

GGU LITIGATION CENTER PRESENTS

Trial Advocacy Bonus Lecture Series

Using the Law in Closing Arguments

GOLDEN GATE UNIVERSITY

School of Law

USING THE LAW IN CLOSING

- I. The jury learns the law after the facts
- II. The trial lawyer must explain the law
- III. Using the law to frame your argument

THE JURY LEARNS THE LAW

- ✓ **You started with the jury instructions**
- ✓ **You built your case to meet /or defeat**
- ✓ **Jury instruction conference**
 - **resolved before or during trial**
- ✓ **The jury FINALLY learns the law**

Ninth Circuit Model Criminal Jury Instructions 8.142

HOBBS ACT—EXTORTION (18 U.S.C. § 1951)

The defendant is charged in the indictment with

First, the defendant induced Victim to part with property by the wrongful use of actual or threatened force or fear;

Second, the defendant acted with the intent to obtain property; and

Third, commerce from one state to another was affected in some way.

USING THE LAW IN CLOSING

- I. The jury learns the law after the facts
- II. The trial lawyer must explain the law
- III. Using the law to frame your argument

Ninth Circuit Model Criminal Jury Instructions

3.8 DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did.

Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

EXPLAINING THE LAW

✓ Jury instructions have NO effect

Two Rules

✓ 1.No surprises with the law

✓ 2.Acknowledge “Court’s” instructions

Ninth Circuit Model Criminal Jury Instructions 8.142

HOBBS ACT—EXTORTION (18 U.S.C. § 1951)

The defendant is charged in the indictment with

First, the defendant induced Victim to part with property by the wrongful use of actual or threatened force or fear;

Second, the defendant acted with the intent to obtain property; and

Third, commerce from one state to another was affected in some way.

USING THE LAW IN CLOSING

I. When & how the jury learns the law

II. The trial lawyer must explain the law

III. Using the law to frame your argument

ARGUING THE LAW

With the burden:

- organize your argument by the elements
- use key jury instruct. (definitions & credibility)

Without the burden:

- attack weakness in the elements
- develop your own framework

First, the defendant induced Victim to part with property by the wrongful use of actual or threatened force or fear,

Second, the defendant acted with the intent to obtain property; and

Third, commerce between one state to another was affected in some way.

The defendant acted with the intent to obtain property

- ✓ witness testimony
- ✓ exhibits
- ✓ reasonable inferences
- ✓ arguments

