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## The Last Word

### *Technology Adds Final Punch to Strong Closing Arguments*

First impressions are vital, but final impressions are, too: Every lawyer knows the importance of strong closing arguments. Indeed, Clarence Darrow's status as perhaps the greatest trial lawyer ever is in large part based on his ability to make closing arguments that would cause the jury to literally swoon. Speaking in his own defense in a trial for jury tampering, Darrow delivered an eight-hour closing to a spellbound jury.<sup>1</sup> His closing arguments are legendary not just for their efficacy, but for their "romantic" element; Darrow didn't just argue facts and logic, he argued about class and consciousness, the oppressed and the oppressors.<sup>2</sup>

#### **Modern Technology**

Even lesser lights, however, can shine brightly in closing with strong themes and careful preparation. Better yet, modern courtroom technology

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gives today's trial lawyers the chance to add flair to their presentation, while underlining key themes. One can only imagine how much more effective Clarence Darrow would have

enhance all of these.

A juror-study participant once said, "Are you the defendant or are you the plaintiff? State what it is you believe. ... Tell me what you're gonna tell me. Then tell me with all your documents. Then in your summation, tell me what you told me!"<sup>4</sup>

One way to effectively tell jurors "what you told them" is to work through the key themes and promises made during opening arguments, and explain the evidence adduced during the trial that supports them. Custom graphics are a great way to do this. For example, rather than just tell the jury the evidence

#### HIGH-TECH TRIAL TOOLS



**SUANN INGLE**



**MARK BINI**

been given the opportunity to use today's trial tools.

Although each trial lawyer develops his or her own style, and will have their own approach to closings, almost all lawyers would agree that certain elements form the basis of any strong closing argument. These include repetition of the key themes introduced during opening statements and developed during the trial; compelling presentation of documents and testimony that support each theme; and use of the verdict form.<sup>3</sup> Technology can

supporting a theme, use PowerPoint or other presentation technology to present a bullet-point chart with quotes from the record that support that theme.<sup>5</sup>

#### **Bullet Points**

Thus, as the lawyer discusses his or her first theme, that theme is displayed, and as they address the evidence adduced during the trial supporting that theme, bullet points are displayed under the theme summarizing or quoting that evidence.

Then, when the lawyer moves to the second theme, that theme is displayed, and then the supporting evidence, again, is presented in bullet points below the theme. This visual presentation will enhance and highlight the practitioner's points, helping drive them home to the jury.

## Compelling Presentation

Even the best closing arguments are worthless if the jury isn't listening.

A seamless and visually interesting presentation will maximize the chance of effectively communicating the closing to the jury (or judge in a bench trial). So, when presenting exhibits or visuals showing witness testimony, consider adding a still photo of that witness.<sup>6</sup>

Besides making the closing more visually interesting, this visual cue will help remind the jury what the witness said, and whose side they support. By combining a series of "build sequences" featuring key themes with bullet points giving supporting witness quotes, along with photos of the appropriate witness, the attorney can create an interactive feel to the presentation, keeping jurors alert and providing them with information they will be able to digest, repeat and work through during deliberations.

One of the biggest advantages of the high-tech presentation is the flexibility offered by the chance to alter it up until the moment of closing. Thus, when an attorney is closing last, or has a chance to make rebuttal arguments, she can tweak the closing presentation to respond to arguments made by opposing counsel during their closing and still benefit from the appeal of custom designed visuals.

Indeed, more and more trial teams are relying on multimedia presenta-

tions using a screen, rather than exhibit boards, because a presentation shown on a screen can be changed by a consultant or a member of the trial team "on the fly."

Depending on time and money, there are various means by which to visually present the verdict form.

Because judges often give counsel the verdict form only hours before closing arguments, there may not be time to "scan" the verdict form in order to display it via trial technology software. However, the attorney can still use an ELMO,<sup>7</sup> an electronic visual presenter that sends a video or digital image to monitors and pro-

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jectors. An ELMO is the cheapest and quickest technological trial aid to display the verdict form to the jury. Manually filling out the form can be very effective.

If there is more time, or for the committed trial team, PowerPoint offers additional options.<sup>8</sup> With a PowerPoint presentation, for example, the attorney can have checks appear as he goes through the form, indicating which way he wishes the jury to find on each question. In addition, numbers can be "suggested" in the damages section of the form, and they can be typed in live during the closing.

If scanned and used in a multimedia system, the verdict form can then be filled out with even more engaging features, including zooming in and out of each question, and highlighting important areas.

Although technology won't give you the skills of Clarence Darrow, it can help enhance and add flavor to a well-crafted closing.

Indeed, use of technology in the courtroom is vital to capture the attention of today's media savvy jurors. Even if technology was not used throughout the evidence portion of a case, the effort to put together a summation punctuated by a PowerPoint presentation displayed through a projector may pay dividends in the jury room.

(1) See Michael S. Lief et al., "Ladies and Gentlemen of the Jury," 67-71 (1998).

(2) "Darrow was able to successfully shift the focus of the trial from a fact-based argument, where he was vulnerable, to more of an emotion-based grounding, where he had a greater chance of success." *Id.* at 69.

(3) See generally, Thomas A. Mauet, "Trial Techniques," 405-16 (5th ed. 2000) (describing strategic considerations during closing arguments).

(4) Bowne DecisionQuest/Minority Corporate Counsel Association Nationwide Jury Perception Project, June-September 2002. As that juror further explained, "and I never got, what are you telling me? I had to just float around and around and follow ... you were so vague in getting there. Tell jurors what you want to tell them!"

(5) The PowerPoint presentation is then projected onto a large screen, preferably 8 feet by 10 feet, so the jury can see it.

(6) The still photo can be taken from an image of the witness from a previous video-taped deposition.

(7) ELMO is a brand name. Other brand names include Samsung and Sharp.

(8) Although it is difficult to prepare a verdict form on PowerPoint in the space of a few hours during a recess, the trial team can prepare in advance the most likely variations of the verdict form that the judge is likely to choose. This will minimize the editing necessary once the actual verdict form is received.

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