

Closing Arguments:

Advice for the Drug and Medical Device Defense Attorney

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I. Introduction

“A very wise judge once said that no trial lawyer needs to be told how to make a summation because within the inner recesses of his heart every advocate earnestly believes that he is a lineal descendant of Demosthenes with a little kinship to William Jennings Bryan and Clarence Darrow thrown in for size. For this reason it is difficult to say anything about the subject which would be of interest.” Manley J. Bowler, *Oral Argument in Criminal Prosecution*, 52 J. Crim. L.C. & Proc. 203 (1961). With all due respect to Mr. Bowler and his very wise judge, not all attorneys are blessed with the wit and presence of these historic orators and litigators. For those who seek and would value some guidance, there are practical ways to improve one’s craft of advocacy with regard to the closing argument, “an important part—and perhaps the most neglected part—of any judicial proceeding.” J. Joseph F. Anderson, Jr., *The Lost Art: An Advocate’s Guide to Effective Closing Argument*, at Introduction (2d ed. 2002). The methods and examples outlined here are merely a starting point; further research, practice, and observation are keys to developing skills that will produce effective and memorable closing arguments.

In the introduction to his excellent book, William Safire outlines the ten steps to a great speech. Although not written specifically to address closing arguments, his words apply to them with equal wisdom. The first step, according to Safire, is the welcome. “Shake hands with your audience. . . . Make the first step a quickstep; get your smile, then get to work.” William Safire, *Lend Me Your Ears: Great Speeches in History* 21 (1992). Let’s get to work.

A. Goal: Get the Jury to Make Your Closing Argument

The term “closing” or “final” argument is, to some degree, a misnomer; what is commonly referred to as a “final argument” is more accurately a “penultimate argument.” An effective attorney will always take the approach that the closing argument is not the completion of the case, but rather it is the springboard that will propel and influence the actual “final” argument: jury deliberations. “Opening statement and [closing] argument are special times. They are opportunities to speak directly to the jury. If they are to make a difference, they must rest on a clear understanding of what the lawyer wants to do.” James W. McElhaney, *Trial Notebook* 633 (3d ed. 1994). The goal, therefore, of the closing argument is not simply to persuade undecided jurors that your client should win,

It is to arm “your” jurors—the ones who already have decided that your client should win—with enough logical and persuasive arguments to convince those who are still undecided or are leaning the other way. Once they are in the jury room, your jurors have to do the work for you. Give them as much as you can to work with. They will not be able to come back to you for more if they are losing the fight inside the jury room.

Patricia Lee Refo, *Closing Argument: A String of Pearls*, *Litigation*, Fall 1998, at 38. If done effectively, jurors will enter the deliberation room armed not only with all the evidence and the law as the judge has given it to them, but with an established framework—your themes, emphasized from opening to closing—for evaluating the evidence and applying the law. They should know that the plaintiff was counseled about the risks associated with the prescription drug and elected to take it anyway, or that the device performed its intended function before failing. The jurors should also be familiar with the evidence that supports your themes, allowing them to make their own persuasive arguments to fellow jurors in the deliberation room.

For the defense attorney, the closing argument is extremely important as it is the “first opportunity to function truly as an advocate.” Henry B Alsobroo, Jr., *Closing Arguments*, in *Defense Counsel Training Manual* 330 (C. Barry Montgomery and Richard B. Allen ed., 1995). The closing argument is “your only chance to tell your client’s story in your words, on your terms, drawing the inferences and conclusions that you want to draw.” Refo at 37. More significantly, “[b]ad summations [or closing arguments] do convert victory into defeat. Good ones preserve victories, frequently turn cases around, and almost always have a substantial effect on the quantum of damages and the fate of peripheral parties and counts.” Daniel P. Levitt, *Rhetoric in Closing Argument*, *Litigation*, Winter 1991, at 20.

B. Summation versus Argument

Before moving to the content of a closing argument, the distinction between the two terms *summation* and *argument* is worth nothing, although they are used interchangeably. Summation, as the term suggests, is simply a summary of the evidence. Summation can be useful when the facts are long and complex, when there are many witnesses, where the course of the trial has been somehow interrupted.

Summing up means going over the evidence. It is not so much argument as it is a preliminary to argument. Unfortunately, some lawyers use summation in place of argument. That is often a mistake. It is usually a waste of time going over testimony that is already understood or hammering home facts that were accepted long ago.

But argument is different. Argument does not suggest a mere summary. Argument brings to mind persuasion addressed to the thorniest problems a case can present. Most cases need a summary of facts at the end, but most of them could profit from good argument.

McElhaney at 634. “No one—certainly not the jury—wants to hear a flat recitation of what the witnesses said during the trial. The jurors heard and saw the evidence, and they neither want nor need to have it recited line by line.” Thomas A. Mauet, *Trial Techniques* 407 (5th ed. 2000). Litigators should, therefore, prepare closing arguments with the emphasis on arguments. You cannot effectively summarize large and often complicated amounts of information, like scientific studies in a pharmaceutical trial, in closing. Jurors do not want to hear a summary of each study and its results. They heard this information, probably in great detail, from the witnesses during the course of the trial; therefore, resist the urge to summarize each study in closing. Instead, focus on your themes and how the studies support those themes to persuasively argue your theory of the case. This increases the likelihood of the jurors deciding the case in your favor, and that they will feel good about it afterwards.

II. Organization of the Closing Argument

Shapeliness is a necessary component of any great speech, including closing arguments. The closing must have a structure, a thematic anatomy, “perfect oratorical style: the imperative mood, the force of a command, the parallel structure that invites a rhythm in delivery.” Safire at 21. In other words, “Tell ‘em what you’re going to tell ‘em; then tell ‘em; then tell ‘em what you told ‘em.” *Id.* at 21.

A. Plan Ahead

As one noted jurist has stated: “good closing argument requires preparation. Very few lawyers are so gifted that they can carry the day by the sheer force of their innate abilities.” J. Joseph F. Anderson, Jr., *The Lost Art: An Advocate’s Guide to Effective Closing Argument*, at Introduction (2d ed. 2002) at 6. According to Judge Anderson:

Sometimes less is more. Mark Twain once observed that few sinners are saved after the first twenty minutes of a sermon. Woodrow Wilson is credited with saying “If you want a two hour speech, I’ll need two minutes to prepare it, but if it’s a two minute speech you want, I’ll need two hours to prepare that.”

The rule that less can be more is no less true in the local courtroom.

Id. at 6-7. The planning that goes into the presentation of a closing argument will greatly increase the clarity of the argument as well as its effectiveness. The general frame of the closing can be developed days or even weeks in advance of its actual delivery.

Part of that planning, and a tool used by many lawyers, is the development of smaller “modules” or “boilerplate” that can be created in advance, committed to memory, used, and recycled when the occasion permits. These “modules” can cover various recurring issues that are encountered in every case (*e.g.*, burden of proof, credibility, circumstantial evidence, *etc.*) and may also be appropriate for issues that are certain to play a substantial role in the particular case (*e.g.*, safety, efficacy, warnings, *etc.*). With more case specific “modules,” however, counsel must be cautious about developing them in advance of trial using evidence or facts that may not be introduced, or could be excluded at trial. Developing them early and reviewing them often can increase a lawyer’s familiarity and confidence on those issues, and therefore increase the effectiveness of the closing argument. *Id.* Just be sure that as the trial unfolds, the facts and evidence in the “modules” conform to the record at trial.

When planning and organizing your closing argument, do so in a manner that gets the jury focused on your issues and your client’s desired outcome as quickly as possible. Jurors, like anyone, have limited attention spans to presentations that do not grab and hold their interest. They may also be tired and ready for the trial to be over so that they can get back to their families, jobs, and regular routines. Do not waste the limited amount of time you have where the jurors are giving you their full attention. “Use those precious first moments effectively. Do not squander them thanking the jury for fulfilling their civic duty, for their patience and attentiveness during the trial, blah, blah, blah.” *Refo* at 40. “Focus on grabbing and keeping the jury’s attention... the opening part of your closing is extremely important.” *Alsobrook* at 332. “Your introduction should be relatively short. Jurors are apt to give their most serious attention to the first part of your speech. Don’t squander the opportunity to reach the jurors before their interest dissipates.” *Anderson* at 33.

B. Flow of the Closing Argument

Maintaining the jury’s attention throughout the closing requires not only planning and effort, but speaking in such a way as to excite and galvanize. “A skeleton needs life. Beyond structure is pulse. A good speech has a beat, a changing rhythm, a sense of movement that gets the audience tapping its mind’s foot.” *Safire* at 21-22. Since not every word of the closing argument will be remembered, the pace and feeling of the arguments should convey the same concepts as the actual remarks. Pause occasionally and let jurors have the opportunity to take in important points. “My belief is that listeners hear speech, not in a sequence of words—one after the other—but in chunks; and what I try to do, though I may seldom succeed in my good intentions, is to throw out words in bunches...like that...and then pause long enough for the listener to take that bunch in.” John Hilton, BBC Broadcast (July 1, 1937), in William Safire, *Lend Me Your Ears: Great Speeches in History* 526 (1992).

The variance of the rhythm is as important as its existence; the ebbs and flows of the closing are what will preserve the jury’s interest. The closing “should first engage the interest, and allow a dip for the audience to get comfortable as the speaker works his way into the theme; then it should build toward its key moment well ahead of the peroration.” *Safire* at 23. Or as more famously defined: “[E]verything important to his purpose was

said at the exact moment when he had brought the minds of his audience into the state most fitted to receive it.” John Stuart Mill, *Autobiography* 19 (1909).

Repetition and parallelism are invaluable tools to a litigator. From Jesus in the Book of Matthew (“Blessed are the poor in spirit . . . Blessed are they that mourn . . . Blessed are the meek . . .”) to John F. Kennedy, Jr.’s first inaugural address (“Let both sides explore . . . Let both sides seek . . . Let both sides unite . . .”), these tools have been used to great effect for thousands of years in some of the best-known speeches of human history. Adding pulse to a closing argument allows the attorney to walk the jurors down the path of his choosing, building tension and excitement as he progresses through his closing.

The question of the proper speed in the closing argument is a very fine line. On one side, the attorney is trying to fit all of his points and arguments into a reasonable length of time so as to maintain the jury’s interest. On the other, he recalls Judge Anderson’s “advice in a nutshell: Most attorneys need to slow down during [closing argument]. My sense is that juries distrust attorneys who talk exceedingly fast in an effort to cover all their material within the allotted time—it looks as though you’re trying to slip something by them.” Anderson at 8.

III. Content of the Closing Argument

A. Restate Your Theme and Fulfill Your Promises

The single most important ingredient to a closing argument is its theme. “In the end, you must answer in a word or sentence the question of the person who couldn’t be there: What was the speech about?” Safire at 24. You want every juror in the deliberation room to be able to answer that question without hesitation, by restating your themes and theory of the case. To do that, everything about the closing argument should be aimed at reinforcing the theme, filtering the evidence through the theme, and giving the jurors the necessary reasoning to take that theme with them into the deliberation room and make the “final” argument for your client.

Your closing argument must reiterate and conform to the themes that have been the focus of your case since opening statements. In order for your theme to dominate in the deliberation room, you must have provided the jury with the critical evidence that supports your theme. “Closing argument should show them that you kept your promise.” Refo at 39. Remind the jurors that you told them in opening statements that the plaintiff was a risk taker, and remind them of the evidence that supported that theme (*e.g.*, elective surgical procedures, thrill-seeking hobbies, use of unregulated herbal supplements, *etc.*) so that they understand your argument, the support for that argument, and are prepared to make your arguments to their fellow jurors in a persuasive manner using the evidence you have given them.

“The attorney who represents a corporate defendant in a tort case must [also] never pass up an opportunity to ‘personalize’ the defendant for the jury.” Anderson at 28. This is particularly true for attorneys representing drug and medical device manufacturers in cases that involve allegations of personal injury. Most jurors’ only exposure to pharmaceutical corporations is through biased media accounts or political campaign messages that refer to these companies in less than flattering terms, such as: “[o]ur health care system is rigged by the big drug companies and insurance companies to benefit themselves at the expense of the American people.” John Edwards, Address at Henderson, Nevada (Jan. 17, 2008), <http://www.johnedwards.com/issues/health-care/20080117-health-care>(last visited Feb. 12, 2008); and “[c]orporate greed and political calculation have taken over our government and sold out the middle class. Our government is selling out their future at the command of lobbyists and their corporate clients and we have to rise up together and stop it.” *Id.*, at <http://www.johnedwards.com/issues/health-care/20071216-lifting-the-middle-class>. These “big drug companies” are our clients and it is against this backdrop that we must defend their interests at trial.

As a result, counsel in drug and medical device cases must personalize the defendant at every opportunity, including the closing argument. Use the names of your client's witnesses, that is, "Ms. Witness," instead of the "Company's Director of Research and Development," and use every possible opportunity to portray the company as a collection of individuals, instead of a large, lifeless entity.

B. Analogies in Closing Argument

"The greatest weapon in the arsenal of persuasion is the analogy, the story, the simple comparison to a familiar subject. Nothing can move the jurors more convincingly than an apt comparison to something they know from their own experience is true." McElhaney at 646 (*citing* Craig Spangenberg, *Basic Values and the Techniques of Persuasion*, Litigation, Summer 1977, at 13, 16). Analogies are extremely effective tools in closing arguments. This is true, according to one commentator, for two reasons: (1) good stories command the attention of the audience, and (2) they challenge the audience to test their appropriateness to the point made, in other words, they test the analogy by reasoning through the problem—thereby arriving at the conclusion on their own. *Id.* at 646-47. "Analogies—whether simple allusions or detailed stories—are a distinguishing mark of outstanding closing arguments. They lead juries to draw their own conclusions, which they believe more fervently than if they had merely been told what conclusion to reach." *Id.* at 647.

Analogies come in various forms and it is important for the lawyer to choose stories that he is comfortable telling and to tell them in a way that is comfortable for the jury to receive. Not everyone is comfortable using every story. Some attorneys might be comfortable with a story from *The Odyssey*, and others may be more comfortable with a story from the Bible. The same is also true for the jury. *The Odyssey* may not resonate with a jury that is unfamiliar with Greek mythology. On the other hand, stories from the Bible might be inappropriate for a jury that is more likely to have individuals from different ethnic and religious backgrounds.

Provided it fits your case and jury though, an attorney defending a drug and medical device company may find a story from Homer's epic poem, *The Odyssey*, useful at trial where plaintiff's conduct in light of warnings are at issue. During Odysseus' 19-year journey home following the Trojan War, he was told to beware of the Sirens while at sea. The Sirens, he was told, used beautiful, hypnotic singing to lure sailors to a dangerous island where they became shipwrecked on the island's rugged coastline. Odysseus wanted to hear the Sirens without falling prey to their temptation, so he ordered his men to plug their ears with wax and tie him to the ship's mast. That way, his men would not be able to hear the Sirens' song or his cries to be untied once he was under the spell of their song. Odysseus' careful planning, therefore, allowed him to listen to the Sirens' song while avoiding otherwise certain shipwreck.

If the plaintiff ignored or failed to consistently follow specific warnings in a drug or medical device case, you might make an analogy using this story. Both plaintiff and Odysseus were warned of the dangers they would face, and both chose to proceed knowing full well what those dangers were. Odysseus however, took measures to protect against the risks he would face. Plaintiff did the opposite and actually increased the risks by ignoring physicians' instructions, misusing the product, continuing to smoke, or whatever fact or evidence supports the analogy.

Counsel must, however, be careful to select stories that fit the facts of the case and those that will resonate with their intended audience. Do not restrict yourself to stories that come from your own personal experiences. Do not

be afraid to steal some other lawyer's story or analogy. . . But do not call the process theft. It is scholarship. You may take some comfort that society does not expect you to footnote your [closing] arguments and give credit for where you get your lines of reasoning, apt comparisons, or even full fledged stories.

McElhaney at 661. This also means that counsel should not be afraid to repeat successful stories in future cases and future arguments. *Id.* Counsel should not, however, try to mimic other skilled attorneys and their closing, but rather seek to incorporate his own unique traits with those he admires and has borrowed from others, in order to become a more talented orator. Everyone must find his own way, and to find it, he has to experiment. I urge you to not experiment with tricks, however. Tricks simply will not work. Juries can detect even the slightest hint of falseness and misleading jurors is a surefire way to lead them to your opponent's desired verdict.

C. The Use of Rhetoric

Rhetoric, in the context of closing arguments, refers to “such forms of heightened verbal magic as anecdote, simile, metaphor, and literary and Biblical quotation and illusion.” Levitt at 17. “There is no better way to develop a theme during [closing argument] than to draw upon classical works of literature, proverbs, and folk sayings that may be familiar to the jury. Shakespeare, the Bible, Aesop's Fables, Abraham Lincoln, Winston Churchill, and Mark Twain, to name a few, can each provide a pithy, yet memorable anecdote or quotation for use during closing argument.” J. Joseph F. Anderson, Jr., *The Lost Art: An Advocate's Guide to Effective Closing Argument* 227 (2d ed. 2002). “The challenge is to know when and how to draw upon these rich resources—while remaining within the relatively understood conversational style acceptable to today's jurors.” Levitt at 17.

The use of such rhetorical references is not, however, without a degree of risk.

Even if you are careful—as you must be—to use rhetoric only to advance your client's cause and not to show off your own wit and erudition, there is always the chance that you will occasionally misstep, dent your own credibility, touch a juror's sore spot, or hand your opponent a weapon to use against you.

Id. at 18. You should also be conscientious about not overusing rhetorical devices or analogies. “Do not simply string together one cute saying after another. Your goal is to win, not to entertain the jury.” Anderson at 11. There must be more to your closing argument than rhetoric. “Even the most brilliant image won't compensate for an unsound closing strategy, unskilled explication of the evidence, and failure to deal persuasively with problem points and show the jury a psychologically sound way home.” Levitt, at 20. You also have to tie the rhetorical device back to the evidence in a way that persuasively conveys your theme or theory of the case. For instance, the story of Odysseus, above, is useless if you do not offer some explanation of how it relates to the facts of the case.

IV. Presentation of the Closing Argument

“When Pericles speaks, the people say, ‘How well he speaks.’ But when Demosthenes speaks, the people say, ‘Let us march!’” Safire at 25. “The key is to have your jury say ‘Let us march!’” Anderson at 27.

A. Courtroom Presence

An effective closing argument should be treated like a public speech and,

[a]s with any public speech, the effective presentation of a closing argument depends not only on content but also on style. A cardinal rule is to be yourself. One should watch and learn from as many experienced litigators as possible, but any techniques that are adopted must “fit” your own personality.

Alsobrook at 331. A lawyer who is uncomfortable in his presentation and is trying to be something he is not faces two challenges:

First, in trying to make something of yourself that you are not, you are going to be tense, you are going to be nervous—play-acting personality rather than presenting the strengths of your own—and, second, the jury or other decision-maker will sense your discomfort and may sense that you are trying to mislead them, hurting your credibility, your client’s credibility, and your case’s credibility.

J. Donald G. Alexander, *Preparing for More Effective Closing Argument: More Lessons from the Bench: To Leave a Jury with a Strong Impression, Make Your Last Words Your Best Words*, 17 Maine. Bar J. 194, 194-95 (2002).

Jurors are looking for conviction. “They are looking to see which lawyer *really believes* his side should win, as contrasted with the lawyer who is merely making a closing argument because it’s expected.” Mauet at 414. Thus, a litigator’s most important task is to “present your closing argument in a way that demonstrates your total conviction in your case and your unwavering commitment to your side.” *Id.* You must believe that your client puts safety above profit; that it provides adequate and responsible warnings to physicians; that its devices provide valuable benefits to patients with minimal associated risks. If you believe these things, so will the jury.

B. Humor

The use of humor in a closing argument can be problematic for the trial attorney. Generally speaking, “lawyers run a grave risk when they attempt to inject humor into their jury [closing arguments]s.” Anderson at 15. As a result, “attorneys should be wary of the use of humor in any form, lest it be seen by the jury as making light of your opponent’s situation or the seriousness of the case to your client.” *Id.* The general “no-humor” rule is not without exception however. There may be moments during the trial when something funny happens. In those situations, “a smile—or even a lighthearted observation—by the attorney is usually harmless and may even help your case: It shows the jury that you are human.” *Id.* Another exception is self-deprecating humor, “[i]f you’ve done something goofy during the trial, you might be able to turn that to your advantage with a brief reminder to the jury.” *Id.* Even within these limited circumstances, counsel should keep their attempts at humor brief and to a minimum.

C. Choose Words Carefully

It is extremely important that counsel maintain a high degree of awareness and control over the words used whenever addressing the jury. “The consummate lawyer is a good wordsmith, choosing words as carefully as an artist chooses paints from the palette. Like the artist, an attorney should convey not only the basic meaning (color), but the particular shade and tone that best evoke the emotions desired.” *Id.* at 22. Counsel should strive to use common phrases instead of technical terminology whenever possible (*e.g.*, “car” instead of “motor vehicle”). “It goes without saying that [legalese] should be avoided at all costs. Stay away from words like *voir dire*, *res ipsa*, and *tort*.” *Id.* at 23.

Attorneys for drug and medical device companies should be particularly cognizant of word choices that color the facts. For instance, a “voluntary withdrawal” of a product from the market should never be confused with “recall,” which implies FDA action. Counsel should also be aware of word choice issues that can potentially confuse the jury. For example, an implantable hip screw might be called a “screw,” a “nail,” or a “rod.” Counsel should work with their witnesses, select the most appropriate term, and consistently use it throughout trial. Attorneys should also avoid the using confusing acronyms unless it advances the case and until they have completely explained to the jury what the acronym means.

Counsel should also be wary of terms or phrases that are commonplace, yet have the potential for alienating certain jurors. For example, use of the phrase “a pound of flesh” might seem anti-Semitic to a juror familiar with its origins in Shakespeare’s *The Merchant of Venice*. Levitt at 21.

Regarding word and language choice, it is perhaps best simply to follow the advice provided by Judge Anderson:

A good trial lawyer should be a good student of humanity first. So prepare yourself. Get to know people who are different from you in one way or another. Learn about their interests and their sensitivities. Read a broader range of books. Widen your lunch crowd. Listen when other people talk—particularly if you are uncomfortable with what they have to say. You should start within your own law office. There are likely people there whom you have not yet really gotten to know. In getting to know a more diverse group of people you are bound to learn more about what meanings are conveyed by specific words to people of different backgrounds.

Anderson at 24.

V. Conclusion

A. Dos and Don’ts

The following list is not comprehensive, but it does attempt to hit the points that are important to keep in mind while preparing an closing argument.

1. Dos

- Restate your theme
- Stick to your argument—don’t rearrange your structure just to meet your opponent
- Use rhetorical questions
- Choose your words carefully
- Use repetition
- Discuss the burden of proof
- Discuss and explain the verdict form
- Demonstrate conviction in your position
- Use pattern or boilerplate arguments where appropriate
- Lead jurors to make their own conclusions
- Use visual aids and blow-ups of testimony
- Wear comfortable, conservative clothing and avoid excessive or distracting jewelry
- Study the body language of jurors
- Remind the jury of promises your opponent made during opening statement but did not keep
- Keep it simple
- Observe time limits set by the court
- Rehearse in front of a mirror or with a friend or spouse
- Strike a balance between reason and emotion

- Make eye contact with each juror at least once
- For defendants, attack the weakest part of plaintiff’s case first
- Moderate the volume of your speech
- Look for ways to connect emotionally with those jurors you think will be leaders
- Exude fairness
- Know the limits of proper argument
- Tell the jury what you want
- Use rhetorical techniques appropriate for your case
 - Analogies
 - Humor (cautiously, if at all)
 - Understatement
 - Theme
 - Rule of three
 - Leaving questions for your opponent

2. Don’ts

- Don’t “thank” the jurors for serving; instead, commend them for their work hard and careful attention
- Don’t merely recite what each witness said
- Don’t shout, point your finger at the jury, or pound on the lectern
- Don’t become unnerved or untracked by an objection by your opponent or by the judge’s ruling on the objection
- Don’t use inappropriate humor
- Don’t apologize
- Don’t argue against a patently obvious fact or conclusion—you don’t make a strong argument stronger by adding a weak argument to it—you only dilute your strong argument
- Don’t use legal terms not understood by the jury
- Don’t go outside the record or misstate the facts
- Don’t waste time telling the jury, “What I say is not evidence.”
- Don’t end on a weak note
- Don’t refer to evidentiary or procedural rulings by the judge
- Don’t tell the jury “This is a complicated case.”
- Don’t parade back and forth

Anderson, at 37-38.

VI. Conclusion

Rarely will you have the opportunity to try a case where the facts and the law are squarely on your side. If such were the case, an attorney would have very little to do but show up, present the evidence, and await the inevitable outcome. The reality of litigation, however, requires considerably more from the effective trial

advocate, especially in the context of defending drug and medical device actions. The facts will not always be on your side; often there will be reasonable disagreement as to the facts of a case that will require a jury to decide one way or another. There may also be significant hurdles to overcome in representing a large corporation or educating the jury on complex scientific or medical issues that are critical to the case. In such cases the effective advocate must do whatever can be done to influence the jury into seeing the facts in the light most favorable to his client. This is achieved by developing coherent and compelling themes that should resonate throughout the trial, from the opening statement to the closing argument. The closing argument should restate those themes and given the jury the analytical framework to examine the evidence that supports your themes. Doing so will provide the jurors with a rationale that will assist them in coming to a verdict favorable to the client. Proper planning, focus, and execution of the theme from the opening statement through the closing argument is one of the surest means of achieving that goal.

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