

CLOSING ARGUMENTS

PITFALLS, STRATEGY, AND THEORY

Chad Platt:

- Have a theme – it should begin with opening and then pulled together in the closing – you should bring it all together
- Generally write closing first and work backward from there –
- Closing must be malleable
- Broad strokes
 - ½ of closing is shooting from the hip – especially in a one day trial
- If Defense has focused on a non-issue (facts that don't really matter) draw them out or get them off – focus in your initial closing
 - “they spent a lot of time talking about XXXXX , but what does that matter, does that take away the act? The Mens rea?” So what if that is true – it does not help the Defendant”

Blake Hills:

- Save something for final – leave it alone – it is so ridiculous you want to get after it – but if you play with it – they will figure out an excuse for it
 - Tervort
 - I was up for 19 hours
 - My wife's health was the most important thing to me
 - Verde
 - I cannot lift my arms
 - Walks up and down in front of the jury showing his arms
 - Slaymaker
 - Stairs
- First closing
 - Elements
 - Not contested
 - Don't waste time on uncontested
 - Juries are conditioned to take in information quickly – don't have time to waste – the clearer the better – do not bore me (Raised on TV and Radio)
- When defense has raised questions or an alternative theory
 - Why should they jury believe you and not the Defendant
 - Must be flexible and innovative

Michaela Andruzzi

- Talk to the foreperson
- I NEVER write my closing before trial. I have a basic theme in mind, and add to it as the trial goes on. When facts come out that fit into my closing, I jot them down. When a witness says something particularly appealing, I jot it down. The other thing I do is save the meat for rebuttal. In my initial closing, I talk about the burden, then I go through the elements. I also mention CSI, and mention that it's not reality. I usually start with one sentence, and only one sentence, thanking them for their time and attention. Then I take a five second break, and start with a good dynamic sentence. For me, it is usually something that the defendant said, or that a victim said.

- My rebuttal ALWAYS begins with a quote pulled from the defense attorney's closing. My theory is that, if I can take one or two points and make them absolutely ridiculous, the rest of his/her closing falls to pieces. That way, I don't have to address everything they said in closing. Rebuttal should be meaty, it should be long enough to erase what the defense said, without being too long. I think it's okay to be a little cutting when attacking their defense, it's apparently okay to call the defendant a jerk, but not a maggot.
- NEVER use the podium. I try to make the jury feel like we're sitting in a living room, discussing the facts. Nobody would stand behind a podium and engage in conversation. It reminds people of a preacher. Stand close, but not too close. And make eye contact with every person, particularly the person you think will be the foreperson. Be animated.
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Robert Stott

- Generally Bob thinks Prosecutors put too much emphasis on closing argument – however, having said that – they are generally considered the funnest part of trial.
- Bob does not like to be tied to a “formal” theme but has a loose theme that he weaves through the trial that he can tie together at closing
 - His theme will usually have a focus on the victim
- Bob is always paying attention to locate the emotional/impactful statements made by a witness in the course of a trial
 - Bob will highlight and remind the jury of the impactful testimony
 - Co-worker holding the dying person in her lap as he struggled to say something –gurgling as the blood was filling up his throat and lungs
 - Look for quotes
 - Weapons
 - Pause
 - Weight
 - Hammer – crush young boys head
- In the first closing Bob does not respond to the defense by pointing out their points
 - He may mention the facts and evidence that does rebut – but does not say “Defense focused on this” Or Defense would have you believe this” – this only serves to highlight and repeat their arguments – they will do this on their closing anyway – wait until then – put your strongest case forward
- In rebuttal – rebut Defendant's case
- Don't assume the jury will see the obvious facts that prove the element
 - Take the time to connect the dots
 - Avoid confusion
 - Josh – you have to convince the weirdest, craziest, and dumbest juror – if you can convince that person (and you cannot ask anyone else to do it) you will convince the others
- Bob always likes to end with the victim
 - We cannot ask jurors to put themselves in the shoes of the victim – but we want the jury to identify with / relate to the victim
 - I am just like this victim
 - This victim is my mother, father, child, friend
 - I like / admire this victim
 - But for the grace of God go I
- Be yourself and let your emotions flow appropriately – voice change – emotions
 - Let the jury know that you are affected, outraged
 - It will usually come naturally if you allow yourself to relate to the victim

- Do not lose your human-ness to technology – powerpoint and logic
 - Art evokes an emotional response
- Jury needs to trust you
 - Calm voice
- Good eye contact – do not look over their heads or worse, under their heads
- Do not read it
 - Notes are okay but if you are going to use them
 - Stop talking
 - Read the note to yourself
 - Look up
 - Continue
- Watch the jury
 - If you see confused faces – may need to spend more time on that issue

Josh Player

- Don't lock in to theme too strong
 - Don't want to get flipped
 - Want option to flip
 - Don't play their game – stick to your game (zone v. man-to-man)
 - Slaymaker
 - Road analogy vs. squid analogy
 - Lay the factual groundwork
- First closing
 - Show them how easy it is to find the Defendant guilty – all the evidence lines up – and the evidence is strong
- Second closing
 - Why they should feel good about convicting
 - Pathos
 - Logos
 - Ethos
 - Tie in analogy's that are true and commonly experienced
 - Disneyland – the rides vs. lunch vs. day of lunch
 - Rag Doll analogy
 - She was under his control like a Rag Doll
- Answer the Why's
- Do not crowd the jury
- No distracting behaviors
- No notes
 - Line up pens or objects
- If using technology
 - Make sure it works
 - Have a back up plan
- Eye contact with each one
- Point at Defendant
- Say the Defendant is guilty!
 - Do not say the defendant IS a squid, monster, or the Devil or a liar
- Be honest – do not laugh or make light – this is serious business
- Jury has to feel that you are honest, not hiding the ball, and seeking justice – not persecuting
 - Making offerings to help
 - Water for people
- Time slows down

- In closing 1 second is a long time
 - Eyewitness case or time that a weapon is held
 - Time it out
- Careful use of exhibits and charts
- Speak from a place of authority
 - If you do not believe in your case – neither will they
- Organization
 - Should not be an easter egg hunt – it should be a well established trail/map

Rob Neil

- Powerpoint, powerpoint, powerpoint
 - The more senses the better
 - Elements
 - How facts meet elements
- The three C's
 - Consistency, credibility, corroboration
- Put your most powerful stuff in first rebuttal
 - Judge may restrict your rebuttal
 - Steal the thunder in your first closing
 - Save rebuttal for rebuttal
- Organization
- Begin and end with victim