



Closing argument: Now what?

In the end, a civil trial is about the money and you must ask for it!

BY VICTOR L. GEORGE

“Be strong.” “Be effective.” “Persuade the jury.” “Don’t back down.” These are common themes which are present in the hundreds, if not thousands of articles on closing argument. I am not writing to tell you any “trade secrets” or “secret words” to transform closing argument into millions of dollars in a verdict. Instead, the simple hope of this article is to allow the young practitioner to go from being inspired to practical steps needed to take to winning any jury trial.

By the time you reach closing argument, the obvious has already been completed: 1) You have met and bonded with the jurors in voir dire; 2) you have laid a roadmap in opening; 3) you have built up credibility throughout the presentation of evidence, either in the form of testimony or exhibits.

The question then becomes, now what? Regardless of the type of case or damages being sought, closing argument is the final opportunity to appeal to the jury. This is the last time you get to speak to the jury about what matters. The testimony is complete, evidence is in, jury instructions are read, and it is now show time!

Below, I address several practical steps that every practitioner should address in closing arguments.

Remind the jurors of defendant’s conduct

Oftentimes, the defendant’s unlawful conduct is more important than your client’s rightful conduct in driving damages. Similar to the reasons why almost every top plaintiff’s attorney will call all

witnesses under Evidence Code 776 (Adverse Witness in Case in Chief), the defendant’s wrongful conduct, why it was wrong, and who was aware of the wrongful conduct, as well as their motivations, are key to increasing the value and justifying damages to the jury.

Members of the jury pool, like most humans, care more about themselves than others. The key issue to home in on is why *they* would be upset, why *they* would think this scenario is wrong, and why *they* would never want their family members to be treated the same way. Synthesizing and filtering the evidence solely as it relates to defendant’s wrongful conduct is paramount in any closing argument, even before discussing any damages to the plaintiff. Only then can you ask the juror to hold defendant accountable and argue to them how best to do so.

Plaintiff is here for money

One of the most awkward and uncomfortable topics during any closing argument for a young practitioner will be the topic of money. The jury will not believe the damages you are seeking if you do not. If you think the number you are throwing out is preposterous, so will the jury. So the first step is to get comfortable with asking for lots of money, knowing that this is a “negotiation” with the jury.

At its core, any civil jury trial is about money. Explain that money brings closure. Explain that the civil system provides for a plaintiff to be awarded money for pain or death; jail is not an option in this court.

Remind the jury that your multi-million dollar request was first initiated

at voir dire; asking for money is not obscene, it is the only reason we are here in court. Argue for very high damages and allow the jury room to justify a lower amount. Similar to any mediation, no defense attorney will agree to your opening demand. Likewise, on the majority of occasions, a jury will simply reduce any amount you request as a means of doing what is “right” or “fair” by both parties.

It is worth noting here that on more than one occasion, I have seen lawyers during closing arguments ask for millions of dollars, then also ask for \$2,000 in burial expenses, or \$10,000 in non-economic damages. Do not seek trivial damages and allow the jury to do you a favor by “permitting \$2,000 burial expenses,” then agreeing with the defense attorney that you should only be awarded 20 percent of the overall damage request you have asked for.

Explain verdict form, step by step

While lawyers on both sides often spend numerous hours on drafting the verdict forms, lawyers often do not spend sufficient time in filling out verdict forms, and explaining to the jury what they should fill out.

As much as you think jurors really care about your case, they cannot care nearly as much as you do. Jurors have families, their own lives, careers, etc. Any step that you can take to assist them practically with handing you a victory is worth doing, particularly as it relates to the verdict form.

During closing argument, a sufficient portion should be dedicated specifically to the verdict form. Use the Elmo or



PowerPoint to display the verdict form in front of the jury. Go through *each* question, even if it is as simple as “Was plaintiff an employee?” It is important to walk the jury through each step of the verdict form, each question, what evidence supports your conclusion, and clearly explain (and write with a marker or via PowerPoint) which answers should be marked “yes” or “no,” amounts, etc.

This is also the appropriate time to justify the suggested apportioned percentage on negligence (100 percent for the defendant). Explain the monetary request through a variety of methods, including explaining the request on a per diem basis. Another method is to compare the loss to a Monet painting, or a fighter jet or something else of substantial value.

Jury instructions

Pick the key jury instructions to argue and discuss with the jury. Go slowly through the most important CACI instructions with jurors. Blow up the jury instructions and explain the instructions to the jury. Take your time and continue explaining how these instructions are applicable to you proving your case and which evidence supported which factors.

Yellow highlight and reiterate instructions. Make sure to read and re-read the most compelling and most harmful jury instructions for your trial as you will need to defuse the defense before they get their opportunity.

Plaintiff is strong, a fighter

Remind the jury that you did not hear any whining or complaining from the plaintiff. Instead, reinforce to the jury that your plaintiff refuses to “surrender.” You are not asking for sympathy or pity. Also, present evidence of plaintiff’s injury through doctors, relatives, friends, people who know and care for plaintiff, etc., not just the self-serving plaintiff.

Points to make in a wrongful death case and catastrophic injury case

In a wrongful death case, explain that death is the worst thing that can happen. Death is exponentially worse than any harm or loss. Death comes in an instant! The decedent will never again see, speak, touch, laugh, think, hug, engage, etc. Finally, explain that money is necessary to allow closure.

If it is a catastrophic injury case, describe that the pain is all consuming, it takes over your life. Pain intrudes in every part of your life; it becomes your personal hell. Pain makes people wish they were asleep instead of loving life, enjoying life, and not hurting.

Be very graphic about the type of injury the plaintiff suffered. Use videos and pictures. Family trips. Remember, a video and picture may be stronger than any description with your words.

Jurors are not fragile

The combined age of an average 12 jurors equals 400-500 years of life

experience. Trust the jury. Even most lawyers will agree that even when hit with a loss, they will typically think the jury did what was fair or the best they could in their own minds. Remember, closing argument is your last chance; do not sugar coat anything. Do not leave anything on the table.

Rebuttal

Finally, always set aside some time for rebuttal. Clear the time breakdown with the judge. It is the last chance to appeal to the jury. At this late point in the trial, the defense’s position will be clear cut. Time for you to crush that defense. Make sure to preempt and leave some good facts to present in rebuttal; home in on any small mistakes made by the defense.

This is your time

Try your cases. You will never have a chance at a closing argument if you do not take your cases to trial. Although you will likely be nervous, embrace every minute! This is your time to shine!

Victor L. George was CAALA's 2005 Trial Lawyer of the Year Award. He is an Emeritus Member of the CAALA Board of Governors, sits on the CAOC Board of Governors and is a Leaders' Forum Club member of the American Association of Justice (AAJ).



George

