument, unlike at any other time during the trial, you have an opportunity to argue to the jury and the opportunity to explain what is important and what is unimportant, why the evidence supports your theory and does not support your opponent’s theory, and why the evidence should lead to a verdict in your favor. During closing argument you also have an opportunity not just to present the evidence but to package it. You should choose the topics that emphasize the strengths of your case and deemphasize the weaknesses. Organize your topics and evidence in a way that is most persuasive, and plan your argument carefully. This means planning not just the content but also the delivery. When you deliver the argument, you should connect with the jurors. You should grab their attention at the beginning and hold it throughout the argument. Done properly, the argument should give the jurors all the tools that they need to decide the case in your favor. □

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