

Closing Arguments

Steve Nelson, Deputy District Attorney



Closing Arguments

What You Likely Already Know...

- Develop your own style when interacting with jurors (don't try to copy someone else);
- Make eye contact with individual jurors;
- Don't make disingenuous arguments to a jury;



Closing Arguments

More of What You Likely Already Know...



- Develop the “theme” of your case through closing argument;
- Change tone/inflection of your voice;
- Address all elements charged
- Know your judge’s view of the term: “rebuttal”

Closing Arguments

More of What You Likely Already Know...

- Appeal to multiple senses of the jury;
- Be honest with the jury;
- Ask the jury to return a guilty verdict; and
- Believe in your case!



Closing Arguments

Beware of Potential Error



- Do argue to the jury that they should convict out of “fear or vengeance;”
 - State v. Todd, 2007 UT App 349, ¶121

Closing Arguments

Beware of Potential Error

- Beware of expressing “personal incentive[s]” that reflect[] a lack of objective detachment” as a prosecutor;
 - State v. Brown, 853 P.2d 851, 860 (Utah 1992);
 - State v. Harriston, 988 P.2d 1170, 1181-82 (Idaho 1999);
 - U.S. v. Martinez-Medina, 279 F.3d 105, 119 (1st Cir. 2002)



Closing Arguments

Beware of Potential Error



- Beware of calling the defendant a “liar;”
 - State v. Johnson, 2007 UT App 184, ¶ 46;
 - Wend v. People, 235 P.3d 1089 (Colo. 2010); and
 - State v. Kuhn, 85 P.3d 1109, 1114-14 (Id. Ct. App. 2003).

Closing Arguments

Beware of Potential Error

- Beware of arguing for guilty verdict in order to “send a message to the community;”
 - State v. Campos, 2013 UT App 213, ¶ 51;
 - United States v. Monaghan, 741 F.2d 1434, 1441 (D.C. Cir. 1984);
 - Arrieta-Agessot v. U.S., 3 F.3d 523, 527 (1st Cir. 1993); and
 - Williams v. State, 522 So.2d 201, 209 (Miss. 1988).



Closing Arguments

Beware of Potential Error



- Beware of inappropriate references to victims or victims' families;
 - People v. Watson, 629 N.W.2d 411 (Mich. App. 2001);
 - State v. Tosh, 91 P.3d 1204 (Kan. 2004); and
 - State v. Todd, 2007 UT App 349, ¶ 19.

Closing Arguments

Beware of Potential Error

- Beware of expressing personal opinions or belief relating to a defendant's guilt;
 - U.S. v. Young, 470 U.S. 1, 18-19 (1985);
 - State v. Bakalov, 1990 UT 45, ¶157; and
 - State v. Parsons, 781 P.2d 1275, 1284 (Utah 1989)



Closing Arguments

Beware of Potential Error



- Beware of vouching for witness's credibility;
 - State v. Hopkins, 782 P.2d 475, 479-80 (Utah 1989);
 - State v. Magallanez, 235 P.3d 460 (Kan. 2010); and
 - State v. Pabst, 996 P.2d 321 (2000).

Closing Arguments

Beware of Potential Error

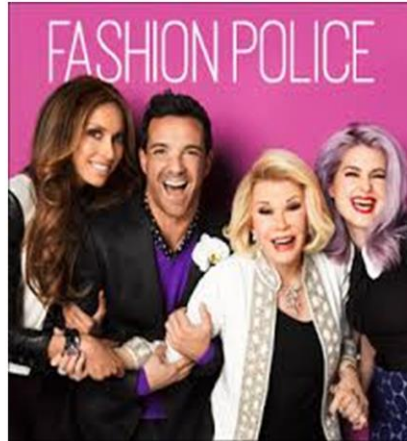


- Beware of expressing “personal impressions” about the defendant’s guilt;
 - United States v. Young, 470 U.S. 1 (1985).

Closing Arguments

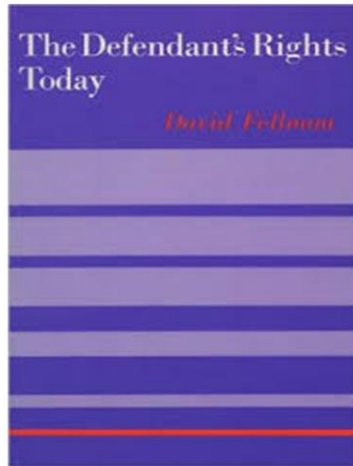
Beware of Potential Error

- Beware (absent record evidence) of arguing that police officer witness has no motive to lie;
 - State v. R.B., 873 A.2d 511 (N.J. 2005);
 - U.S. v. Weatherspoon, 410 F.3d 1142 (9th Cir. 2005);
 - U.S. v. Martinez, 981 F.2d 867, 871 (6th Cir. 1992);
 - U.S. v. Pungitore, 910 F.2d 1084, 1125 (3rd Cir. 1990);
 - U.S. v. Richter, 826 F.2d 206, 209 (2nd Cir. 1987);
 - U.S. v. Swiatek, 819 F.2d 721, 731 (7th Cir.



Closing Arguments

Beware of Potential Error

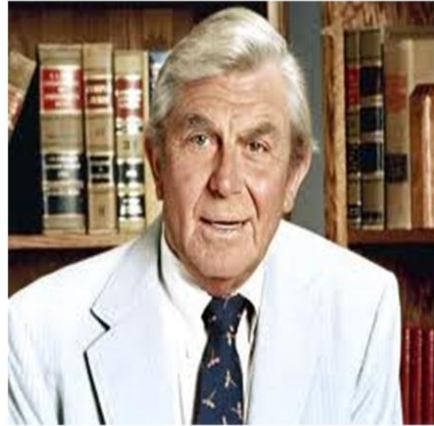


- Beware of arguments referencing a defendant's constitutional rights during closing argument;
 - State v. Maas, 1999 UT App 325, ¶120;
 - State v. Thomas, 239 N.W.2d 455, 457 (Minn. 1976);
 - People v. Brice, 100 A.D.2d 419, 422 (NYAD 2003); and
 - State v. Tosh, 91 P.3d 1204 (2004).

Closing Arguments

Beware of Potential Error

- Be wary of what you say about defense counsel in closing argument;
 - State v. Campos, 2013 UT App 213, ¶
 - People v. Watson, 629 N.W.2d 411 (Mich. App. 2001);
 - U.S. v. Holmes, 413 F.3d 770, 775 (8th Cir. 2005); and
 - People v. Nunez, 74 A.D.2d 805 (NYAD 1980).



Closing Arguments: Practicum Component



- Scenario #1
 - Facts: Child advocate is murdered and it turns out she likes to have kinky sex with a serial killer;
 - Defense: Overexposure to television violence; and
 - Verdict: Guilty

Closing Arguments: Practicum Component

- Scenario #2:
 - Facts: Strangled murder victim selling test answers to other kids at school;
 - Defense: defendant was a victim of medication side effects;
 - Verdict: Guilty



Closing Arguments: Practicum Component



- Scenario #3:
 - Facts: Inspired (“ripped from the headlines”) by militia actions such as Waco and Siege of Ruby Ridge
 - Issue: Jury nullification
 - Verdict: Acquittal

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