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# Closing Argument

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# Closing Argument

James H. Seckinger†

## I. Importance of Closing Argument

### A. Put Closing Argument in Perspective

Lawsuits are won or lost on the evidence and the law, not on the advocate's analytical and oratory skill. As pointed out by Broun and Seckinger:

Closing arguments—here is the advocate in her final and finest hour! She won it with her closing argument! She was magnificent! Legion are the legends of summations.

A lawsuit is won during the trial, not at the conclusion of it. It is won by the witnesses and the exhibits and the manner in which the lawyer paces, spaces, and handles them.

The likelihood of a lawyer's snatching victory from the jaws of defeat with his or her closing argument is so slight that it hardly warrants consideration. *Compare* last of the ninth multi-run game-winning home runs; *but see* Bobby Thompson's shot heard round the world in *Giants v. Dodgers* (1951).

On the other hand, lawsuits are lost by fumbling, stumbling, incoherent, exaggerated, vindictive closing arguments.

This is not intended to minimize the importance of the closing argument. It is merely to relegate it to its proper position, which is a summation of the evidence that has preceded it and a relation of that evidence to the issues in the case.

Although the closing argument is not quite as controllable as is the opening statement, it is very close to it—close enough that we can say that there is no excuse for a poor closing argument.<sup>1</sup>

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1. 1 KENNETH S. BROUN & JAMES H. SECKINGER, PROBLEMS AND CASES IN TRIAL ADVOCACY 239 (4th ed. 1990).

## B. An Effective Closing is an Argument, Not a Summation

There is an important and critical difference between argument and summation. As Jim McElhaneey notes:

Final argument conjures up the picture of a lawyer engaged in intellectual combat. If the function of law is to provide a framework for advocacy, then this event—argument—is central to our system of justice. The lawyer's discussion may be gentle or hard-hitting, absorbing or dry, logical or emotional—but it will be argument.

Summation evokes something else. It is still the lawyer talking to the jury, but he is not persuading. He is summing up. He is going over the evidence so the fact-finder will remember what was said during the trial.

There you have the distinction, but what difference does it make? The answer lies in the purpose the lawyer has in talking to the judge and jury. In the half hour or so that he has at the end of trial, what should be accomplished?

It is not an idle question. Opening statement and final argument are special times. They are the only two opportunities lawyers have 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. Fine, you say, but what does this have to do with the difference between summation and final argument?

Just this: Summation—summing up the evidence—is what must be done when the facts are long and complex, there are many witnesses, or the course of the trial was somehow interrupted. It is a task to undertake when the jury needs help keeping things straight. It is a job most needed when the case has not been well tried. 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. Why spend time convincing people to accept what they already believe? It is annoying at best, and can even make a friendly jury hostile if carried to excess. It is our tendency for plodding redundancy that makes jurors complain that lawyers go over the same things again and again.

But argument is different. Argument does not suggest a mere summary. Argument brings to mind persuasion addressed to the thomiest problems a case can present. Most cases need no summary of facts at the end, but most of them could profit from good argument. The disputes that actually get to trial are usually not clear one way or the other. They go to trial for the very reason that each side thinks it has something of merit to present.

The point is simple. Nearly every case has some serious problem that needs attention in final argument. Usually that problem is not solved by a summary of the evidence, but by a line of argument that is designed to meet the particular difficulty.<sup>2</sup>

An effective closing argument should attack the serious problems in a case and put them in the most favorable light for the judge or jury. Merely reviewing the evidence does not attack, analyze, or solve the real issues that must be resolved by the fact-finder.

Thus, on final argument we recognize that the fact-finder (judge or jury) has already heard and digested the evidence, has evaluated the witnesses, and has probably reached a decision or is strongly leaning towards one. The advocate must recognize this reality, face the problems in the case, and use the argument to give the fact-finder comfort in an appropriate judgment. To successfully discharge this role as facilitator for the fact-finder, the advocate must see the case from the fact-finder's perspective; only then can the advocate effectively persuade.

## **II. Begin Preparation for Closing Argument When the Case Comes in the Office**

Many trial lawyers begin to prepare their closing argument with their first contact with the case, as the facts make an initial impression. At this time they are as close to being jurors as they will ever be.

Record your first reaction to the case and put it in the case file. As you get closer to delivering your closing argument, you can go back and discover how the case first appeared to you. This perspective will help you view the case from the fact-finder's vantage point, since the fact-finder is seeing the case for the first time just as you did at that time. From your first impression of the case, you can shape and reshape your closing argument as the facts develop. You can focus on your strongest arguments and determine how to prove them. An argument without a solid factual foundation is completely ineffective.

The basic guidelines for preparing a closing argument, then, are as follows:

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2. JAMES W. McELHANEY, McELHANEY'S TRIAL NOTEBOOK 491-92 (2d ed. 1987).

1. Create a closing argument file at the outset;
2. Develop evidence to fit the closing argument;
3. Prepare a closing argument outline before the trial begins;
4. Think about, prepare, and rehearse your closing argument before trial, leaving sufficient flexibility to meet the exigencies of trial;
5. Modify your closing argument throughout the trial in response to the record to date;
6. Base your closing argument on the issues, the evidence, the burden of proof in the case, and your client's right to a verdict.

### III. An Appeal to Reason, Not to Emotion

Closing argument should not be an appeal to sympathy, prejudice, or emotion in general. Give the judge and jury reasoned arguments to use during deliberations. The closing should continue to speak during the deliberation of the case. Furthermore, appeals to emotion will dissipate during the jury instructions and cannot be sustained while the jury considers the case. Judges and jurors usually cannot be fooled and will recognize an appeal to emotion for what it is.

### IV. Time—Argument As Opposed to Summation

Do you spend twenty minutes or two hours in final argument? Whenever possible, try to hit the high points in short order, particularly when closing to a jury. Jury members have been there a long time and are being subjected not only to your argument, but also to those of other parties and to the judge's instructions. The jury's work is still to come. Pick and choose the points you intend to argue so that you *exploit*, rather than *exhaust*, their limited attention span.

In a complex case, twenty minutes is not sufficient to clarify and analyze the evidence as it relates to key issues. Often, the time taken in a complex case is abused, misused, and leads to a "snoozzer." Ask yourself, is it really necessary to go over this issue, this evidence? If not, discard it.

In closing before a judge, oral presentation may be supplemented with written materials that the judge can examine at his leisure after

the trial. Thus, this provides a focus to assist the judge in analyzing the evidence. Hit the high points of your evidence and answer the hard questions that your opponent's case presents.

## V. Anatomy of a Closing

### A. Overview

A good speech must have a beginning, a middle, and an end. This approach has been characterized as “telling the jury what you are going to say, saying it, and then telling them what you have said.”

A suggested structure for a closing argument begins with an opening that catches the fact-finder's attention by developing the issues and by stressing the need for a clear and decisive decision. The middle of the closing argument should develop the theory of the case, the evidence, and the law supporting the theory of the case. It should address credibility issues and should confront and resolve the problems and hard questions in the case. The end of the closing argument should clearly state why the party should win, based on that party's theory of the case, the evidence, and the law. The final remarks should be a reasoned demand for a decision in your client's favor in the name of law and justice.

The essential techniques for a persuasive and effective closing argument, in a nutshell, include the following:

1. Capture the fact-finder's attention at the outset;
2. Set forth the theory of the case;
3. Analyze the evidence and the law that support the theory of the case;
4. Discuss credibility issues—both witnesses and documents;
5. Confront and handle the problems and hard questions in the case;
6. Clearly set forth a factual and legal theory that provides a rational and logical basis for a decision in your favor;
7. Adopt a style and demeanor that encourages a rational decision. To accomplish this, address the fact-finder with some emotion and intensity, but avoid any “fire-and-brimstone” overtones. Remember that the judge or the jury is the fact-finder, not the

wrong-doer. Do not yell or raise your voice at the judge or jury—it may make them feel like they did something wrong. Persuade them.

## B. Structure

Use the following structure as a guideline for every case. It contains eight essential points for a persuasive and effective closing argument.

1. Create a strong beginning.
2. Develop the issues in the case.
3. Analyze the burden of proof and use it effectively.
4. Develop a theory of the case.
  - (a) Resolve problems and hard questions.
  - (b) Highlight only essential evidence—testimony and exhibits.
  - (c) Demonstrate the credibility of witnesses and documents.
5. Argue inferences to be drawn from the facts.
  - (a) Use understatement to lead the judge or jury.
  - (b) Employ analogies to create word pictures.
  - (c) Avoid rhetorical questions.
6. Attack an opponent's case.
7. Integrate the law of the case into the argument.
8. End with an articulated demand.

## C. A Strong, Effective, and Dramatic Beginning

At the outset of a closing argument, all eyes and ears are focused on the advocate. Do not waste the attention span that is conferred—capture it. Think of the first two bars of Beethoven's Fifth or the opening organ chords from *Phantom of the Opera*. Capture that fickle attention span with an opening that entices—one that focuses on the task facing the fact-finder.

Do not waste the beginning of your closing argument by using boilerplate pleasantries, thanking the jury, or acknowledging that they have been there for a long time. That much they know. Get to the point, namely your theme and theory. Take a motif, a phrase, a concept from the case that has been revealed through the evidence, and make the judge

or jury sit up and take notice of someone who is going to be relevant for them—someone who will help them with their task. Make them notice *you*.

### **D. Issues in the Case**

In following the prescription of helping the judge or jury do their job, it is always useful to state the main issues. State what the fact-finder is expected to decide.

Sometimes a statement of the issues in the case can be as simple as “who did it” or “how much should the defendant pay.” Other times the issues are more complex and involve important questions of law that must be developed.

You need not mechanically recite the issues during the closing, but you do want the judge or jury to gain an understanding of what you say their task is in the case. Set it out separately or integrate it as the circumstances of the case permit.

### **E. Burden of Proof**

The burden of proof in a trial is a matter of both law and fact. Most academics and legal theorists look at the burden of proof as a legal principle. Skilled and successful trial lawyers also look at the burden of proof as a legal principle but use it to their advantage as a factual concept throughout the case and in the closing argument.

In a civil case, the burden of proof is fulfilled by a preponderance of the evidence. The legal principle is that the plaintiff or party seeking relief carries this burden. The factual principle is that the burden of proof by a preponderance of evidence means “more likely than not,” and on the scales of justice, may only be by a feather’s weight. This is distinguished from “beyond a reasonable doubt,” “clear and convincing,” and other heavier factual burdens.

In a criminal case the legal principle is proof beyond a “reasonable doubt.” The factual principle focuses on “reasonable doubt” in terms of the word “reasonable,” and as a standard of proof in comparison to “preponderance of evidence,” “clear and convincing,” and other standards. For example, the government should focus on “reasonable doubt” as



a doubt based on reason and common sense, not beyond a shadow of a doubt, not beyond any doubt, and not proof to a mathematical certainty. The defense, however, should focus on “reasonable doubt” as a higher standard than “preponderance of the evidence” and “clear and convincing evidence,” as “reasonable doubt” is a willingness to act without hesitation in matters of importance.

## **1. Using the Burden of Proof to the Advocate’s Advantage**

When preparing the closing argument, the advocate should carefully analyze the burden of proof in the case to determine how it can be used most effectively to win. The burden of proof should be used as a positive tool of argument, not as a negative hurdle that must be cleared.

For example, assume the plaintiff has the burden of proof by a preponderance of the evidence. Looking at this burden of proof in its most positive light, the plaintiff must prove that his theory of the case is “more likely than not,” and when placed on the scales of justice, that his evidence is more believable by at least a feather’s weight. The same analysis applies for the credibility of the witnesses. Note that the words “clearly,” “beyond doubt,” and “without question” do not apply in such an analysis. Using such terms would assume a burden the plaintiff does not have.

The defendant in a civil case should analyze and prepare the closing argument to emphasize that the burden of proof lies on the plaintiff. Where possible, the defense should argue that the plaintiff has failed to discharge his burden of proof. For the defendant, the burden of proof is a factual and a legal premise that can help him argue the case. The defendant should determine what the plaintiff has not proven to show that the plaintiff failed to satisfy the burden of proof. However, there is a strong caveat here: avoid assuming a burden that the defendant does not have. By making statements such as “the evidence clearly shows” or “we have demonstrated in this case” or “it is clear from the evidence that the defendant acted reasonably,” a defendant assumes a burden of proof in the case that he does not have.

## **2. Abuse and Misuse of Burden of Proof**

An effective closing will never misstate the burden of proof, attempt to camouflage it, or ignore it outright and hope it goes away. A jury will generally listen carefully to a judge's instructions that define the burden of proof. In a bench trial the judge will carefully follow the law. The burden of proof cannot be abused by misstating, mischaracterizing, or ignoring it. The best advice is to face up to the burden of proof, and turn it into a positive weapon for your case.

The principal abuse and misuse of the burden of proof occurs when a party assumes a burden of proof that he does not have. For example, a plaintiff assumes a burden of proof when he discusses how easy the case is for the jury to decide or how the evidence clearly shows something without any question. By doing this, the plaintiff assumes the burden of showing that the case is easy to decide, or the evidence is clear without a question, each of which is a more difficult burden than the plaintiff had in the case.

### **F. Theory of the Case**

The advocate's role in closing argument is to assist the fact-finder in resolving the dispute in the advocate's favor. To be successful in this role, the advocate must analyze the disputed evidence or disputed interpretation of the evidence to determine the "cutting edges" of the case. Some lawyers refer to the "cutting edges" of the case as the "hard questions" that face the fact-finder in deciding the case.

Every disputed case has "cutting edges" or "hard questions" around which the case will be resolved. Once they are determined, a theory of the case can be developed, and the substance of the closing argument begins to develop.

#### **1. Resolving Problems and Hard Questions**

It is essential that, before you give your closing argument, you have clearly articulated your theory of the case to the fact-finder through the evidence presented in the case. One element of your theory of the case must be to resolve the problems and answer the hard questions

posed by your opponent's case. When developing your closing argument, do not ignore the questions posed by your opponent's case. Make sure that you have an answer for these questions, and that you leave a clear answer with the fact-finder.

## **2. Evidence—Testimony and Exhibits**

In your closing argument, it is not necessary (indeed it is counterproductive) to review all of the evidence and exhibits in the case. However, there may be parts of the evidence that fit within your theory of the case that are essential to an understanding of your theory and that should therefore be highlighted. Similarly, some exhibits may be particularly useful and important to bring out of the morass of documents and testimony and to bring into the category of key documents. In a bench trial you can provide an argument brief containing a binder of documents to be taken into chambers for further consideration. In a jury trial, you need at least one of the members to remind the others of particular documents or pieces of evidence that you have pointed out in your closing. This will serve to fill gaps or answer questions raised by the opponent's case or to provide the fact-finder with information necessary for understanding your case.

Obviously, there must be a discriminating selection process to isolate the key, memorable documents and evidence that the jury will need for its deliberations.

## **3. Credibility of Witnesses**

An assertion that your witnesses were credible is of little help to the fact-finder. The judge or jury will apply their common sense and knowledge of human nature to make that assessment. However, you can help the fact-finder assess credibility by pointing out other evidence that corroborates the veracity of your witness's testimony or that demonstrates the illogical nature of the version proffered by your opponent's witnesses.<sup>3</sup>

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3. Some examples of these techniques can be found in section G. *infra*.

## G. Arguing Inferences

Arguing the inferences to be drawn from the facts in a case is the key to making an effective closing argument. By the time of closing arguments, the fact-finder has heard the evidence and is prepared to decide the case. The judge, as fact-finder, has taken careful notes and has absorbed all of the facts in preparation for making a decision; the jury, through its individual members, has heard all of the evidence and brings the collective wisdom and perspectives of the group to the task at hand. The skilled advocate must go beyond the evidence to argue the inferences.

In cases that go to trial, there are two different interpretations that can be placed on the same facts. In addition, there may be questions unanswered by direct evidence. In both situations, the advocate must use closing argument to provide a framework for the evidence that will lead the fact-finder to a conclusion that goes beyond, but is consistent with, the evidence adduced. For example, when the parties have different theories about *what* happened and the evidence at trial does not clearly resolve the mystery, each advocate will attempt, in closing, to persuade the fact-finder to draw the inferences from the proven facts that support his theory of the case.

When there is no doubt about what happened, but “why” it happened is important in the case, the burden on the advocate will be to argue persuasively for the inference which demonstrates that the client is entitled to a favorable judgment.

Cases in which the facts are clear and there are no unanswered questions rarely go to trial. Trial courts are filled with disputes where the evidence does not answer all the questions separating the parties. Fact-finders are then called upon to apply life experiences, intuition, and common sense to the evidence. To do that they must draw inferences from the proven facts in order to come to a judgment. The advocate’s challenge is to guide the fact-finder through that process and to illuminate the way, through arguing inferences, to the desired conclusion.

Arguing the inferences from the evidence is the most critical and the most creative aspect of closing argument. In the hands of a skilled trial advocate, the creative aspect of arguing the inferences can be the

most rewarding and the most persuasive part of the trial, as is aptly demonstrated by several examples discussed below.

### 1. Understatement—Lead the Judge or Jury

The purpose of closing argument is to persuade and to help the fact-finder reach a decision. A judge and jury are both imbued with human nature and the human intellectual process of decision-making to proceed in a rational manner to achieve the proper result: to do what is right based upon the law and the facts.

In preparing the closing argument, many lawyers proceed by “telling” the fact-finder how the case should be decided. This approach is not helpful and may cause a judge or jury to stiffen their backs rather than be receptive to the point. The effective closing argument provides information, facts, and the law to lead the fact-finders to a certain predictable conclusion. The key, then, is to *lead*: Do not tell, order or bore.

Lloyd Paul Stryker makes the point powerfully and persuasively:

[N]o point is ever better made than when not directly made at all but is so presented that the jury itself makes it. Men pride themselves on their own discoveries, and so a point which the jury are allowed to think their own ingenuity has discovered can put the advocate in a position where the jury begin to regard him as not only their spokesman but their colleague.<sup>4</sup>

When I was trying cases out West, in Colorado, we had a saying about some trial lawyers who used overbearing and dominating techniques on closing argument: “You can lead a horse to water and they will drink on their own. Trial lawyers tend to drag the horse up to the watering hole, stick their head in the water, and drown them with viscous verbosity.”

Implicit in the concept of leading the fact-finder, rather than telling or dominating, is the principle of respecting another’s intelligence. Respect intelligence, know limitations, and present the facts and the law in an organized manner in order to lead the fact-finder logically and rationally to a predictable conclusion. Then, the fact-finder will

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4. LLOYD P. STRYKER, *THE ART OF ADVOCACY* 125 (1954).

have information that will continue to argue for your case after the closing and during jury deliberations or during the judge's decision-making process. One of the most effective things an advocate can learn is how to make a closing argument that continues to argue after it is completed.

An example of the effective use of arguing the inferences to be drawn on a key element in the case is the hypothetical "Bonnie Lynch" case as reported by Jim McElhaney in his Trial Notebook.

It is rare that we get the chance to test the effect of what we say. That is an opportunity John Burgess of San Francisco had at the convention of the American Bar Association in 1979. He was defense counsel in President Tate's Showcase program, "Cameras in the Courtroom."

He was representing the hypothetical "Bonnie Lynch," who was charged with knowingly harboring and concealing a fugitive from a federal warrant and then helping him cross a state line, knowing it was his purpose to commit a felony.

It was a case that had been used by the State Junior Bar of Texas as the problem for the National Mock Trial Competition, and the facts were simple. Bonnie Lynch had put up a man in her apartment over the weekend. His name was Frank Adams. He was the fugitive from justice whom Bonnie Lynch had driven to the bus station—across the state line—in Texarkana.

There was only one question: Did Bonnie Lynch *know* about Frank Adams, or was the entire business an innocent coincidence?

It was a question that Burgess got to argue twice during the convention—before two different juries composed of legal secretaries from Dallas law firms.

The principal evidence against Bonnie Lynch came from her old acquaintance, Jesse Nolan. Nolan was involved in the transaction, too. He is the one who talked Bonnie Lynch into putting up Frank Adams for the weekend. But instead of being prosecuted, Jesse Nolan received a grant of immunity in return for his testimony. And on the witness stand, he *insisted* that he told Bonnie Lynch "all about" Frank Adams.

Each day the lawyer acting as United States Attorney tried the case the same way, and each day Burgess defended it the same way—with one exception. At the end of the first trial, the jury found Bonnie Lynch guilty by a vote of seven to five. It was an effective defense, but Burgess was not happy, and he decided to do something special in attacking the testimony of the immunity witness, Jesse Nolan.

As you might expect, each time he explained how the grant of immunity gave Nolan a motive to lie. But the second day, Burgess decided to "reenact" the telephone call. Here is what he did:

Ladies and gentlemen, there is only one way that Bonnie Lynch can be guilty: This "immunity witness," Jesse Nolan, must be telling the truth.

You remember his testimony. He told you that he called Bonnie Lynch on the telephone to see if she would be willing to put up Frank Adams for the weekend. He admitted that she was reluctant to do so at first because she lives alone with her little girl, Gretchen. But Adams says that he talked Bonnie into it and insists that he told Bonnie Lynch all about Frank Adams in that conversation.

Now, his honor, Judge Higginbotham, is going to instruct you at the end of the case. He will tell you the law you must follow. One thing he is *not* going to do is tell you to leave your common sense at the door when you go in that deliberation room.

If Jesse Nolan is telling you the truth, how *must* that telephone conversation have gone? [Then, armed with two imaginary telephones—one in each hand, and changing his voice to suit the character, Burgess relived the telephone conversation.]

“Hello?”

“Hello, Bonnie?”

“Yes. Who is this, please?”

“This is Jesse—Jesse Nolan.”

“Oh, hi, Jess. How are you?”

“I’m fine. Say, Bonnie, I wonder if you might do me a favor.”

“I will if I can. What is it, Jesse?”

“I have this friend from out of town, and I have to find a place for him to stay. I wonder if you might put him up for the weekend?”

“Gee, Jesse, I don’t know. There is just me and Gretchen living here—I am not sure.”

“Oh, he wouldn’t be any trouble. He’s a real nice guy.”

“I’m really not sure, Jesse. Who is this person, anyway?”

“His name is Frank Adams, and he is an old friend of mine.”

“Oh, Jesse, I don’t think so. . . .”

“Bonnie, don’t worry. He is a real good guy. He is a bag man for the mob in Nashville. There is a federal fugitive warrant out for his arrest, and he is on his way to Dallas to bribe a local official.”

“Well, if that’s the case, send him right over.”

Everyone on the jury—everyone in the courtroom—burst out laughing, and after an extensive rebuttal by the prosecution, it took the jury five minutes to return a verdict of “not guilty.” The vote was unanimous. Instead of just urging that the immunity witness was not telling the truth, Burgess did something far more effective—he demonstrated it, so that the jury reached the right conclusion on its own.<sup>5</sup>

A cross examination by Weymouth Kirkland in the *Peck* case, as recorded by Lloyd Paul Stryker, illustrates the effect of arguing the inferences on the credibility of a key witness.

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5. McELHANEY, *supra* note 2, at 499-501.

[Weymouth Kirkland] had been called upon to defend a group of insurance companies which were resisting claims based on the alleged death of an engineer named Peck. The plaintiff contended that Peck had fallen overboard from a steamer while crossing Lake Michigan. The defendants, on the other hand, were seeking to establish that Peck had never fallen overboard, that he had left his coat in his stateroom as a ruse, and that when the boat docked in the early morning, he had quietly slipped down the gangplank.

Much evidence was adduced by the plaintiff for the purpose of establishing that if Peck had in fact fallen overboard, the currents and the prevailing winds would have carried his body to a particular spot. One of the plaintiff's witnesses was a cook on another steamer whose ship, three days after Peck's disappearance, sailed past the exact spot where other witnesses had said the currents would have carried Peck's body. On his direct examination, the cook said that exactly at that spot he happened to glance out from his locker, saw the body, and recognized it as that of his old friend, Peck.

It was a nice opportunity for cross-examination, and Mr. Kirkland used it in this way:

Q: How long had you known Peck?

A: Fifteen years.

Q: You knew him well?

A: Yes, sir.

Q: How did you happen to see his body?

A: I looked out of the porthole.

Q: You recognized it beyond doubt as the body of Peck?

A: Yes, sir.

Q: Did you make any outcry when you saw the body?

A: No, sir.

Q: Did you ask the captain to stop the ship?

A: No, sir.

Q: What were you doing when you happened to look out of the window and saw the body?

A: I was peeling potatoes.

Q: And when the body of your old friend, Peck, floated by, you just kept on peeling potatoes?

A: Yes, sir.

It was a bit of cross-examination well done. And how was it used in the summing up? Did Mr. Kirkland tell the jury that the cook's testimony was palpably untrue? Did he denounce the absurdity of the answers? He handled it far more adroitly. As he stood before the jury for his final plea, he produced a potato from one pocket and a knife from another. Thus equipped, he rested one foot on a chair and proceeded to peel the potato, saying: "What ho! What have we here? Who is this floating past? As I live and breathe, if it isn't my old friend Peck!



I shall tell the captain about this in the morning. In the meantime, I must go right on peeling my potatoes.”

By innuendo he had destroyed all the cook’s testimony. A little wit had accomplished far more than the finest rhetoric or the fiercest denunciation of this perjurer.<sup>6</sup>

A final example of leading the fact-finder to a desired result, rather than telling the fact-finder what to do, is the classic “forget me not” argument. This argument goes something like this:

This is the last time I will be able to talk to you about this case, and there is so much more that I would like to say. The plaintiff’s lawyer, Mr. Rawlings, is going to get to talk to you one more time. The rules of court let him get the last word, and I do not get a chance to answer what he says. So there is something important that I want you to do. You know that there will be things he will say that I would answer if I could. And you know what all the evidence is in this case. So please listen carefully to everything he says, and whenever he makes an argument, make the response I would make if I could. And if you do that, I know that you will be fair.<sup>7</sup>

If you structure your closing argument to lead the fact-finder to reach a certain conclusion, the fact-finder will reach that conclusion for you and think it was his own.

## 2. Analogies and Word Pictures

Analogies are effective communication techniques primarily because they paint clear mental pictures. An effective argument, in its simplest form, is a collection of words designed to create a persuasive mental picture in the listener’s mind. The value of a good analogy is that it paints a clear mental picture that can be readily accepted. The listener then adds his own laws and interpretation to it.

Mo Levine was a renowned trial lawyer in New York City, a keen student of human nature, and the author of one of the most famous analogies in American trial folklore. One of Mo Levine’s closing arguments went like this:

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6. STRYKER, *supra* note 4, at 126-27.

7. MCELHANEY, *supra* note 2, at 529.

Ladies and gentlemen, I am not going to torture you by going through the torment of my client's experience, by going through each and every item of suffering that he has endured in the past or that he will face in the future. This man lost both of his arms and I have been trying to think of how to best tell you what it is like to live without two arms. Let me tell you what it is like. I had lunch with my client. I ate with my knife and fork. Do you know how he ate? *He ate like a dog.*<sup>8</sup>

A plaintiff's lawyer used another effective analogy in an automobile collision case involving an eight-year-old girl who became a paraplegic with no motor or sensory feeling below her shoulders. After briefly stating the facts relating to liability and discussing in broad terms the child's injuries, the lawyer concluded his closing argument as follows:

This little girl will never hear her mother say "Run outside and play."  
This little girl will never hear anyone ask, "May I have the next dance?"  
This little girl will never have the thrill of hearing anyone whisper, "Will you be my wife?"  
This little girl will never have the joy of confiding "I'm going to have a baby."

Only four sentences, but they resulted in the largest verdict in New York in a single personal injury action to that date. The power of understatement is indeed a most moving way to appeal to the minds and hearts of American jurors.<sup>9</sup>

An analogy can also be used to argue the credibility of the witnesses. For example, in a criminal case the defense typically attacks the character of the witnesses for the prosecution. An effective argument for countering such an attack revolves around the "They Picked the Witnesses" analogy.

I can't believe it. Here is Mr. Johnson, the defense lawyer, complaining about the witnesses we called to the stand. As if it is our fault we asked them to testify. WE DIDN'T PICK THOSE WITNESSES. THE DEFENDANT DID. They are his friends. If we could choose our witnesses, we would pick respectable people, community leaders. We called those people to the stand—the ones the defendant is complaining about—because they were there, and they know what the defendant did.<sup>10</sup>

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8. Robert E. Cartwright, *Winning Psychological Principles in Summation*, TRIAL DIPL. J., Spring 1978, at 35.

9. James Dempsey, *The Power of Understatement*, TRIAL DIPL. J., Fall 1979, at 35.

10. MCELHANEY, *supra* note 2, at 527-28.

In many cases, a jury instruction or a principle of law will play a key role in the fact-finder's decision, thus it is critical that the fact-finder clearly understand the legal principle. Sometimes an analogy can help, as demonstrated by Craig Spangenberg's "Robinson Crusoe" analogy on circumstantial evidence.

This reminds me of my father reading *Robinson Crusoe* to me when I was a little boy. Remember when Robinson Crusoe was on the island for such a long time all alone? One morning he went down to the beach and there was a footprint in the sand. Knowing that someone else was on the island, he was so overcome with emotion, he fainted.

And why did he faint? Did he see a man? He woke to find Friday standing beside him, who was to be his friend on the island, but he didn't see Friday. Did he see a foot? No. He saw a footprint. That is, he saw marks in the sand, the kind of marks that are made by a human foot. He saw circumstantial evidence. But it was true, it was valid, it was compelling, as it would be to all of you. We live with it all our lives. So let's look at the facts of this case—for those tracks that prove the truth.<sup>11</sup>

The challenge and danger with analogies is that the mental image perceived by the judge or jury can differ from the point that was intended by the sender or the opponent can turn the analogy against the sender. The following is an example of a bad analogy, where the trial lawyer attempted to be clever and did not think the analogy through:

A criminal defense lawyer is making his closing argument to the jury. His client is accused of murder, but the body of the victim has never been found. He dramatically withdraws his pocket watch and announces to the jury, "Ladies and gentlemen, I have some astounding news. We have found the supposed victim of this murder alive and well, and, in exactly one minute, he will walk through that door into this courtroom."

A hushed silence falls over the courtroom, as everyone waits for the momentous entry. Nothing happens.

The lawyer then says, "The mere fact that you were watching that door, expecting the victim to walk into this courtroom, suggests that you have a reasonable doubt whether a murder was committed." Pleased with the impact of the stunt, he then sits down to await an acquittal.

The jury is instructed, files out and files back in 10 minutes later with a verdict finding the defendant guilty. Following the proceedings,

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11. Craig Spangenberg, *Basic Values and the Techniques of Persuasion*, LITIG., Summer 1977, at 16.

the astounded lawyer chases after the jury foreman to find out what went wrong. "How could you convict?" he asks. "You were all watching the door!"

The foreman explains, "Most of us were watching the door. But one of us was watching the defendant, and he wasn't watching the door."<sup>12</sup>

In summary, the use of an analogy can be a powerful communication tool in a closing argument. However, the analogy must be very carefully examined and cross-examined. Make sure that it sends the proper mental image and that it cannot be turned against the user.

### 3. Rhetorical Questions

The purpose of closing argument is to persuade the fact-finder. The most effective means of persuasion is to present information in such a manner that the person receiving the information will act upon it in a certain predictable way. From the listener's perspective, the most helpful information is presented in a manner that helps the listener make a decision. Therefore, make your point and persuade instead of asking questions in a rhetorical fashion.

Questions do not persuade; they inquire. Questions do not enhance a logical progression; they provoke a hiatus and a questioning process. Thus, although debaters love rhetorical questions and rhetorical questions have become popular in academic circles, they are not effective in the art of persuasion.

A typical rhetorical question on closing argument is, "Who should be held responsible?" A fact-finder might respond, "Your client," "That is what this case is about so why not help me," or "Please get on with it and give me some information." These responses do not help the advocate's goal of persuasion. A rhetorical question takes control away from the advocate. Rather than stating facts that can guide the listener's thought process, a rhetorical question takes the momentum away from the speaker and confers it on the listener without guidelines or predictability.

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12. RODNEY R. JONES ET AL., *DISORDERLY CONDUCT—VERBATIM EXCERPTS FROM ACTUAL CASES* 143 (1987).

Finally, closing argument is the advocate's opportunity to piece the facts and the law together and to persuasively argue the inferences. It is not the time for twenty questions. Quiz shows are for entertainment, not persuasion.

## H. Attacking Opponent's Case

The first thing to do in closing argument is to argue *your* case. Argue the theory of your case that will bring a verdict for your client as effectively and persuasively as you can. Once that has been accomplished, attack the opponent's case. This organizational structure uses the psychological principles of primacy<sup>13</sup> and the persuasive power of positive, rather than negative, points.<sup>14</sup>

Psychological studies and trial lawyer folklore in the United States clearly indicate that people are most strongly influenced by what they hear first and that people respond more readily to positive, rather than negative, arguments. In organizing the closing argument, the advocate should respond to the psychological needs of the fact-finder by presenting his theory of the case first in its most positive and favorable light before attacking the opponent's case.

In addition to meeting the psychological needs of the fact-finder, this organizational structure avoids the pitfall of arguing the opponent's theory of the case rather than your own. In other words, play the game in your ballpark, not in your opponent's. Stick to your game plan no matter how tempted you are to respond to the opponent's challenges during the trial or in the closing argument.

When the time comes to attack your opponent's case, begin by differentiating his theory of the case from your own. In differentiating

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13. The psychological principle of primacy states that persons will most strongly believe and hold onto their initial beliefs. American trial lawyers have adapted this psychological principle to form the organizational technique of presenting their best and most persuasive facts, issues, or argument first. This adaptation of the psychological principle of primacy is uniformly referred to by lawyers in the United States as the "doctrine of primacy."

14. An exception to the persuasive power of positive over negative points is sometimes seen in political campaigns using negative advertising. Such negative campaigning is effective only when it plays upon people's fears and apprehensions. Thus, negative argument may be effective and powerful when a commonly held fear or apprehension within the community is present in a case.

the opponent's theory of the case from your theory, set forth: (1) your theory and the opponent's theory; (2) how they are similar; (3) where they diverge; and (4) the evidence—testimony and exhibits—supporting the divergence.

Next, discredit your opponent's theory. This can be done by attacking: (1) the manner in which the opponent has framed the issues in the case; (2) the testimony and the exhibits presented by the opponent; (3) the credibility of the opponent's witnesses and exhibits; (4) the gaps in the opponent's evidence; (5) the inferences the opponent draws from the evidence; and (6) the opponent's application of the law or jury instructions.

### I. Law of the Case

Do not forget that the judge will also have a closing argument—the law that will be applied to the facts. In a jury trial, the law of the case will be incorporated into the jury instructions and verdict forms. In a trial to the court, the law of the case should be embodied in the trial briefs and legal memoranda presented during the case and upon submission of the case for decision.

Like the facts, think about and prepare the law of the case from the time the case comes into your office.<sup>15</sup> When preparing the law of the case, remember that the lawyer is an advocate in an adversarial setting, and the most favorable legal principles and interpretations of the law should be thoroughly researched and vigorously presented. Make every effort to get the court to decide the legal principles early in the case or at the earliest time possible during the trial. Then you can shape the facts, as you present them through the witnesses and exhibits, to the law governing the case.

The law of the case should *not* be relegated to a discrete section of the closing argument. Rather, integrate the law into all parts of the closing argument. For example, see section V.B. above as to the suggested structure for closing argument, and integrate the law of the

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15. See *supra* section II (Closing Argument Preparation).

case into framing the issues in the case, the burden of proof, the theory of the case, as well as arguing inferences and attacking the opponent's case.

## J. "The Demand"

Trial lawyers in the United States firmly subscribe to the psychological principles of primacy and recency—"start strong and end strong." The beginning of closing argument should capture the fact-finder's attention. The ending should wrap up the argument with a captivating summary of why you should win.

If the opening portion of the closing argument can be compared to the opening bars of Beethoven's Fifth or the opening organ chords of the *Phantom of the Opera*, then recall the concluding movement of Beethoven's Fifth and the final scene in the *Phantom* for the type of attention-keeping and captivating summary of what has transpired during the trial.

The ending portion of the closing argument should *not* be a repeat of prior points or statements. Under no circumstances should it be a "dribble off" or a "time's up" type of ending. Taking a cue from Beethoven and Andrew Lloyd Webber, the ending should be carefully and thoughtfully prepared in advance of the closing argument so that it will relate to the key issues in the case and summarize the most persuasive argument for your side of the case. Prepare in advance both the opening five to seven minutes and the ending five to seven minutes of your closing argument. Start strong and end strong.

The ending of the closing argument should state clearly what you want for your client. In the United States, we call this "the demand." In a jury case, there will be a verdict form, which the lawyer should review with the jury, instructing them on how it should be completed.<sup>16</sup>

In a trial to the court, the lawyer should also articulate precisely what relief he wants in the case. The "demand" can be prepared in writing and submitted to the judge in advance of the closing, after the closing,

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16. See Sample Jury Verdict Forms in Appendix II, *infra*.

or both. In any event, an effective and persuasive demand portion of the closing argument will *not* simply refer the court to a certain page in the written submission, but will clearly state the demand. The advocate's eyes should be riveted on the judge, and her voice and demeanor should indicate her sincerity and the merits of the demand.

As a trial lawyer, if you have the opportunity to argue the case, then argue it. If a written submission is required, then write. But never mix the two. If you try to do two things at once, you will do neither well.

## VI. The Law of Closing Argument

As noted by Jim McElhaney, it is easy to state the basic rules of final argument.

1. You may not misstate the evidence or the law.
2. You may not argue facts off the record.
3. You may not state your personal belief in the justice of your cause.
4. You may not personally vouch for the credibility of any witness.
5. You may not appeal to passion or prejudice.
6. You may not urge an irrelevant use of evidence.

There they are, elegant in their simplicity. And as black letter principles, they are easy enough to follow in the security of an office chair. It is only in the heat of argument that they offer any difficulty. What seem like simple propositions may suddenly look like snares in which a single misstep can bring an objection, a reprimand from the bench, a pointed instruction to the jury, a mistrial, or just a shrug of judicial indifference.<sup>17</sup>

## VII. Epilogue

Litigation is always rigorous and demanding, and often frustrating and emotionally draining. But in the closing argument lies the most satisfying part of the trial (next to winning). Preparing the closing argument can be creative, like painting. Delivering the closing should be like figure skating—fluid and graceful. Both the creation and the delivery of a closing argument require skill, discipline, and experience

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17. MCELHANEY, *supra* note 2, at 479.



to make it truly effective. The closing argument provides the advocate with the satisfaction of finishing the picture he has been painting throughout the trial. When it is done well, it can truly be a work of art.

## **Appendix I**

### **Ten Rules for Closing Argument**

The following ten rules for closing argument have been adapted from a lecture and written outline prepared by a great NITA teacher, Steven Lubet, Professor of Law, Northwestern University School of Law, Chicago, Illinois.

#### **Rule 1—It Must Matter to You**

##### **A. The Case Itself Must Matter to You**

Be it your client, the facts or the law, something in the case must stir the advocate to present a convincing closing argument. Some say that every lawsuit has a moral dimension and that moral dimension should be the cornerstone of the final argument. “It must matter,” “stirring the advocate’s fire,” “a belief in the case,” “moral dimension” are all concepts that beget much more than sincerity as popularly defined in today’s culture by the “turn it on/turn it off” emotive power of the anchor person in *Broadcast News*.

When you have arrived at the stage of presenting your closing argument, there must be a theory for winning your client’s case that can be credibly presented and argued, with conviction and sincerity, to the fact-finder. If something happens during the trial to destroy your theory of the case, you have to settle the case, since the single most important element in closing argument is your ability to argue with conviction the theory for winning your client’s case. Conviction in your client’s cause, and thus the ability to emanate honest sincerity, does not mean that you must have a personal belief in the merits or justness of the case, but there can be no conviction if there is not a credible argument to be made on behalf of your client.

It must matter to someone. There must be a belief in the case or a moral dimension that drives the conviction which underlies the argument. Counsel must, at least vicariously, be stirred to make a convincing argument. It is easier to convey such conviction if counsel accepts the correctness of his client’s position. However, that is a luxury not available in all cases. Nevertheless counsel, being the

voice of that client, must at least project the client's belief in the correctness of his case.

**B. Your Chance to Speak and to Persuade the Judge/Jury**

1. You cannot sell it if you would not buy it
2. Nothing is as persuasive as sincerity—honest sincerity
3. Look inside yourself for the argument you can believe in and deliver

**C. Remember What Your Mother Told You**

1. Look them in the eye
2. Do not fidget
3. Speak up
4. Do not read it (Soviet newscaster)

## **Rule 2—Have a Theory of the Case**

Do not just recite a bunch of facts—have a theory of the case. Make sure it honestly takes into account the problems and hard questions in the case and that can win the lawsuit.

**A. Explain Why You Should Win**

Give the fact-finder the essential reasons your client should win. Use a simple sentence, such as “my client should win because.” Support it with facts. Consider using a list, such as, “there are three reasons why my client should win—(1), (2), and (3).”

**B. The Issues Must Resonate with the Judge or Jury**

In presenting the issues to the fact-finder, you want the light to go on and the reaction to be, “Oh, yes, that's right!” The issues should not be presented in a technical way. So, for example, do not talk to a jury about failure of consideration; tell them your opponents did not live up to their part of the bargain.

- C. Do Not Assume a Burden You Do Not Have—Such as “It is Clearly True That,” or “It is Easy to Find Here”
- D. Do Take into Account Your Opponent’s Theory of the Case and Then Diminish it

### **Rule 3—Avoid the “Easy Laundry List” Approach: Chronology**

- A. Chronology is Tempting Because it is Easy. But it is Very Deadly in Terms of Persuasion. It is More Summation Than Argument.
- B. The Laundry List Chronology Approach Usually Fails Because:
  - 1. it is boring
  - 2. it overemphasizes trivia—as usually unimportant facts come out early and last long
  - 3. it is beyond your control
  - 4. it does not show relationships between events or people
  - 5. the main theme tends to be interrupted by details
- C. Chronology Does Not Take Advantage of Your Right to Argue—It is More of a Summation Through Which the Fact-Finder is Justified in Snoozing

### **Rule 4—Avoid the “Worst Laundry List” Approach: Witness-By-Witness**

- A. Witness-By-Witness Discussion. The NITA Term Is “Witness Listing.” It is Never Persuasive or Effective.
- B. Witness Listing is Even Lazier Than Chronology
- C. Might As Well Not Argue
  - 1. Does not organize anything
  - 2. Does not allow inferences or conclusions to be drawn

3. They have already heard the witnesses and this is repetitive and condescending

## **Rule 5—Address the Legal Issues**

- A. **Do Not Just Catalog the Facts. Deal with Legal Consequences. Look at the Interfacing of the Facts in the Law.**
  1. Explain what the legal consequences are
  2. Explain why they matter
  3. For Example:
    - (a) A bad line-up in a criminal case is not just a rights violation but it affects reliability.
    - (b) Bad confession—likewise is not simply a rights violation but affects reliability.
- B. **For Primary Legal Issues in a Case Such as Reasonable Doubt in a Criminal Case, Negligence in an Injury Case, or Malice in a Libel Case, It is Important to Argue That Issue Rather Than Just Stating It. Go to the Theme of the Lawsuit and Spend Your Time Arguing That Theme.**

## **Rule 6—Address Factual Problems**

- A. **Every Case Has Factual Problems—Deal With Them**
- B. **Solve Your Own Problems, Such As:**
  1. Credibility
  2. Motive, bias
  3. Missing evidence
  4. Apparent contradictions
  5. Timing, gaps, lapses
  6. Why
- C. **Exploit and Emphasize Your Opponent's Factual Problems**

## **Rule 7—Use the Evidence in Your Argument**

### **A. Actually Use the Documents. For Example:**

1. read from the documents rather than just referring to them.
2. draw inferences from the documents.
3. contrast documents and testimony—for example, “He said . . . , but the document says. . . .” A reasonable inference to draw from the document is “X” and that is our argument.

### **B. Exhibit the Exhibits**

### **C. Argue the Weight and Credibility of the Documents and the Testimony**

## **Rule 8—Do Not Argue in a Vacuum**

### **A. There is Another Side in the Room and You Have to Meet that Argument**

### **B. Challenge Your Opponent’s Case**

1. Announce your opposition’s weak points
2. Invite reply, but be sure of trap you have set

### **C. Respond to Opposition**

1. Defend the challenge
2. Refute opposition’s strength
3. Comment on silence in their testimony and in their argument

### **D. If You Have Rebuttal—Save Something**

1. Keep a kicker
2. Organize around theme
3. On rebuttal, do not just repeat

## **Rule 9—Use the Jury Instructions**

A. In a Jury Trial, it is Always Important to Refer to the Judge's Charge. Read and Refer to the Court's Instructions to the Jury. Pay Particular Attention to the Instructions on:

1. burden of proof
2. credibility of the witnesses
3. expert testimony
4. the elements of the case

In a bench trial, refer to the law governing the case and argue the law and the facts in the same organized and persuasive manner as you would do in a jury trial.

## **Rule 10—Ask For What You Want**

A. Know What You Want

B. Alternative Verdicts

1. Lesser included offenses in criminal cases
2. Alternative verdicts usually result in rolling the dice

C. Damages

D. Special Interrogatories

E. Verdict Form

## Appendix II SAMPLE JURY VERDICT FORMS

IN THE CIRCUIT COURT OF  
DARROW COUNTY, NITA  
CIVIL DIVISION

MARY L. DIXON, Plaintiff	)	
	)	
vs.	)	JURY VERDICT
	)	[Alternative Verdict Form #1]
PROVIDENTIAL LIFE INSURANCE COMPANY, Defendant.	)	
	)	

The jury is to answer the following interrogatories. The foreperson is to answer the interrogatories for the jury and sign the verdict.

Interrogatory No. 1: Has the defendant proven that the insured, John Dixon, committed suicide?

YES \_\_\_\_\_  
NO \_\_\_\_\_

Interrogatory No. 2: Has the plaintiff proven that the death of the insured, John Dixon, was an accident?

YES \_\_\_\_\_  
NO \_\_\_\_\_

Interrogatory No. 3: \*We are unable to find that the death of the insured, John Dixon, was suicide, and also we are unable to find that it was accidental.

OR



**\*We find that the plaintiff has not met her burden of proving accidental death, and also that defendant has not met its burden of proving suicide.**

YES \_\_\_\_\_

NO \_\_\_\_\_

The members of the jury have unanimously answered the interrogatories in the manner that I have indicated.

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Foreperson

*\*Use only one of the above.*

IN THE CIRCUIT COURT OF  
DARROW COUNTY, NITA  
CIVIL DIVISION

MARY L. DIXON,	)	
Plaintiff	)	
	)	
vs.	)	JURY VERDICT
	)	[Alternative Verdict Form #2]
PROVIDENTIAL LIFE	)	
INSURANCE COMPANY,	)	
Defendant.	)	

We, the Jury, return the following verdict, and each of us concurs in this verdict:

[Choose the appropriate verdict.]

I.

We, the Jury, find for the plaintiff in the sum of \$50,000, the face value of the life insurance policy.

\_\_\_\_\_  
Foreperson

II.

We, the Jury, find that the insured, John Dixon, committed suicide, and the plaintiff is entitled to the sum of \$100,000.

\_\_\_\_\_  
Foreperson

III.

We, the Jury, find that the death of the insured, John Dixon, was an accident, and the plaintiff is entitled to the sum of \$100,000.

\_\_\_\_\_  
Foreperson

IN THE CIRCUIT COURT OF  
DARROW COUNTY, NITA  
CIVIL DIVISION

MARY L. DIXON, )  
Plaintiff )  
 )  
vs. )  
 )  
PROVIDENTIAL LIFE )  
INSURANCE COMPANY, )  
Defendant. )

JURY VERDICT  
[Alternative Verdict Form #3]

We, the Jury, return the following verdict, and each of us concurs in this verdict:

[Choose the appropriate verdict.]

I.

We, the Jury, find for the plaintiff in the sum of \$\_\_\_\_\_.

\_\_\_\_\_  
Foreperson

II.

We, the Jury, find for the defendant.

\_\_\_\_\_  
Foreperson

IN THE CIRCUIT COURT OF  
DARROW COUNTY, NITA

THE PEOPLE OF	)	
THE STATE OF NITA	)	
	)	
vs.	)	Case No. CR 1473
	)	JURY VERDICT
JOHN DIAMOND,	)	
Defendant.	)	

We, the Jury, return the following verdict, and each of us concurs in this verdict:

[Choose the appropriate verdict.]

I. NOT GUILTY

We, the Jury, find the defendant, John Diamond, NOT GUILTY.

\_\_\_\_\_  
Foreperson

II. FIRST DEGREE MURDER

We, the Jury, find the defendant, John Diamond, GUILTY of Murder in the First Degree.

\_\_\_\_\_  
Foreperson

III. SECOND DEGREE MURDER

We, the Jury, find the defendant, John Diamond, GUILTY of Murder in the Second Degree.

\_\_\_\_\_  
Foreperson

#### IV. MANSLAUGHTER

We, the Jury, find the defendant, John Diamond, GUILTY of Manslaughter.

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Foreperson

#### V. CRIMINALLY NEGLIGENT HOMICIDE

We, the Jury, find the defendant, John Diamond, GUILTY of Criminal-ly Negligent Homicide.

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Foreperson