

# CLOSING ARGUMENT

## Answering the Why's

Riley Josh Player, Deputy District Attorney

Salt Lake County District Attorney's Office - (801) 366-7848 – [jplayer@slco.org](mailto:jplayer@slco.org)

### I. Fundamental Principles of Closing Argument

- a. Be yourself, do not try to emulate or copy someone else's style
- b. Be honest, honest, honest

- i. Honest with yourself
- ii. Honest with opposing counsel
- iii. Honest with the jury

- 1. The jury will know if you don't believe in your case or in your argument
- 2. You need to be able to look each member of the jury in the eye when you ask them to convict
- 3. You need to be able to look the defendant in the eye when you say he/she is guilty

### II. Traditional Theories of Closing

- a. Work your trial theme/theory at closing

- i. Josh's take: have a theme – but do not be obvious with it – even in your initial closing

- 1. Plant seeds by key words, statements, objections and objections witnesses
- 2. Wait until your rebuttal to lay your theme out specifically
- 3. Wait until rebuttal to use a theory analogy

- b. Initial Closing

- i. Recognize – Address the victim appropriately

1. Photo's are nice
2. If the victim is the community – be careful – you cannot ask the jury to stand in the shoes of the victim

ii. Walk the jury through the elements

1. Show them the elements that are undisputed
2. Identify the elements which are disputed by defense
3. Argue the facts that show that the element is met

a. Connect the logical dots for the jury

4. Show the jury why the Defendant's theory is faulty or nonsensical

iii. Use tangible exhibits

1. Pipes
2. Guns
3. Checks

iv. Use your instructions

1. Carefully prepare your instructions so that you can use the power of the court and law to argue from them
  - a. The judge has instructed you that \_\_\_\_\_
  - b. Examples: actual physical control, eyewitness identification
  - c. The instructions should help you explain why you have proven the case – why they can and should convict
  - d. Reasonable doubt – firmly convinced

c. Rebuttal

- i. Rebut the defense with facts and/or common sense

1. 3 different boys – who don't know each other – have the same story
- ii. Flipping their theory – analogy
  1. This can be very powerful
  2. You will need to decide whether to flip and then do your analogy or abandon your analogy
    - a. Do not bore the jury
- iii. Remind the jury of the victim
  1. It personalizes your victim
  2. It personalizes you
- iv. Look at and/or point at the Defendant
- v. Tell the jury the Defendant is guilty
- vi. Ask the jury to bring back a guilty verdict
- vii. Caveat
  1. Some judges take a literal view of rebuttal
  2. Do not leave out any factual argument necessary – if necessary you can leave out the flash – never leave out the substance

### III. Answer the why's:

- a. We lose cases when we fail to answer the why's.
  - i. Why they can believe your witness
  - ii. Why they cannot believe Defendant's witnesses
  - iii. Why this evidence is important
  - iv. Why that evidence is not important

1. Red herring

- b. After initial closing, the jury should know

- i. Why the facts prove the elements
- ii. Why the jury should convict

1. Victim deserves it
2. Defendant deserves it
3. Community deserves it

- a. Careful here – cannot suggest the jury is the victim or ask jury to stand in shoes of victim

4. Sworn duty to follow the law

- c. After rebuttal, the jury should know

- i. Why the Defendant's theory / argument is wrong
- ii. Why they have no real option other than to convict
- iii. Why they want to convict and feel good about it

1. Logos, ethos, pathos

#### IV. Do's

- a. Appeal to as many senses as possible

- i. Powerpoint
- ii. Exhibits

- b. Use fantastic quote from trial

- c. Use a fundamental truth

- i. Parents protect their children
- ii. People lie to get out of trouble
- iii. People make mistakes

- d. Find a common experience for your analogy
  - i. First day of school
  - ii. Riding in a car
- e. Focus on the factual strengths of your case
- f. Acknowledge and provide an answer for the weaknesses of your case
  - i. Admit – not hiding anything
  - ii. Not important
- g. Keep personal opinions out
- h. Keep emotion in
- i. Address the victim
  - i. Appropriate time, attention and emotion
- j. Use rhetorical questions and reverse looking arguments to show why Defendant's theory is impossible or nonsensical
  - i. Just happened to be \_\_\_\_\_
  - ii. Defendant would have you believe
  - iii. This, that and the other are all coincidences?
- k. Use rhetorical questions to force your opponent to deal with the weaknesses of his/her case
  - i. Only do this if Defendant cannot provide a satisfactory answer
    - 1. It is on his bus route
  - ii. Sometime better to leave to rebuttal
- l. Move around the courtroom

- m. Change the volume and inflection in your voice
- n. Eye contact with every juror
- o. Smile and frown when appropriate
- p. Take the matter seriously

V. Don'ts

- a. Invade the personal space of the jury
- b. Read your closing from a piece of paper
- c. take more than 40 minutes on either initial closing or rebuttal
- d. make jokes or take shots at Defendant, opposing counsel, or witnesses
- e. call the defendant a monster or devil

VI. *Do or Don't?*

- a. Anticipate and address defendant's arguments in your initial closing

- i. Advantages

- 1. Takes the wind out
    - 2. Jury hears your spin on it first

- ii. Disadvantages

- 1. The jury hears their defense an additional time
    - 2. Jury hears you are concerned enough about it that you are bringing it up

- b. Case-by-case

VII. Considerations

- a. You cannot wait until closing to win
  - i. You don't put the star quarterback in during the 4<sup>th</sup> quarter

VIII. Finally

- a. Practice your closing to several people

- i. Ask them if they have any questions
  - 1. Answer the why's
- ii. Ask them if anything is confusing
- iii. Ask them if they would convict