

## CLOSING ARGUMENTS

(See Student Exhibit #7)

Lawsuits are usually won during the course of the trial, not at the conclusion. Lawsuits are won by witnesses, exhibits and the manner in which the attorney paces, spaces and handles them. Sometimes, however, lawsuits have been lost by fumbling, stumbling and incoherent closing arguments. This is not intended to minimize the importance of closing arguments, but rather to emphasize its proper position as a summation of the evidence and a relation of that evidence to the issues in the case. (Brown and Seckinger, *Problems in Trial Advocacy*, 1977). The purpose of the closing argument is to convince the trier of fact (judge or jury) that the evidence presented is sufficient to win the case for whichever side the attorney is representing.

**Objective:** To provide a clear and persuasive summary of: 1) the evidence you presented to prove the case and 2) the weaknesses of the other side's case.

- Outline your summation first; you should not presume that the testimony has stuck in the minds of the jury.
- Show appreciation to the jury for listening to the presentation of facts and evidence, but do not be too flowery.
- Review previous representations: review facts where no discord concerning them makes it possible for you to say the evidence has established facts you said you would prove.
- Issues – P/P should narrow down the issues completely; Defense should create as many issues as possible so that the jury will tend to feel that the P/P failed to prove them all.
- Cover the law in as favorable a manner as possible for your case.
- Look at any special problems (any poison) in your case and try to cover them up (i.e., your client has a horrible personality); remind the jury of the *voir dire* promises they made.
- Look at problems in your opponent's case, especially a failure to produce a key witness or present key evidence (both of which are usually controlled in mock trial cases, but still worthy of mention).
- Should be natural and convincing; dramatics should be within the range of the attorney's ability to perform convincingly and effectively and not look silly.

**Advice on Preparing: What should be included?**

- Thank the judge or jury for its time and attention.
- Isolate the issues and describe briefly how your presentation resolved these issues.
- Review the witness' testimony. Outline the strengths of your side's witnesses and also the weaknesses of the other side's witnesses. (Remember to adapt your argument at the end of the trial to reflect what the witnesses actually said as opposed to the anticipated weaknesses of the other side.)
- Review the physical evidence. Outline the strengths of your evidence and also outline the anticipated weakness of the other side's evidence. (This section too must be adapted at trial.)
- State the applicable statutes and any cases to show it supports your side.
- Remind the judge or jury of the required burden of proof (the amount of evidence needed to prove a fact). If you are the P/P lawyer, you must tell and convince the court that you have met that burden. If you are the attorney for the defense, you must inform and convince the Court that the other side has failed to meet its burden.
- Argue your case by stating how the law applies to the facts as you have proven them.
- Don't forget to request the verdict/remedy you desire.

**Other Suggestions:**

- Be sure your closing argument is well organized.
- Rehearse as much as possible.

**Advice on Presenting:**

- You must always be flexible. Adjust your closing argument to the weakness, contradictions, etc., in other side's case that actually come out at trial. You cannot anticipate everything perfectly before the actual presentation of the case.
- Argue your side but do not appear to be vindictive. Fairness is important.
- Be relaxed and ready for interruptions by certain judges that like to ask questions during closing arguments. (Not typical for Colorado program.)
- Do not make objections during the other side's closing argument.
- Do not read all the way through your closing argument. Use notes as needed but deliver closing argument without dependency of notes and with confidence.
- Keep eye contact with jury or at least look up occasionally.

### **Style Points**

- **P/P's Attorney:** Remember, the P/P has the burden of proving the facts in the civil case by a preponderance of the evidence. Therefore, the P/P's summary of the favorable evidence presented is extremely important. Be sure to avoid claiming evidence that was not, in fact, presented; similarly, do not emphasize evidence that the defense successfully attacked, except to give a firm response to such an attack. Cite the law clearly and correctly, and make a clear argument regarding how the law requires the judge or jury to rule in the P/P's favor.
- 
- **Defense Attorney:** Summarize all of the evidence presented to weaken the P/P's case. Emphasize the inability of the P/P to meet the burden of proof, and stress that such inability must clearly lead to a decision in favor of the defendant.

### **What to Include:**

- A summary of the evidence presented that is favorable to the presenting attorney's side;
- A summary of the case;
- A legal argument showing how the law requires the judge or jury to interpret the facts, and why that law requires them to rule in favor of the side for which the attorney is arguing (an "argument" telling the judge or jury why all of the evidence dictates a decision in your favor, i.e., tell what the verdict should be and why).
- New information MAY NOT be introduced in the closing argument.