

CLOSING ARGUMENT

Closing Argument

You cannot script or “memorize” any jury address, but particularly a **closing argument**. You may have a framework or an outline with certain portions planned out. Closing is an argument constructed *about this* trial that just concluded, about *this* witness testimony and *these* exhibits.

*In your opening statement, preview for the jury what your evidence is.
In your closing argument, tell the jury what the evidence means!*

The closing is an organized reminder, a detailed explanation and a passionate argument. A good closing should serve as a:

- reminder of all the favorable information that the jury heard throughout trial
- detailed explanation of the evidence in the clear, simple terms of your case theory and theme
- passionate argument to the jury about how they should view the evidence, what they should do with it and how they should vote in deliberations

Throughout the trial, you provided all of the pieces – testimony and exhibits – that you previewed in opening. The required undersell in opening combined with the favorable parts of your case presentation – direct examinations, exhibits, demonstratives and cross examination (sometimes even your opponent’s case presentation) – should have made for a **better story** in the end than that you previewed in the beginning. The closing is the advocate’s opportunity to organize those pieces and explain to the jury the overall **meaning, inferences and arguments** that follow from the testimony and evidence.

You planned for and provided the jury with the information during trial – now explain to them why it was important . . . and what they should do with it.

Many students simply report back to the jury the facts elicited at trial. A closing like this can sound like the opening phrased in the past tense (“you heard” in the place of “you will hear”). Do not merely report the facts; instead, argue using them. (“Now you understand that when Mr. Witness says he was ‘confused’ on the day of the incident, it was because he didn’t know what happened”).

Prepare a closing argument as an outline that will be augmented with the many details that came out during this trial. You may script another hook to re-earn the jury’s attention during closing, some arguments from the evidence you knew would be part of your case, and a strong conclusion. But the rest must be a flexible composition intended to reflect *this* trial. For instance, you should add quotations of specific testimony, attack the other side’s

view of the evidence or arguments (particularly those inconsistent to yours), and include credibility arguments about the opponent's witnesses.

Closing Argument (cont.)

1. **Re-hook 'em.** Reestablish your theme and theory. Re-introduce the theme and clear case theory from the opening statement.
2. **Re-orient the jury to the story of your case.** A closing is not a time to "re-tell" the story, but it is time to re-visit and re-frame the case in terms of that persuasive, clear and memorable story from your opening. By closing the simple story of *your* case has been muddled by the trial process. When you remind the jury of important testimony and exhibits, do so using the same persuasive, clear and memorable story of the case from opening.
3. **Organize your argument.** Typically, the argument within a closing is best organized around the elements of the crimes or claims for the party with the burden, or attacking the same structure for the party without the burden. ("Let's look at all the ways that you learned that the defendant acted intentionally [an element]" or "Consider these 5 pieces of evidence alone is deciding that the plaintiff failed to prove causation"). Within an argument related to an element, further structuring in terms the evidence, witnesses or chronology of events can be very helpful to the jury, clear and persuasive.
4. **React to, and address, your opposition's evidence and argument.** You must, in closing, listen to and challenge the theory, theme, evidence and arguments of opposing counsel. If one concept holds true from TV and the movies, it is jurors expect a back and forth between attorneys during closing argument. You *must* address that which is inconsistent with your presentation of, and arguments in, the case. Tell the jury why you are right and they aren't.
6. **Ask for relief and explain what the jury should do.** Your closing is the last time to make an impression on the jury. You should end with a strong message about why this case is important and why they should rule in your favor. Don't be afraid to make an emotional appeal. Once again, tell the jury directly what you need from them: "You must now bring back a verdict of guilty in the . . ."

Closing Rebuttal. Rebuttals are reserved only for the party with the burden. Listen to the argument and respond to it for the jury. Answer the questions that the jury is asking themselves (or your opposing counsel asked of them). Then, return to your argument, theory and theme to have the last word in the case

Closing Argument Format & Examples

I. RE-STATE THEME

Re-state theme and theory that was emphasized in opening and throughout trial.

- *“Desperate people, do desperate things, at desperate times. On November 8, 2010, the defendant, Robert Duffy, had no money and was on the verge of getting evicted from his apartment. So to fix his problems, this desperate man did a desperate thing, at a desperate time in his life. He robbed the Dollar Store, and shot the only two witnesses, Wendy Smith and Christy Chacona.”*

II. RE-ORIENT THE JURY TO THE CLEAR STORY OF YOUR CASE

Re-visit the story persuasively, stating your theory of regarding the events in question. Do not reference or rebut the other side’s theory in this section. Return to your theory first, re-orient the jury to how *you believe* they should organize the facts and THEN address the holes in the other side’s case (our “90:10 Rule”).

- *“Now you know that on November 8, 2010, at approximately 9:00 pm, the Defendant let the last customer out of the store and locked the door behind them. With only himself, Wendy and Christy in the locked store, he proceeded to rob the store. Realizing that Wendy and Christy were the only two people that could prevent him from getting away with this crime, you heard throughout this trial that he decided to get rid of them by tying them up and shooting both women in head.”*

III. BURDEN OF PROOF

As the prosecution/plaintiff, you want to acknowledge the burden of proof, but not over-emphasize it. Think of it as being similar to “taking the sting out” of an unfavorable fact during direct examination. As defense, you may return to the burden throughout your argument.

- *“We have the burden of proving to you beyond a reasonable doubt that the Defendant committed the murders. Based on the evidence and testimony, we have proven that there is no doubt that the Defendant shot and killed Wendy Smith and Christy Chacona the night of November 8, 2010.”*
- *“One of the instructions that the judge is going give to you says that we must prove our case by the “greater weight of the evidence. This means that they have to prove that 51% of the evidence weighs in their favor, that the version of events we have presented is more likely than the version the defense has presented – not only is their version LESS likely – it may not even be possible.”*

IV. EXPLAIN HOW YOU HAVE PROVEN YOUR CASE

Walk the jury through how you have proven your case. One of the more clear and efficient ways to do this is by going through the elements you must prove one-by-one. Conversely, as the defense, organize your argument by the failings to meet the burden of proof.

- *“In order to prove robbery we must prove that the Defendant (1) used force, violence, or fear (2) to knowingly (3) take U.S. currency from another. First, we know the Defendant used force, violence and fear by using a gun during the commission of the robbery...”*
- *“while the robber may have used force, the prosecution have not proved that Jerry was the robber or that the robber acted knowingly in any way. Consider the following five reasons that demonstrate that you should have a reasonable doubt about who committed this robbery and whether it was an accident.”*

V. ATTACK CREDIBILITY OF WITNESSES

Attack the credibility of the prosecution’s/plaintiff’s witnesses based on impeachments that took place during the trial.

- *“Later, the judge will instruct you that you, the jury, have the power to judge the credibility of the witnesses that you heard testify in this trial. It will be up to you to determine which ones you believe and which ones you don’t believe. The defense called up Kimberly Johns, who testified that she saw Wendy’s ex-boyfriend outside in the parking lot the night of the murders. But you also heard her admit on cross-examination that at no point did she see his face.”*

VI. RE-STATE THEME AGAIN

Make sure to re-state your theme. Remember, if there’s one thing that you want the jury to take back with them relating to your case, it is your theme. Thus, you should re-emphasize your theme at the end of your closing to tie everything up.

- *“Desperate people, do desperate things, at desperate times. On November 8, 2010 the Defendant was a desperate man, who knew he had to do a desperate thing to get himself out a desperate time in his life. Unfortunately for Wendy Smith and Christy Chacona, that desperate thing came at the expense of their lives”*

VII. ASK FOR A VERDICT

Tell jury how you want them to decide case.

- *“We are confident that based on the all of the evidence, there is only one verdict that the law, and a sense of justice, requires. A verdict of guilty on all counts.”*