

Complete and Thorough Preparation Is Essential

By C. Barry Montgomery and Bradley C. Nahrstadt

The art of summation is unique. There is no standard under which one may enlist. The style is as varied as men's personalities. The objective is clear: to marshal the facts in the most persuasive way for his client. To weave the diffuse threads of evidence into a discernible texture, so that what seemed separate and remote becomes part of the whole—a clear picture of the objective.

—Louis Nizer,  
The Implosion Conspiracy

# Crafting a Successful Closing Argument

The closing argument is the only real opportunity a defense lawyer will have to speak to a jury using his or her own terms and style. The facts come from the witnesses, but the closing argument belongs entirely to

the lawyer. It is the time to summarize a case and explain to a jury in carefully selected words precisely why a defendant deserves to win a case. A lot rides on a closing argument and, for that reason, defense counsel must lay the proper groundwork and make sure that a closing argument contains the elements necessary to persuade a jury to find in favor of a defendant.

## Preparation for a Closing Argument

Indoctrinating a jury for your closing argument begins with jury selection. Begin laying the groundwork for your closing argument when you question the venire about their perceptions and attitudes. During the course of voir dire, inquire about juror attitudes concerning damages awards. Let jurors know during voir dire that you will discuss damages, as well as liability, at a later stage of the trial. Entice potential jurors to look for guidance from you on damages issues. Obtain commitments from jurors that they will be fair and impartial to both sides of the case.

Throughout the trial, keep a list of key points or evidence that you want to cover during closing argument. You should make a special effort to keep this list when a trial is particularly long or breaks occur in the trial testimony, since key evidence that is developed at the beginning of a trial is frequently overlooked when the time comes to prepare a closing argument. As you take notes during the course of a trial, place an asterisk or some other symbol in the margin of the notepad next to the significant testimony that you want to highlight during your summation. This will help in your review of your trial notes, by highlighting the importance of particular pieces of evidence. William J. Dailey, Jr., Harry A. Pierce and John P. Ryan, *Closing Argument—Defendant's Perspective*, Massachusetts Courtroom Advocacy, Chapter 11, §11.3 (2005).

Once the evidence has been completely presented, the court has ruled on all motions, and the jury instructions have been approved, you can refine and incorporate the key points and issues that you



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highlighted on your list during the trial into a comprehensive outline of all the subjects and testimony that you will cover during your closing argument. As a defendant, keep your outline flexible, to accommodate additions or deletions, depending on the content of the plaintiff's closing.

### **Content of a Closing Argument**

Every closing argument in every case is different. What works in one closing argument may not work in another. Although closing arguments are as different as the lawyers who give them, every effective closing argument incorporates the following rules.

#### **Organize the Argument to Highlight the Theme of the Case**

A closing argument should tie together a defendant's liability and damages theories in a coherent, persuasive manner that supports the recommended verdict. A defendant's liability and damages theories should be stated early in a closing argument and repeated as often as possible. Many times, a defendant's theories will form the opening sentence of a closing argument. The liability and damages themes should be phrased so that they are the most memorable sentences of the defense's closing address to a jury. If a jury is to retain only one kernel of information from a closing argument, that kernel must be the defense's theories of liability and damages.

#### **Do Not Retry the Case during a Closing Argument**

What do we mean by that? Do not give a witness by witness, document by document summary of the testimony. The second most common complaint by jurors about closing arguments is that the lawyers simply repeated all the evidence that the jurors heard during the course of the trial. What that juror complaint really means is, "Don't the lawyers think that we remember any of the evidence?" The obvious keys to avoiding this pitfall are organization and focus. *Emphasize* the facts that indicate that a defendant is not responsible for the injuries suffered by the plaintiff. *Highlight* the testimony of the witnesses that reveals that no liability rests on the shoulders of the defendant. Give jurors an overview, not a verbatim summary of all the testimony.

#### **Deal with the Facts Thoroughly and Methodically**

You have to give a jury a solid basis for accepting your case or doubting the other side's case. Many trial lawyers build a good case by means of thorough direct examinations of their own witnesses or killer cross-examinations of an opponent's witnesses, but then they fail to remind juries of exactly what they accomplished. The principle of restraint on cross-examination—be brief and avoid that one question too many—is premised on the strategy that you will drive the important points home during a closing argument. Do not forget to do it when the moment of a closing argument finally arrives! Peter W. Murphy, *In re Julius Caesar, Deceased: Whoever Wrote "Shakespeare" Knew a Few Things About Closing Argument*, 30 AM. J. TRIAL ADVOC. 71, 81 (Summer 2006).

#### **Do Not Misstate the Evidence**

To win, you must maintain your credibility—with the witnesses and the client, to be sure, but most importantly, with the jury. A big part of a trial lawyer's job is to argue the implications and conclusions that emanate from the evidence. However, when presenting those arguments, a defense attorney must avoid misstating evidence. That line can never be crossed. When you cross that line and misstate the evidence, you will destroy your credibility with a jury and, along with it, any chance you have had to win the jury to your side. As one pair of commentators has noted, "most jurors will give you a great deal of leeway in arguing the conclusions and implications from the evidence. However, most jurors intuitively know when you cross the line and misstate the evidence. Certainly, at least some jurors will have a clear recollection of what the witness actually said and that you have stated it wrongly. At that point, you likely have lost the case, because your credibility will have been seriously damaged." Andrew D. Ness and Louis Bagwell, *Closing Arguments: The Law and Practical Considerations*, 24 CONSTRUCTION LAWYER 29, 34 (Summer 2004).

#### **Face Bad Evidence Head On**

You cannot afford to ignore bad evidence in your closing argument. A jury knows what that evidence is, will certainly hear about it from your opponent, and will certainly

notice if you fail to address it. Undoubtedly, your opponent will bring your failure to deal with bad evidence to the front and center during his or her rebuttal, so you need to face any bad evidence head on, explaining to a jury why this evidence does not militate in favor of a finding for a plaintiff.

Address bad facts or evidence in the middle of a closing argument, when a jury's

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attention level tends to be at its lowest. You do not want to address troublesome evidence at the beginning of a closing argument, since that is when you want to lay out the strengths of your case. Likewise, you do not want to wait until the end of your closing argument to address bad facts, since you want to close on a strong, positive note, returning to your themes one last time.

#### **Personalize Your Client**

To find in favor of a particular defendant, a jury must relate to that defendant; the jurors must believe that a defendant is in the right. To help jurors reach that decision, you have to personalize a defendant. This is especially true in a case involving a corporate defendant. Defense counsel can personify a corporate defendant in two ways: by showcasing the people in a corporation and by emphasizing the good works engaged in by a company. Regarding the first point, explain to the jurors that your corporate defendant is composed of people similar to them—people who are trying to do the right thing. Have a personable corporate representative sit with you during your closing argument at the counsel table. Stand next to this person as you begin your closing argument, reintroduce him or her to the jurors, and thank the jury for its

service on behalf of that individual and the company that he or she represents. When making your closing argument, identify with your client by using the words “we” and “us” throughout your summation.

Concerning good works, communicate to the jurors what this corporate defendant provides through goods and services to help other people, including the people on

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the jury. Every corporation has some public purpose, and you should highlight it for the jury. For example, a pharmaceutical company makes medicine to help people who are ill. A transportation company helps people by taking people where they want to go. Companies help people to get what they want or need. Give a historical perspective on the company and show the jurors how and why it began and all the good things that the company had done over the years. Personifying a corporation will help a jury to see a corporation as would see a person, not as some large, monolithic, entity with no soul or personality.

#### Discuss the Law

Jury instructions are familiar to all lawyers who try cases, but jury members have probably never heard legal instructions before, and a jury does not know the law. As a result, you must take some time during a closing argument to discuss the instructions that a jury will receive from a court. In many states, such as Illinois, it is reversible error to deny an attorney the right to explain the content of a court's instructions. See, e.g., *Sidorewicz v. Kostelny*, 102 Ill. App. 3d 851, 430 N.E.2d 377 (Ill. 1981). It is important to note that you must accurately discuss the content of jury instructions, and attorneys cannot slant or distort them to favor one side or the other. *Backlund v. Thomas*, 40 Ill. App. 2d 8, 189 N.E.2d 682 (Ill. 1963); *N.C. v. Wilson*, 556 S.E.2d 272 (N.C. 2001); *Kansas v. Henry*, 44 P.3d 466 (Kan. 2002).

Incorporating the law as it exists in the jury instructions into your closing argument can help convince a jury that the law is on your side in this particular dispute. In addition, it will help jury members remember your key points when they hear the instructions you have told them that they will hear, and it will help your credibility when the judge instructs the jury as you have said they will be instructed. Donald G. Alexander, *Preparing for More Effective Closing Argument*, 17 ME. B.J. 194, 196 (Summer 2002).

You should make sure to explain difficult concepts, such as “negligence,” “proximate cause,” “burden of proof,” “willful and wanton conduct,” and “present cash value,” to name just a few. Make sure that you explain the legal instructions in terms that a jury can understand. It is often effective to use examples and illustrations to explain legal concepts. For example, accidentally knocking the flowerpot off the balcony is negligence, but throwing the flowerpot off the balcony is willful and wanton conduct. Finally, explain the law in the context of the factual setting of the trial rather than in abstract terms.

#### Always Discuss Damages

It is important to keep in mind that even if a case does not appear to involve liability, defense counsel must discuss damages. The case books abound with examples in which defendants were murdered because their attorneys made no efforts to address damages in their closing arguments. Take the case of *Pennzoil v. Texaco*, which involved a claim by Pennzoil that Texaco interfered with an agreement that Pennzoil had to acquire Getty Oil. Texaco's counsel did not address damages in the closing argument; Pennzoil's attorney devoted a substantial portion of his summation arguing for an award of significant damages. The jury returned a verdict of \$10 billion dollars.

Remind the jury in your closing argument that in discussing damages you in no way admit or acknowledge that your client is liable for negligence or responsible for the plaintiff's injuries. Although beyond the scope of this article, hopefully, as part of your overall trial strategy, you will have already presented these caveats, introduced damages awards and liability as topics, during voir dire and your opening statement,

and described your duty to address *all issues* in the case. You must remind the jury again that you have a duty and an obligation as a defense lawyer to address *all issues* in the case—including damages and liability.

In some surveys, one of the most frequent complaints registered by jurors has been that they had received insufficient guidance regarding the awarding of damages. See, Edith Green & Brian Bornstein, *Precious Little Guidance: Jury Instruction on Damages Awards*, 6 Psychology, Public Policy & Law 743 (2000); Neil Vidmar, *The Performance of the American Civil Jury*, 40 ARIZ. L. REV. 849 (1998). Researchers have noted that jurors seek anchors—amounts or information that they can use as reference points in determining appropriate amounts for damages awards. Dorothy K. Kagehiro, *Factors Affecting Jury Damages Awards Decisions*, 45 For The Defense 18, 19 (Aug. 2003). As a result, you must confront damages head on: provide jurors with a figure. The anchor provided to a jury simply cannot be the figure suggested by a plaintiff's attorney. To those who say that your figures will serve as a floor for the damages that a jury will award, we say it is much better to concede a floor than to be at the mercy of a jury that only has a plaintiff's numbers to consider.

A member of ATLA has given the following advice to plaintiffs' lawyers about how to “inspire jurors” to award high pain and suffering damages through closing arguments:

You should consider challenging defense counsel to give a number to the jury. Defense counsel who fails to respond may be seen by the jury as being unfair or afraid—or even as passively admitting the validity of the plaintiff's request. On the other hand, if defense counsel gives a ridiculously low number, this provides you the opportunity to display righteous indignation in rebuttal.

Larry Stewart, *Arguing Pain and Suffering Damages in Summation, How to Inspire Jurors*, 28 TRIAL 55 (Mar. 1992).

Do not let this plaintiff's lawyer be proved right. You must have a number in mind to present to a jury. Remember that a jury is unsophisticated in placing values on the various elements of damages, and you should not leave jurors to guess what sum might be fair and reasonable. When sug-

gesting a figure, discuss the concept of “fair and reasonable” compensation as that term is used in the jury instructions. Remind jurors that fairness is not a one-sided coin. Any verdict rendered by the jury must be fair and reasonable to both the plaintiff *and* the defendant. It may be helpful, in certain cases, to provide the jury with the dictionary definition of the terms “fair” and “reasonable.”

If the evidence indicates that a range of figures is most appropriate, provide a suggested range of figures to the jurors. The best way to present this range is often to suggest a single figure and then to argue that “in no case should the verdict exceed” a larger figure. If the jurors believe all of the things claimed by the plaintiff, you will have ensured that they have been given a top figure that is fair and reasonable. Whatever you do, do not lowball your damages award recommendation. A jury may totally ignore your recommendation if you do, or worse yet, take offense with the figure. Instead, give the jury a recommended damages figure that comports with the facts adduced at trial and one that your client can live with.

Further, you must take care to explain and support your recommended verdict with the evidence, for a jury will not consider an unsubstantiated figure. Provide a jury with examples of compound interest, to demonstrate the time value of money as it applies to future economic damages. And remember, you must explain the non-economic as well as the economic elements of the damages. Although difficult for the defense, pain and suffering, disability, and loss of consortium all should be handled with compassion and understanding in terms of dollars.

A plaintiff’s counsel will often write the figures that he or she thinks that a jury should award on a large sheet of paper on a flip-chart or on a chalk board for each element of the plaintiff’s damages, such as medical bills, lost wages, pain and suffering, disability, disfigurement, and loss of a normal life. A jury will inevitably write down everything suggested by a plaintiff’s attorney. You should do the exact same thing. Blow up a copy of the verdict form, which delineates each item of special damages, and show it to the jury. During closing argument you should compare,

in writing, the defense’s suggested figures with the plaintiff’s figures for each element of the damages, to contrast them. You must explain to a jury why a plaintiff’s proposed verdict is anything but fair. Furthermore, you must demonstrate why a lower award than the award suggested by the plaintiff is reasonable.

Years ago, plaintiffs’ attorneys felt hesitant to provide juries with large numbers for each element of plaintiffs’ damages claims, fearing that in doing this, they would appear to have overreached. Those days are long gone. Today, in a catastrophic injury case, it is not unusual for a plaintiff’s attorney to ask a jury to award 10 or 20 million dollars or more for a plaintiff’s pain and suffering. To counter that kind of valuation, you must make a logical and sensible damages argument to the jury; first, by discussing the purpose of damages awards, and second, by discussing the value of a dollar.

During your closing argument, remind a jury that the purpose of a damages award is to compensate a plaintiff during his or her lifetime. Consequently, a damages award is limited to the amount of money a plaintiff is likely to spend during the remaining years of his or her life. When a jury understands this, a plaintiff’s lawyer’s suggestion that a plaintiff should receive 25 million dollars for pain and suffering seems outrageous.

After hearing your opponent’s suggestion that tens or hundreds of millions of dollars should be awarded to the plaintiff, jurors can often lose track of the significance between ten thousand dollars and ten million dollars. Your task is to bring jurors back to reality. And one of the best ways to do that is to show them the value of a dollar. Explain to a jury that the dollars that they will award for damages are the same dollars that they use to buy food for their families. The value of the dollar does not change when jurors enter a jury box or because they will award other people’s money.

As part of this argument, give jurors an illustration of just how much a million dollars is. If the average wage for a family of four in the United States is \$50,000, it would take that family 20 years to earn a million dollars. If a plaintiff’s attorney has suggested that the plaintiff receive 10 million dollars for pain and suffering, remind the

jury that it would take a family of four 200 years to earn the same amount of money that the plaintiff has requested—just for one element of damages. Arguments such as these can successfully remind a jury that they must award fair and reasonable compensation.

In addition, jurors generally do not understand the concept of “present case value,” as defined in the relevant jury instructions, which is something that you should discuss with them. Plaintiffs’ attorneys often ignore discussing present case value, hoping that defense attorneys will do likewise. Do not fall into this trap. Be ready and willing to explain present case value to a jury, since damages for future economic loss can be substantially reduced using this judicially mandated calculation. Explaining present case value to a jury will support your efforts to substantiate your figures. The concept unequivocally favors the defense.

Finally, when discussing damages, acknowledge that sympathy for an injured person exists. It is there in the courtroom. A judge will tell a jury that “your verdict must not be based upon speculation, prejudice, or sympathy,” but this will accomplish nothing. Tell jurors that you expect them to have sympathy for the plaintiff. Tell them that you too have sympathy for anyone who is injured. It is a natural human response. But sympathy cannot and must not play *any role* in their verdict. Let jurors know that you expect that each and every one of them will follow the law and not permit sympathy to enter into their decision on liability and damages.

Plaintiffs’ lawyers always tell jurors that their client is not looking for sympathy—which is true—they’re looking for money. Use that statement to stress that everyone—the judge and all counsel—agree that sympathy has no place in the jury deliberation room. Sympathy exists, but jurors must discard it when they walk into the jury room.

### **Take Care to Explain and Support the Recommended Verdict**

Your closing argument should tie together the defendant’s liability and damages theories in a coherent, persuasive manner that supports the recommended verdict. The defendant’s liability and damages theories

should be stated early in the closing argument and repeated as often as possible. The liability and damages themes should be phrased so that they are the most memorable sentences of your address to the jury. If a jury is to retain only one kernel of information from the closing argument, that kernel must be the defense's theories of liability and damages.

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**Take your time, and do not be afraid to pause to think about what you are going to say.**

#### Pay Attention to the Plaintiff's Closing Argument

Don't use the plaintiff's closing argument as time for a mental break. Pay careful attention to what the plaintiff's counsel says during his or her closing argument. Some of the arguments made by the plaintiff's counsel regarding damages, including the "per diem" argument and the "Golden Rule" argument, are not allowed in a number of jurisdictions. The per diem argument is the most commonly used technique in presenting a formula for calculating monetary awards for a plaintiff. It argues that the plaintiff is no longer able to lead the life to which he or she had become accustomed—he or she has sustained a loss of enjoyment of life due to pain and suffering, which now occurs each and every day of the plaintiff's life. A value is established for one day of pain and suffering, referred to as the "per diem value." A plaintiff's attorney will multiply the life expectancy of the plaintiff, measured in days, by the per diem value for pain and suffering to determine the value of this element of the plaintiff's claim. The courts in many states have held that the "per diem" argument is inappropriate and cannot be made. *See, e.g., Brant v. Wabash R. Co.*, 31 Ill. App. 2d 337, 176 N.E.2d 13 (Ill. App. Ct. 1961); *Brokopp v. Ford Motor Co.*, 71 Cal. App. 3d 841, 139 Cal. Rptr. 888 (Cal. Ct. App. 1977); *Cox v. Valley Fair Corp.*, 83 N.J. 381, 416 A.2d 809 (N.J. 1980); *Henman v. Glinger*, 409 P.2d 631 (Wyo. 1966);

*World Wide Tire Co. v. Brown*, 644 S.W.2d 144 (Tex. App. 1982). Per diem arguments are objectionable because of the speculative nature of their mathematical formulas and because they are not based on facts presented in evidence. *See, e.g., Caley v. Manicke*, 24 Ill. 2d 390, 182 N.E.2d 206 (Ill. App. Ct. 1962); *Boop v. Baltimore and Ohio R. Co.*, 118 Ohio App. 171, 193 N.E.2d 714 (Ohio Ct. App. 1963); *Grossnickle v. Germantown*, 3 Ohio St. 2d 96, 209 N.E.2d 442 (Ohio 1965).

When a plaintiff's attorney makes the "Golden Rule" argument, jurors are urged to place themselves in the shoes of the injured party and award an amount commensurate with what they would charge to experience the disability, pain and suffering that the plaintiff has experienced. Most courts have held that this type of argument is inappropriate. *See, e.g., Cleveland Clinic Florida v. Wilson*, 685 So. 2d 15 (Fla. Dist. Ct. App. 1996); *Brokopp v. Ford Motor Co.*, 71 Cal. App. 3d 841, 139 Cal. Rptr. 888 (Cal. Ct. App. 1977); *Offutt v. Pennoyer Merchants Transfer Co.*, 36 Ill. App. 3d 194, 343 N.E.2d 665 (Ill. App. Ct. 1976). If your trial is in a jurisdiction that does not allow these damages arguments to be made, you must lodge an objection when the plaintiff's counsel attempts to make these arguments to the jury.

Moreover, counsel are not allowed to interject their personal beliefs into the trial. According to the United States Supreme Court, "it is unprofessional conduct for [an attorney] to express his or her personal belief or opinion as to the truth or falsity of any testimony or evidence or the guilt of the defendant." *United States v. Young*, 470 U.S. 1, 8 (1985). If an opposing counsel has expressed a personal belief in the defendant's guilt or the credibility of a party or witness, has provided personal assessments of the proper outcome of the case or has discussed personal experiences bearing on the case, make an objection and ask the court to strike the comments from the record.

And remember, as a general rule, when an opposing counsel makes an improper argument, you must object at the time of the improper statement to preserve the issue for appeal. In addition, making a timely objection provides the attorney who made the statement and the court an

opportunity to rectify the damage—in the case of the court, either through an admonition to counsel or an instruction to the jury to disregard the statement. *See, e.g., Houston Lighting & Power Co. v. Fisher*, 559 S.W.2d 689 (Tex. Civ. App. 1977); *Azile v. King Motor Center, Inc.*, 407 So. 2d 1096 (Fla. Dist. Ct. App. 1982); *Quick v. Crane*, 111 Idaho 759, 727 P.2d 1187 (Idaho 1986).

#### Demeanor and Style during Closing Argument

Just as no two closing arguments are the same, no two lawyers are the same. Every trial lawyer delivers his or her closing argument in a different way. With that said, the authors believe that any lawyer can employ the following style and demeanor suggestions to craft a winning closing argument.

#### Develop Your Own Style

Every lawyer has to develop his or her own style when it comes to delivering closing arguments—one that feels natural and unforced. However, no matter what style you adopt, always remember to be yourself. The jury has been observing you for several days or weeks by the time the closing argument is delivered. If you attempt to change your style or your delivery at this late date, the change will be readily apparent to the jurors, and they will be turned off by it.

Some lawyers are good at making points with stories and analogies, some make their points through humor, some are very organized, some are quiet, and some are loud. Whatever your strengths, use them. Ask yourself what you are most comfortable doing and do it. If you are not comfortable with something, do not do it. You are much more believable and, accordingly, much more effective in presenting your argument if you are yourself.

#### Use a Conversational Tone

You should not deliver your closing argument in a monotone. Be interesting in your delivery. Your delivery should incorporate breaks in the cadence and variations in tone of voice, emphasis, and volume. This will not only keep the jurors' attention longer than otherwise, but also emphasize the important points you want to stress. *Dailey, et al., supra*, §11.6h.2.

It is important to keep in mind that pauses can sometimes communicate more

effectively than words alone. Silence before a vital spoken thought can invoke suspense and command the undivided attention of an audience. Take your time, and do not be afraid to pause to think about what you are going to say. Not only will you provide jury members with more cogent thoughts, but they will infer from the silence that what you are about to say is important and worthy of consideration. Kevin C. Kennedy, *Closing Argument: Through the Eyes of a Trial Advocate*, 30 AM. J. TRIAL ADVOC. 593, 598 (Spring 2007).

Finally, do not underestimate the power of inflection and intonation. The change in voice pitch and tone can catch a jury's attention at crucial moments. Moreover, establishing a rhythm or pattern with words can effectively impact a jury. *Id.*

#### Limit Your Use of Notes

Reading a closing argument, whether from notes or a full text, is simply not an effective way to persuade a jury to find in favor of your client. Every advocate should learn to create the impression of speaking extemporaneously—notwithstanding, you must still prepare very carefully and thoroughly. As noted above, you should prepare an outline of the closing argument, which should include a roadmap of your core defense themes, the essential pieces of evidence that highlight those themes, and the inferences and conclusions that naturally follow from the evidence. Then use that outline to rehearse your closing. Dailey, *et al.*, *supra*, §11.3. There is nothing wrong with referring to notes or an outline during a closing argument, especially in a lengthy or complicated case—just don't use the outline as a crutch, reading it to the jury.

#### Share Your Passion about a Case with a Jury

You must share your own passion for a case with a jury. If you are not engaged in a case, you cannot expect the jury to be moved to decide the case in your favor. You cannot fake passion—it has to come from the heart. Recognize what drew you to the case, to the client, or to the issues in the first place, and turn that recognition into passion for the client and the cause. When jurors see, hear, and feel passion, they cannot help but be moved, impressed, and excited. Reaching a jury on an emotional level can

make all the difference between success and failure, or between spectacular success and partial success. Remember, a jury is more likely to care about your case, and about your client, if it sees that you care. Ask yourself, when you speak would you rather be similar to Demosthenes, of whom people said, "How well he speaks," or would you rather be similar to Cicero, of whom people said, "Let us march!"

#### Be Sincere in Your Delivery

It is impossible to convince a jury about something that you yourself do not believe in. As one legal commentator has noted, "Sincerity is the common denominator of successful arguments." John F. Kuppens, *Effective Closing Arguments*, *The Young Lawyer's Guide to Defense Practice*, at 370 (DRI 2006). Sincerity and credibility are intimately linked. If you are sincere, a jury will like and trust you, and it will make it easier to present an argument if you are simply talking honestly about what you believe is right. *Id.*

Eye contact and body language are important in conveying sincerity. Look jurors in the eye when you speak to them. Eye contact helps establish credibility. Avoiding eye contact sends the signal that perhaps you do not believe in what you are saying. Ness and Bagwell, *supra*, at 33. Stand up straight, and project an aura of confidence. And above all else, remember: if you do not believe it—don't say it.

#### Do Not Personally Attack Your Opponent

No matter how much you dislike your opponent's tactics, do not launch personal attacks against an opposing counsel. Confine your criticism to the testimony and the credibility of the witnesses. Not only do personal attacks detract from the effectiveness of your closing argument, they can serve as grounds for a defense verdict reversal and the grant of a new trial. *See, e.g., New York Central R.R. Co. v. Johnson*, 279 U.S. 310 (1929); *Missouri-Kansas-Texas R.R. Co. v. Ridgeway*, 491 F.2d 363 (8th Cir. 1951); *State v. Gregory*, 501 P.2d 387 (Ariz. 1972); *Cecil v. Gibson*, 37 Ill. App. 3d 710 (Ill. App. Ct. 1976).

#### Use Demonstrative Aids

Study after study has confirmed that people process visually presented informa-

tion very effectively, and a combination of orally and visually presented information works best of all. Although "a picture is worth a thousand words" is an overworked cliché, in this television age, it remains an important truth. You used visual aids and graphic exhibits during the course of trial—don't forget to selectively use them during the closing argument. Demonstra-

**A jury is more likely to care about your case, and about your client, if it sees that you care.**

tive exhibits can convey considerable information or a big concept in a very efficient and simple way. Directing a jury to a few chosen words that you have highlighted on an enlarged copy of a vital document or showing a computer animation about how an accident likely occurred can have a tremendous impact on a jury. Develop at least one good exhibit to illustrate the central theme of your case and use it throughout the closing argument. Once you have completed your use of an exhibit, put it away, so that jurors' attention is not distracted from your further argument. And always make sure that your opponent's exhibits are put away before you deliver your closing argument.

#### Be as Brief and Succinct as Possible

When asked for his advice about what makes a good speech, Franklin D. Roosevelt had the following to say: "Be brief; be sincere; be seated." Roosevelt, himself a lawyer, could just as easily have been talking about a closing argument.

At the beginning of a closing argument, a jury will completely focus on you. However, this total concentration and attention will not last very long. Therefore, using those precious early moments effectively is extremely important. Structure your closing argument to ensure that your most persuasive points are made as quickly as possible. You cannot do this if your argument is lengthy and complicated. Accord-

ingly, your closing argument needs to be short, simple, and logical. Striving for brevity should and will lead to simplicity, and simplicity is much to be desired when it comes to closing arguments. Ness and Bagwell, *supra*, at 35.

#### **Be Respectful**

Always show dignified respect to the court, the jury, the lawyers, and the trial process in general. Failure to follow this rule can hurt you in a couple of different ways. First of all, if you disrespect the players or the process during your closing argument, you

will divert attention from the substance of your argument. In addition, to the extent that you demean the proceeding or its participants, you imply to a jury that you think that their participation and the sacrifices they have made to hear the case are unimportant. Alexander, *supra*, at 196.

#### **Conclusion**

The successful closing argument is depends on complete and thorough preparation. The sooner this preparation begins in the litigation process, the better for an attorney and his or her client. The closing argument

is the culmination of your trial strategy. It should bring to bear in a cohesive manner all the key elements of your case and expose and exploit all the weaknesses of the opposing party's case. The closing argument provides defense attorney with the opportunity to bring jurors back to earth on the issue of damages. It also can be the time when an ill-prepared attorney can do the greatest damage to an otherwise successful presentation of his or her client's case. For all these reasons, the closing argument is of critical importance to any trial's outcome. 