

The Last Word: Closing Argument

By Sharla J. Frost



The closing argument provides an opportunity to amaze and enthrall a jury with the summary of why your side has won. Strong closing arguments share common characteristics: they are organized, focused, and persuasive. Organization requires time—something that is in short supply during a trial. Prepare a generic closing in draft mode before the trial starts. This allows you to incorporate the evidence and testimony as you go along, streamlining the creative process later.

Variations on a Theme

Trials are thematic. Early in the case, identify the theme or themes. The opening statement, the witness testimony, and the cross-examinations all build on the trial themes. The closing argument provides the opportunity to incorporate the themes, the evidence, and the rebuttals into one streamlined delivery, during which you demonstrate why your side should win.

Closing arguments possess many of the same characteristics of a persuasive brief. And just as a brief writer's page limit, argument time is not unlimited, either. Be strategic and critical in determining what goes in the summation of the evidence.

1. Synthesize the most persuasive, important parts of the case into a concise, efficient recapitulation of the proof.
2. Pick one or two of the most significant points made by each witness and determine if you need to present them all or select one or two of the most significant witnesses to highlight.
3. Identify the strongest arguments and the best evidence that you presented, then present that portion of the record.
4. Note the time and date of important concessions in case the judge or jury needs a portion read back.

Structure of the Closing

Use the jury charge and instructions to guide the information that you are presenting.

Quote and display in your PowerPoint slides, or on a screen, the specific language of the relevant statutes or rules to explain how you met your burden or how the other side did not. Tell the jurors how the evidence supports a finding in your client's favor in each step.

Provide a visual representation and mark the boxes that you believe the jury should choose so that the jurors know exactly what you want them to do.

Use Graphics!

Incorporate graphics or artwork into your presentation. Jurors live in a digital world and your illustrative materials should be short and interesting.

1. Avoid slides that have nothing but blocks of text with small words and little space.
2. Use simple graphs if they make sense to your argument.
3. You will need help with the graphics. Consider hiring a professional or select the most technologically adept member of your team, to create and refine the artwork and slides.
4. Give the same type of focus to your visual presentation that you do to your oral presentation.

Proofread!

Make sure that someone else proofreads each and every one of your slides. While typos or grammatical errors won't matter to every juror, they will matter to some.

Observe the Ethics

Know the relevant case law to ensure that your advocacy does not violate any local case law standards or the local rules of ethics. Argument does not mean that there are no boundaries. A good closing touches on the strongest and most meaningful evidence presented in the trial, along with explanations of the significance of missing evidence or witnesses. While you can challenge the credibility of a witness, do not personally impugn him or her.

Remember that the closing argument is an advocacy piece. The name is “argument” for a reason. You can make extrapolations from the evidence presented. However, you do not have creative license. Both the rules of ethics and common sense require that you be able to support the arguments that you make. Avoid ad hominem attacks on the lawyers on the other side.

Know Your Time Limits

If there is no case management order or published courtroom rule about time limits, ask the judge during the pretrial conference. You should practice the argument to ensure that your performance fits within the amount of time you will have. Nothing hurts a trial lawyer’s psyche worse than running out of time to present a brilliant closing argument.

Prepare for Objections

Anticipate objections by your opponent. If the point is crucial to your argument, be prepared to address the objection, just as you would an objection to evidence. If it is not a crucial point, concede it and move on. Objections in closing are often a strategic attempt by your opponent to interrupt your flow or stop your momentum. Expect some interruptions but be prepared to keep moving. Do not lose focus.

Have a Plan B

Practice using the computer and video equipment that you will use in the courtroom and have a backup plan for the mechanics of the closing. Know what to do if the electricity goes off, the projector breaks, the computer crashes, or

some other random emergency happens. Be sure that someone on your team has a backup computer with a complete, final version of your slides, a hard copy for the judge, and a thumb drive with an extra copy of the materials on it. Something always goes wrong, but if you are prepared, you will not get sidetracked by a technology glitch.

Have a Clock

Arrange for a means of keeping track of the time elapsed during the argument. Designate someone on your team to ensure that you are aware of the countdown to the end of the closing so that you do not run out of time before you make your winning point.

Memorize the Wrap-up

Practice your final remarks so that they are automatic. Even if your time is cut short, look the jurors in the eyes at the end of your remarks and say, “Thank you for your time, your service, and your attention. We look forward to receiving your verdict at the completion of your deliberations.”

You made it through the trial. You’ve got this.

[Sharla J. Frost](#) has been the first chair in more than 60 trials over the past 32 years. A native of Frogville, Oklahoma, she combines her cattle ranch background with Baylor Law School training to obtain defense verdicts for Fortune 50 clients. She is a partner with the Houston office of **Tucker Ellis LLP**. A longtime member of the DRI and of the DRI Women in the Law Committee, she is a member of ABOTA, former President of Litigation Counsel of America, and recipient of numerous professional awards and accolades.