

TRIAL

Technology in the Courtroom

Reflections

Summation: The Last Hurdle

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It's three o'clock in the morning and you're not asleep. Your heart is racing and your eyes are wide open. "I've got to get some sleep – there's no way I'll ever get through tomorrow if I don't get some rest," you say to yourself. You can't seem to stop the waves of random thoughts.

Up to now there has been no clear winner in the trial. You can see that the jury is confused. The trial has been a real tug-of-war. Each side has been pulled to the brink of disaster, but neither has gone over the edge. The victor is yet to be decided.

It all rides on your closing argument. Can you breathe life into these well-worn facts? Can you make the jurors understand? Can you move them to feel the loss your clients have endured? Can you provide the jurors with what it takes to right this wrong? It's all up to you. The responsibility is overwhelming. All the time, all the work, all the energy, the very future of the family you've grown to love depends on the words you choose and how you present them.

You think of the first time the family walked into your office. You didn't know their children, Johnny and Laura, their dreams, their losses. Well, they aren't just clients now. Your life has become so entwined with theirs that it's hard to tell where their lives stop and yours begins.

The barking of a dog somewhere in the night brings you back to the present and the all-important closing argument hanging over you. How many times in past trials have you questioned your ability to get through to a jury? How often have you lain awake agonizing about what to say? How many times have you been convinced that the verdict depended on the close? Right or wrong, most lawyers seem to feel that it all comes down to the final argument. Probably because that's all that remains for us to do. After that we are totally helpless – no control at all. What a frightening thought!

The Morning Of

The stillness of the morning is shattered by the buzz of your alarm. Five a.m. – it's still dark outside. "Well, maybe I slept a little," you think as you ease out of bed, only to stumble over the files you were reviewing last night. You cautiously make your way to the bathroom and flip the switch. The bright fluorescent light pierces your tired, red eyes. "Come on, come on, get a grip," you think as you splash cold water on your face.

As you look into the mirror your reflection seems to fade into the faces of the people on the jury, sometimes warm and comforting, sometimes cold and distant. You remember

how suspicious Ms. Jones looked when Karen was testifying. You were sure Ms. Jones was on your side. What did Karen say or do to cause that reaction? Was it just your imagination?

Why didn't you have someone in the courtroom to watch the jury? It's impossible to do it all yourself – listen to the answer, think of the next question, watch the jury, watch the witness. That's why so many of the seminar speakers you've heard and articles you've read recommended that lawyers have someone else in the courtroom to help. But you don't have the money to hire all those experts. You do the best you can with what you have – but sometimes you feel so inadequate. "I should at least have had my secretary come and watch," you think.

A full breakfast is out of the question, but you know you need a little something to eat or the knot in your stomach will soon be fighting the butterflies for space. A little cold cereal – that'll do it. Easy on the coffee, now.

Standing at the sink, rinsing out your cereal bowl, your mind jumps from the jury to Karen to her family to the close. As you think about your argument, you realize you have been preparing for it all your life. Who would have thought that lessons learned by a five-year-old would become part of a lawyer's summation? You have decided to use an analogy, a lesson about right and wrong you learned when you were a young child.

You remember it well. You were at Aunt Ethel's house. Visiting her was fun. There were always family members around – aunts, uncles, cousins – and enough food to feed an army. Aunt Ethel made the best apple pie you have ever tasted.

Everything was great that day, except that it was raining, and the cousins had to play inside. One minute you were laughing and running through the house, trying to get away from Cousin Jim. The next minute you were frozen in the dining room, looking at the fragments of Aunt Ethel's favorite vase, which had just crashed to the floor. Pieces were scattered everywhere, and you were so scared you could hardly breathe. Your mother gently took your arm and led you to the bedroom.

"I didn't mean to. I promise, I didn't mean to break it, I'm sorry," you said, tears streaming down your face.

"I know you didn't mean to break the vase on purpose," your mother said lovingly. "But you are responsible, even though you didn't mean to break it. You were careless. You knew better. It was your fault."

You were so ashamed – you just wanted someone to spank you or yell at you — anything to get it over with. Instead, your mother said, "It's up to you to earn enough money to give Aunt Ethel to make up for the loss you caused." You had to fix what you had broken in the only way you could, she explained. You couldn't mend or replace the lovely old vase, but it was your responsibility to pay for the loss.

It is a simple story, and you think it will work in this case. The defendant, although speeding, had no intent to do the damage he did, but he must be required to pay for the loss he caused. Your story should appeal to the jurors' sense of fairness and responsibility.

“I’m going to have to hurry and get to the office if I’m going to have any time to discuss my summation with Alice,” you think. She always has a lot of insight. You’re glad to have a partner with her ability.

Rehearsing

You’ve tried your argument on almost everyone who would listen and got some great ideas. It’s amazing how nonlawyers see things we miss. Probably because we think like lawyers instead of people. Thank goodness you’ve never had a lawyer on any of your juries. Briefcase, files, keys – you think you’re ready – you hope Alice will be early today.

It’s six a.m. as you back out of the driveway. Your son, Joshua, invades your thoughts. “I should have paid more attention to him last night. I should have praised him or hugged him, or something. He was so proud of his test score.” Lately it seems you’ve hardly been able to think of anything but this case.

You usually enjoy sliding the roof back on your car in the mornings, but not today. No use letting the wind and morning dampness make you look unkempt. As you turn down the boulevard to the office, you click off in your mind all the important points you have been jotting down in your closing-argument file since you started this case. Starting a file on closing argument as soon as the case came in and dropping in ideas, magazine articles, newspaper clippings, and the like as you went along really has helped you collect the resources you need now for summation.

Now what are those speaking principles from Aristotle again? Did you use them in your argument? One of them was something to do with repetition. If you’ve done anything right or wrong, you’ve certainly repeated it. Well, no time to worry about that now.

You hope nobody in the office hits you with urgent problems. It’s so frustrating when you walk in and have to put out four or five fires. Maybe you should go straight to the courthouse. No, if you do, you won’t get a chance to talk with Alice.

You’re fairly comfortable that you’ve stuck to your theme throughout this trial. You started it in *voir dire*, you hit it throughout the testimony, and you’ve incorporated it in your close. “moment of carelessness caused a lifetime of pain.” It won’t make history, but it fits this case.

How will you get everything in? You have only 50 minutes for the whole final argument. At least you were smart enough to ask the judge how much time he would allow for closing argument. You’ve been caught flat-footed too many times when you prepared for one time limit and then the judge set another. “I should have practiced more, though, and timed myself,” you agonize. “I have only about 30 minutes for the last part of close, and I’ll have to spend some time rebutting what the other lawyer says. But I’m not going to let him draw me into chasing rabbits. I’m going to stick to my plan.”

It is really lucky that the only objective witness called the defendant’s car “that red rocket” during deposition. What a catchy phrase! It couldn’t have come out better if you’d planned it. The witness used the same words at trial. You paused to let them sink in. The jury will surely hear those words again in your summation.

Now, what was the day of the week the accident happened? There you go again, using that word. You must remember not to call this wreck an accident. Why is that so hard? You know that “accident” does not convey the image you want. It makes the collision sound like a simple mistake. Stick to crash, smash-up, wreck – something like that.

There is so much traffic this morning. Surely it never took so long to get to the office before. Everything seems to be moving in slow motion. As you glance down at the passenger seat, you see the list of names of jurors and information about them. You must remember to look over your jury notes again before you go to court.

You pass the courthouse. Just the sight makes your mouth dry. Your neck feels tight. Is it sane to put yourself through this – voluntarily? Karen and her family think you’re so calm. They’re depending on you.

Recently, you’ve been reading some of the great modern orators – Winston Churchill, John F. Kennedy, Martin Luther King, Jr. They had effective ways to reach their listeners – repetition, rhetorical questions, analogies. It really got to you when Kennedy said, “And so, my fellow Americans, ask not what your country can do for you; ask what you can do for your country.” You’ve planned to try something like that today. You’re going to say, “When you decide what’s fair for Karen, don’t look so much at her life as it is. Instead, look at the life she can never have.” That sounds pretty good.

Thank heaven, you’ve finally reached the office.

You know there are other rhetorical devices – quotations, alliteration, metaphors – but you can’t use them all. You have to do what feels right and use language that’s down-to-earth. You have to come across as honest and real, believing in what you say. The best way to appear sincere and credible is to *be* sincere and credible. In the bedtime story you read to Joshua last week, the Velveteen Rabbit learned to be real by loving. Maybe it’s as simple as loving Karen and her family and letting it show.

Well, getting to the office early gets you a good parking place.

How can you relate to the people on the jury and help them relate to Karen? What do you have in common? You know a good bit about them. You know where they work and that some of them have families. You have tried to tie your analogies and stories to things that should be familiar to most of them. You don’t want to leave any of them out, yet you want to make your main pitch to those two or three you have picked as leaders. It has worked for you in the past. This is where those jury notes really come in handy. You’ve used them throughout the trial, but they are essential now.

Alice’s car is parked behind the building. She’s in early too.

Final Consultation

You’re so preoccupied you almost pass a secretary in the hall without saying “Hello.” You walk straight into Alice’s office. She looks up with a smile. “Yes?” It’s not fair, she’s

relaxed. After a quick greeting, you show her your outline. “How are you going to start?” she asks.

“What do you mean, how am I going to start? I’m just going to start,” you say.

“You have to start strong,” Alice says. “When you first approach the jury and establish eye contact, you’ll have all of their attention. You don’t want to waste those precious moments telling them what a beautiful day it is, do you?” she asks.

“Well, I wasn’t going to do anything like that,” you say, irritated. “I was going to thank them for their service. You know, warm up a little bit. Explain to them that what I say is not evidence but merely some fair inferences from the testimony.”

“For crying out loud,” Alice says. “You’re basically telling them not to pay any attention to you.”

“Well, I always start like that. It’s comfortable. It helps me to get started. I really have a great argument.”

“Well, maybe you do, but by the time you get around to it, you will have lost half the people on the jury. Can’t you come up with an opener that will really grab them?”

“Oh, I don’t know,” you respond with a sigh.

“Why don’t you go and think about it for a while?” Alice suggests. “I have some dictation I’ve got to finish. Come back when you think you’ve got something and try it out on me.”

Your secretary approaches as you walk out of Alice’s office, but you hold up your hand and shake your head. You sit anxiously at your desk. Alice is right, you admit to yourself, but it’s hard to start your argument when you’re feeling so uptight.

You think about those voice relaxation techniques you learned. You’ve never before tried to use them but you will today. You hang your head and arms, tighten your face like a fist, and then let the muscles relax, inhaling deeply and exhaling slowly.

“What if the defendant, Mr. Smith, had driven his car at the speed limit of 50 miles an hour instead of 65 miles an hour on June 24, 1990? We wouldn’t be here before you, would we? Because Mr. Smith, the defendant, chose to speed and disregard the law, Karen will live a life of pain.”

It doesn’t quite seem to send the full telegram. You try it again. How about this?

“On June 24, 1990, little Johnny and Laura had something taken away from them. George had no idea when he kissed his wife good-bye that morning that all their lives were about to change forever. When the defendant, Mr. Smith, chose to speed and to drive his car carelessly that morning, he took away from Johnny, Laura and George the kind of mother and wife they had always known her to be.”

Maybe this approach is too long, maybe it's too much too soon. "I like it, though. I'll ask Alice what she thinks," you say to yourself.

At least you have the ending down pat. You know the importance of those final two minutes. You've been taught that jurors will likely remember longest what they hear last, so your final words must be the ones that will move them to action.

In the Courtroom

Those relaxation techniques have helped, but you're still anxious. The jury looks comfortable this morning. Ms. Jones has a big smile. Karen, despite her pain, looks calm – the look of someone here for justice, not pity. George, Johnny and Laura all look just right. The judge is talking.

"Is the plaintiff prepared to begin the summation?"

"Yes, Your Honor." It's time! You try to look confident as you push back the heavy wooden chair and stand. Your knees are shaking. You hope the jury can't see them. You take a deep breath, in and out.

Approaching the podium, your mind checks off your list of preparations: notes in outline form, two or three exhibits arranged for easy reference. No fumbling around today. You will stand beside the podium for the close. You don't want any barriers between you and the jury. You're in place. You're beginning to feel better as you look into the eyes of your friends and neighbors – the jurors.

"May it please the Court, ladies and gentlemen of the jury"