

MAJ TRIAL SKILLS SEMINAR: PLAINTIFF'S CLOSING ARGUMENT

And God said: "Let there be Satan, so people don't blame everything on me. And let there be lawyers, so people don't blame everything on Satan."

- George Burns

I. Introduction

While justice may be blind, jurors most certainly are not. We are judged by what we say, what we do, what we look like, how we interact with the court and our opponent and in a host of other areas from the outset of any trial. We are judged while in the courtroom and while out of it. The challenge we face is in making sure that the message we convey while we are being judged matches the message we are trying to convey, all the while remembering the uphill battle we face from the moment we walk into the courtroom.

But fret not. We are not without weapons and armor in our battles. Rhetorical principles as old as the Roman Empire, social psychological principles developed over the last several decades and modern visual aids exist to assist us in persuading jurors to see things our way.

II. Rhetorical Principles

The ancient Roman orator, Cicero, developed five canons of persuasion that still work today: invention, arrangement, style, memory and delivery. First, invent what you intend to say. Then decide what order you want to say it in; determine how you will style it to suit the jury; write it all down and learn it; and, finally get up and win your case.

A. Invention

While inventing your argument it is important to always remember the golden rule of persuasion: remember you are attempting to obtain the jury's agreement with your position. You are not attempting to outscore your opponent. Many times your opponent acts as if the sole point of an argument is to humiliate you or get you to admit defeat. Does he want to score points? Let him score points. All you want to do is win – to get the jury to accept your choice or do what you want it to do. People often win arguments on points, only to lose the battle.

With that said, here are several tips for us to keep in mind when inventing an argument:

- *Three Core Issues:* There are only three core issues about which we argue: blame, values and choice. A properly crafted closing argument will address all three of these core values, but will primarily focus on choice as the central issue. This is because choices are about the future and solving problems **that benefit the jury**. It is best when the choice is framed around commonly held values of the jury (remember to never argue against the inarguable).
- *Three Forms of Argument:* There are three forms of argument: logical argument, emotional argument and character-based argument. These three forms work best when utilized together. As to the first (logic), look for your opponent to provide you the opportunity to utilize his logic to your advantage. As to the second (emotion), transform yourself into an emotional role model for the jury, letting the jury see your own emotions change when appropriate as you make your points. As to the third (character), match your presentation – your appearance, tone and manners – to the jury’s expectations. I’ll address each of these forms in reverse order.
- *Character-based Argument:* The three components of an argument by character are virtue (the jury believes you share their values), street smarts (you appear to know what to do in action) and disinterest (the jury’s interest and understanding appears to be a paramount concern).
 - *Virtue:* The key to this form of argument is to present yourself and your case in a way that feels familiar to the jury (conform your speech, attitudes and beliefs to those of the jury), while avoiding the impulse to mimic. Consider the parent who talks baby talk to a five year old. The parent doesn’t just look silly to other parents; the child is insulted. Who among us has heard, “Don’t talk to me like I’m a baby!” Inauthenticity is among the worst sins a lawyer can commit.
 - *Street Smarts:* This is where your intimate knowledge of the case comes in play. The jury has to believe you (i) understand the strengths and weaknesses of your case and (ii) can provide them with a way of reaching a decision. When crafting a way for the jury to reach a decision, consider providing three options – one on each extreme and a third option in the middle. This approach provides the dual advantage of presenting your opponent’s argument as extreme while allowing the jury to feel like it has provided a moderate solution.
 - *Disinterest:* The goal here is to seem selfless and likable. When providing your third way, middle approach, act as if you

reluctantly reached the conclusion that it was the best approach (because of its overwhelming rightness) and even though choosing it will harm you (less money than the most extreme choice). Along the way, do not be afraid to show doubt in your rhetorical skills and to use humor. Sometimes we can seem too polished.

- *Emotional Argument:* Emotion comes from personal experience and expectations we formulate from that experience. Consider the following tools to evoke the emotion of your jury without making a blatant and insulting call for raw emotion:
 - Tell a story in the first person that calls on the jury's past experiences.
 - Control your volume. Draw the jury to you with soft speech. Reach out and grab them with louder speech.
 - Use simple language. Emotional speech does not come from a place of logic. It comes from a place of feeling.
 - Use anger only when you can portray a matter (whether testimony or act of your opponent) as belittling of the jury. This is to be distinguished from a matter that belittles your client or you.
 - Impart importance to the jury as a collective body, particularly when their decision can expressly reject a well-established policy or practice of your opponent that is outside the bounds of reason.
 - Do not tip off your emotion or else the jury will resist it. It will seem either fabricated or too over the top.
- *Logical Argument:* The key to all logical argument is to organize your case in a fashion that is persuasive to your audience, not you. To do this, you must start with what the jury already believes, values or desires. This is where the "Rules of the Road" come into play. We must craft basic common-sense, inarguable principles that were violated by our opponent (deductive logic). Make sure your rules encompass all of your liability-turning issues and phrase them in the future tense. Introduce the rules in voir dire, explain them in opening statements, use them in the trial and fit them into our choice for the jury in closing arguments.

B. Arrangement

Now that you know what you want to say, it is time to organize your thoughts. The rule of thumb is to start with emotional argument, then segue to logical argument and conclude with character-based argument. The classical presentation outline is arranged like this:

1. *Introduction*: Use emotion to gain the good will of the jury. Remember that you do not need a strong emotion to persuade the jury. Instead of telling a joke, something as seemingly innocuous as “I made some prepared remarks, but after seeing you this morning, I’m going to leave them here on the table. I hope you’ll forgive me if I stumble on my words a bit.” The goal is to grab the attention of the jury at this stage.
2. *Narration*: Tell the history and relevant facts of your case in a chronological fashion. Make sure the facts are brief, clear and plausible. What you tell the jury should sound usual, expected and natural. And do not repeat yourself.
3. *Division*: List the points where you and your opponent agree and disagree. This is where you organize your points within the umbrella of your rules.
4. *Proof*: This is when you tell the jury why each issue within your rule should be decided in your favor in a common-sense way with everyday examples and shared common experience.
5. *Refutation*: Dismantle each of your opponent’s arguments by illustrating their logical flaws, their absence of factual support and most importantly, how deciding the way of your opponent will not benefit the jury in its everyday life when it leaves the courtroom. Again, always aim toward the jury’s future. What is better for them, not you?
6. *Conclusion*: Restate the rules and, in summary fashion, how they were violated. Remember to use reluctance and disinterest. Genuine emotion is okay. Manufactured emotion is your worst sin.

C. Style

The five elements of speaking style are (i) the use of proper language, (ii) clarity of language, (iii) vividness of language, (iv) ensuring that you speak in familiar terms and (v) the rhythm and cleverness of your words.

1. *Proper Language:* Use a certain basic level of formality. You are in a courtroom and are dealing with serious, life-altering matters. Jurors expect and want that as much from you as they expect and want their preacher to use a certain level of formality in the delivery of his sermon. But don't unduly focus on eloquence and don't fret if your delivery is not perfect. One of the things that endeared George W. Bush to his voters was his inartful choice of words.
2. *Clarity:* This should be self-explanatory. Always, always use easily understood words and avoid legalese like the plague.
3. *Vividness:* This involves creating a mental picture for the jury. Remember to use videos, photographs, satellite imagery and documentary proof to assist in this regard.
4. *Decorum:* Do your words fit your audience? Have you used any language that may mark you as an outsider, someone who just doesn't get it? Talk about the same things the locals talk about in making your presentation.
5. *Ornament:* Follow this simple test. Record your speech and watch it. Does it sound good when you watch yourself? Be your own worst critic.

D. Memory

Create an outline, not a word-for-word verbatim speech. If you know your case as you should, you should do fine. If you are comfortable with the technology (and if you're not, you should be), use PowerPoint to trigger your memory while also engaging the jury with visual evidence. Here are the DOs of PowerPoint:

- Edit slides down to the essence of the matter and use as few words as possible.
- Ensure the slide clarifies and enhances the message and that it does not detract from it.
- Use simple pictures or icons.
- Use your slides to build element upon element, adding one point at a time.
- Use a black screen between slides to keep the attention on you.

And here are the DON'Ts of PowerPoint:

- Use too many words.
- Use too much graphic design.
- Present more than one point on a slide at a time.
- Show a slide before you explain the concept behind it.
- Use technology for technology's sake.

E. Delivery

Vary your voice inflections and speed for punctuation and to retain attention. Make eye contact. And most of all, be true to yourself and your emotions. That way, you can avoid the curse of George Burns.