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Closing Argument: Through the Eyes of a Trial Advocate

Kevin C. Kennedy[†]

Abstract

The author, an experienced trial lawyer, shares some of his techniques and strategies for giving an effective closing argument. While word choice, gestures, and multimedia play an important role, nothing is as important as knowing your jury.

Introduction

There is an old adage that states “the tongue is more powerful than the sword.” When properly bridled and honed, the spoken word can empower nations and propel the multitudes. This fact is evidenced in history by speeches of famous orators. For example, Alexander the Great motivated his troops through speeches—enabling him to create one of the largest empires in history.¹ Napoleon Bonaparte gave hope to his followers as to the fate of France after he was defeated and exiled to Elba in his famous speech, “Farewell to the Old Guard.”² Franklin Delano Roosevelt offered a bastion of inspiration during one of America’s darkest hours when he said, “[t]here is nothing to fear but fear itself.”³

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¹ See D.B. NAGLE, *THE CULTURAL CONTEXT OF ALEXANDER’S SPEECH AT OPIS* 151-72 (1988).

² Napoleon Bonaparte, *Emperor of France, Abdication Address* (Apr. 20, 1814), in ROBERT B. ASPREY, *THE REIGN OF NAPOLEON BONAPARTE* 359-61 (2001).

³ Franklin D. Roosevelt, *President of the United States, Inaugural Address* (Mar. 4, 1933), in *THE PUBLIC PAPERS OF FRANKLIN D. ROOSEVELT, VOLUME TWO: THE YEAR OF CRISIS*, 11-16 (Samuel Rosenman, ed.) (1938).

Dr. Martin Luther King, Jr.'s famous "I Have a Dream" speech is a much celebrated moment from the Civil Rights Movement that has touched generations of listeners.⁴ John F. Kennedy stirred the nation in his inaugural address. His challenge—"My fellow Americans, ask not what your country can do for you; ask what you can do for your country"—remains impressed upon the minds of modern Americans.⁵

The spoken word is equally efficacious in the trial setting and essentially serves the same purpose: to engender emotion and persuade others to accept a certain point of view. More specifically, an effective closing argument requires careful, calculated communication. As the last thing the jurors will hear from a lawyer before deliberation, the closing will guide the jury's thought process and ultimate decision. The lawyer must transform himself into a salesperson—marketing ideas that make the jury buy one version of the facts over the other in order to influence the jury's decision. Therefore, logic and emotion must be tied together in a closing argument; a lawyer should create a picture with his words and convey an image to the jury, including all of the evidence presented during the trial. Judges typically instruct juries to avoid making emotionally-charged determinations; however, such appeals are permitted and can be quite effective during the closing argument. The closing is the lawyer's last opportunity to sell the client's story through his argument to the jury.

Section I of this Article discusses the steps that should be taken to prepare for the closing, the importance of knowing your audience, and the effective use of gestures, body language, and multimedia when speaking. Section II examines various closing techniques, different types of arguments, and the story-telling aspect of closings. The final section reiterates the importance of closing arguments and techniques.

I. Preparing and Perfecting the Closing

In preparing for closing arguments, a lawyer should be alert to deficiencies in demonstrative evidence, topics covered in direct and cross

⁴ Martin Luther King, Jr., Address at the March on Washington for Jobs and Freedom (Aug. 28, 1963), in *A CALL TO CONSCIENCE: THE LANDMARK SPEECHES OF DR. MARTIN LUTHER KING, JR.* 75 (Clayborne Carson et al. eds.) (2001).

⁵ John F. Kennedy, President of the United States, Inaugural Address (Jan. 20, 1961), in *ROBERT DALLEK, AN UNFINISHED LIFE: JOHN F. KENNEDY, 1917-1963* 321, 324-26 (2003).

examinations, and what types of gesturing and word selection will most appeal to the personality of a particular jury. Slight improvements to each of these areas will collectively increase the chances of a positive outcome. There are many things an effective trial lawyer can do before a trial begins to help improve upon deficiencies, including the following: reading books and articles dedicated to exploring new techniques; attending trials, continuing legal education, and other seminars dedicated to trial advocacy; and spending time practicing individual skills.

At the time of trial, the lawyer must practice his closing relentlessly. Practicing in front of co-workers, a legal secretary, or even a mirror allows for self-evaluation and constructive criticism through self-observation and others' reactions to the argument. In addition, recording a practice session on video can allow you to see your own weaknesses, as well as your strengths, thus providing an additional opportunity to enhance the overall presentation. I like to practice in what I call the "Court of Creativity," my own private courtroom. I encourage my associates to practice in this simulated courtroom in order to perfect their closings and become comfortable in a courtroom setting.

Because a lawyer cannot determine guilt, innocence, or liability, winning a case does not happen without the jury. As such, an effective closing argument must make the members of the jury feel like they have been part of the "team" throughout the duration of the trial. To accomplish this, you must know your jurors well enough to know the type of argument to which they will respond. Learning about your jurors early in the trial and making them feel like they are a part of the team can lead to a positive outcome for you, as their team mate.

A. Know the Jury

Jury composition can vary for many different reasons, the most important of which is geographical location. The natures and predispositions of individual jurors pivot largely on geography. For example, a jury in the South may have different views and biases than one in the Midwest. Demographics, or whether the jury pool comes from the city, the suburbs, or a rural community, also partially determine a jury pool's age, education, gender, and racial make-up. When a lawyer practices in an unfamiliar location, it is wise to retain local counsel to discuss the views of the community in order to fashion a closing that is perceptive to the

unique characteristics of the location. Being sensitive to location is the first step in knowing a jury.

Lawyers also learn about their jurors through voir dire. During that process, the lawyer should take note of where jurors work, if they are married, whether they have children, and their views on issues that will come up during the trial. In addition, the lawyer should discover whether the members have prior jury experience and whether their experience was with a civil or criminal trial. The attorney should also be particularly sensitive to individuals with disabilities and those with biases towards a certain sex, race, gender, or culture. Voir dire reveals whether a juror has any of these biases and the level of juror sophistication. Once biases are revealed, they can be avoided.

Voir dire also helps determine what closing techniques are appropriate for the jury. For example, in a case in which I represented a criminal defendant, one of my voir dire questions determined that a number of potential jurors were retired from the military or were spouses of retired military members. Since a significant number of the jurors were retired from a branch of service, as was my client, I utilized a patriotic theme during the closing argument to help the jury relate to my client on a persona level.

The lawyer should carefully observe and evaluate each potential juror and their responses to questions during voir dire to determine who among them has a dominant personality. Those who are aggressive and assertive in voir dire are likely to act similarly in the jury room; it is especially important to determine from the outset who the leaders will be. Based on their reactions, it may be necessary to make adjustments to the approach you have planned for the closing. Appeals to the jury panel leaders may be an especially effective approach because they will likely influence the decisions of other jurors.

Another sensitive issue a lawyer should be aware of with modern juries is exposure to and prejudice toward the trial system. Many popular television shows, such as *Law and Order*⁶ and *Shark*,⁷ depict lawyers exercising these trial techniques. It is important to determine members of the jury pool's attitudes toward such shows during voir dire, as these dramatizations often do not realistically depict the trial process. Accord-

⁶ NBC television.

⁷ CBS television.

ingly, the juror may have an unrealistic expectation that is disappointed during the rigors of trial, based on these news and entertainment mediums. The Internet also offers potential jurors the ability to research trials and trial-related news. An effective trial lawyer should not only be aware that a juror may harbor negative feelings about judges, attorneys, or the judicial process based on inaccuracies in the news or from television shows but also should address such negative attitudes during the venire. These topics should be addressed in voir dire and extended into closing arguments.

B. Effective Speaking

Effective speaking has several components. The first and most important component is word choice. The words a lawyer chooses can have a significant impact on the listeners, and a misstep in word choice could be a large setback. For example, referring to the opposing litigant by the designation “plaintiff” or “defendant” dehumanizes the individuals. In a wrongful death case, an effective strategy might consist of referring to the deceased by name only, rather than “victim” or “deceased.” Using terms such as “deceased” or “decedent” seems cold and impersonal, which can make jurors think the lawyer does not care about the loss of life. Use of those two words, especially, serves to remind the jurors that the actions of the plaintiff resulted in another person’s death. Word choice is especially important during the closing because these final words will be fresh on the jurors’ minds during deliberation; a closing tainted with poor words or negative connotations and innuendo could do significant damage to a case.

Descriptive adjectives are another tool lawyers may use to persuade the jury. Adjectives paint a picture for the jury. Using adjectives to project the tone and mood of the story can captivate the members of your audience, drawing them into the argument. Adjectives make a presentation more interesting, which is crucial since jurors—like all people—have limited attention spans. Compelling the jurors to visualize the location of an event to the extent they feel as if they were there will help the jurors pay better attention to the story. I have some favorite descriptive, case-specific adjectives. In a personal injury trial, words such as painful, horrendous, tragic, embarrassing, and humiliating are particularly effective. Jurors can *feel* these descriptive terms and will become more involved in your closing. These and other modifiers—such as cruel,

inhumane, abusive, hateful, hurting, willful, knowingly, intentionally, and maliciously—can also be effective in prosecuting criminal offenders. Such words can assist jurors in bridging the gap between the factual evidence presented and the human element of the crime. Any descriptive words applicable to the situation that effectively elicit emotion favorable to your client will enhance the closing argument.

The cadence with which the lawyer chooses to speak is also important. Pauses can sometimes communicate more effectively than words alone. For example, silence and the length of silence are integral to musical expression and the composition of captivating music. Similarly, silence before a vital spoken thought can invoke suspense and thus command the undivided attention of an audience. Jurors who pay close attention to what you are saying will more likely comprehend what you want to communicate. Do not be afraid to pause and think before you speak. Not only will you provide the jurors with more cogent thoughts and arguments, but they will infer from the silence that what you are about to say is important and worthy of consideration.

Inflection and intonation also serve as persuasive communication devices. The change in voice pitch and tone can catch the jury's attention at crucial moments. It is helpful to plan the change in voice at places in the closing where emphasis would be the most beneficial. Tone and inflection must also impart sincerity through the words being spoken. Moreover, establishing a rhythm or pattern with words can effectively impact the jury. Some lawyers employ an evangelical style, which uses changes in volume and pitch to emphasize points. These lawyers also tend to combine changes in voice inflection with gestures and movement in their closings that command the attention of those in the courtroom.

Finally, it is important that the closing argument be memorized. Preparedness allows the lawyer to speak directly with the jury. Use of notes is viewed as a crutch and may distract the jury from what the lawyer is trying to say. Moreover, if the closing is memorized, then the lawyer will be able to maintain eye contact with the jurors and move freely around the courtroom.

C. Gestures and Body Language

Movement during closing argument effects the jury's overall perception of the presentation. It is generally difficult for an attorney to capture the jury's attention and even more difficult to keep it. In order to do this,

a lawyer may choose to be animated and expressive with his eyes, face, and hands. Some lawyers exhibit confidence by moving around the courtroom freely, projecting an air of competence. Good posture, deliberate movement, and an open stance demonstrate confidence. Moving away from the podium in courtrooms where it is permitted enhances the directness of contact between the lawyer and the jury by removing the visual barrier erected by the podium.

Certain nonverbal behavior, such as the crossing of arms, may be interpreted as the lawyer's disinterest in what he is presenting. Further, this type of body language also conveys stubbornness and petulance. The jury should believe not only that you are interested in the case, but also that you really believe your client's version of the facts.

During closing, movement can also emphasize specific points in the argument that the lawyer wants to communicate. Walking in a systematic pattern can help make a point, especially when coupled with a technique such as repetition, which is discussed below. In addition, hand gestures and natural movements make a lawyer appear comfortable in the courtroom, which bolsters the jury's trust and assurance. Power movements such as pointing, moving quickly, extending the arms, bending the knees, clapping the hands, or demonstrating action discussed during the trial may be used to get the jury's attention in particular circumstances. However, too many movements can be distracting from the content of the argument. Therefore, movements should be employed carefully as a tool of communication.

D. Demonstrative Evidence and Multimedia

Incorporating multimedia or demonstrative evidence in the closing enhances the picture the lawyer paints for the jury. The colloquialism, "a picture is worth a thousand words," rings as true in the courtroom as it does in everyday life. On that premise, showing the jury an accurate picture is very persuasive. While some consider multimedia distracting, appropriate execution can help to keep the jurors' attention. Also, media elicits the attention of technologically-savvy jurors and helps congeal key points to jurors who are visual learners. Even for those inclined to auditory learning, visual media can help reinforce a concept or argument. Regardless, arguing in more than one manner creates excitement and an opportunity to connect with the jurors.

Technology is one way a lawyer can present a case to the jury. Computer-generated graphics can be used to demonstrate how an event occurred. Computer generation has been effectively employed in personal injury cases involving car accidents, for example, by allowing the jury to vividly see what the intersection looked like or an animated sequence of events leading up to the crash. Computer generation can also be used in a murder case to reconstruct a shooting and show the direction of the bullet that inflicted a fatal injury or to create a model of an injury. In a personal injury case, medical slides that show how a bulged vertebra could deteriorate over time can impact the jury's determination of damages over a person's lifetime. Finally, a lawyer can incorporate charts of empirical data, slide shows setting out the closing's main points, or photographs to make his closing more stimulating and visually appealing in a way that can lend credibility. The goal of using media and technology in closing arguments is to make your client's version of the facts seem more real to the jury. While media and technology may be used advantageously during trial, it must appropriately fit within the context of the closing.

II. Closing Techniques

There are several techniques attorneys can employ in closing arguments to persuade the jury. To maximize effectiveness, these techniques should be used in conjunction with what the lawyer has learned about the jury. Use of a certain technique could negatively affect one jury but persuade another jury. As discussed earlier, the lawyer must do all he can to learn the personality of the jury early in the trial to help determine the most effective techniques for that jury. The following paragraphs discuss various techniques and provide examples where relevant. Several of the following techniques can be successfully combined in a single closing.

A. The Hook

Many attorneys have employed "the hook" method to draw the jury into their argument. In the criminal trial of O.J. Simpson, Johnnie

Cochran used the now-famous hook: "If it doesn't fit, you must acquit."⁸ This hook has been parodied in subsequent settings, but it was particularly effective in *People v. Simpson*⁹ because it played off both the evidence and the human-factors at issue. As such, it stayed in the minds of the jurors during their deliberations. One way to effectively incorporate a hook is to use it consistently throughout the trial. A hook operates like a theme with the first mention of the hook in an opening statement and carried through the closing. Hooks can be used in almost any trial setting and can be combined with any of the other techniques discussed herein. For example, a story explained later suggests, "things are not always as they appear." This hook can be used easily throughout a trial. In addition, a story and a hook can form a strong combination where a defense strategy strongly depends on an opposing party's misinterpretation of the facts.

A famous line or quote that many jury members know or can relate to also makes a good hook. For example, Paul Harvey, as the commentator of *The Rest of the Story*, tells little-known anecdotes of truth and stories that always end with a twist.¹⁰ To incorporate this familiar radio show format in a hook, the lawyer might say: "The prosecution has told you only part of what happened the day of the theft. Now we will tell you the rest of the story." This hook's effectiveness lies in the subtle doubt it casts on the opposition's version of the facts.

Again, intimate knowledge of the jury remains important for choosing an appropriate hook. Using a hook derived from the locality's culture will deepen the feeling of familiarity between the jury and the client, allowing the jury to more easily identify with your client's situation.

B. Repetition

Repetition can be used to capture the jury's attention because repetition is the key to most learning. This technique, like the hook, is most

⁸ Johnnie Cochran, Criminal Defense Attorney for O.J. Simpson, Closing Argument (Sept. 27-28, 1995), in JANET COTTERILL, LANGUAGE AND POWER IN COURT: A LINGUISTIC ANALYSIS OF THE O.J. SIMPSON TRIAL 199-219 (2003).

⁹ No. BA 097211, 1995 WL 479507 (Cal. Super Ct. L.A. County, Aug. 2, 1995).

¹⁰ See PAULAURANDT, PAUL HARVEY'S THE REST OF THE STORY 1-2 (Bantam 1978) (1977).

effective when it is used consistently from the opening statement to the closing argument. Individual jurors have different levels of learning and comprehension capabilities. For jurors who are having difficulty understanding portions of your argument, repetition will help them remember key facts and grasp important concepts. The goal in using repetition is to emphasize the most important aspects of your argument and help the jury remember those points during their deliberation.

Hearing a key word or phrase repeated throughout the trial and emphasized during the closing should help jurors remember that word or phrase. Dr. Martin Luther King, Jr. used this concept throughout his famous "I Have a Dream" speech given at the March on Washington by repeating some key phrases such as "I have a dream" and "let freedom ring."¹¹ Johnnie Cochran also used his hook "[i]f it doesn't fit, you must acquit" multiple times throughout his closing to show the jury that most of the evidence did not fit with the theory that O.J. Simpson was guilty.¹²

C. Clichés and Quotes

Clichés and quotes are another useful form of a hook. These statements are usually very simple, but incorporate a well-known idea or philosophy in a memorable and straightforward way. A few examples of clichés and quotes easily applied to either a civil or criminal trial are as follows:

- "What a wicked web we weave when first we practice to deceive."
- "If you don't learn, then you will burn."
- "We create opportunity; don't wait for opportunity."
- "You reap what you sow."
- "What goes around comes around."
- "Cream always rises to the top."
- "There is nothing to it but to do it."
- "Go big or go home."

Using famous quotes from the Bible can also be an effective technique in limited situations. Many Americans are generally familiar with biblical precepts such as "an eye for an eye,"¹³ "forgive men their tres-

¹¹ King, *supra* note 4, at 75.

¹² Cochran, *supra* note 8, at 199-219.

¹³ *Exodus* 21:24.

passes,”¹⁴ and “thou shalt not kill.”¹⁵ Some of these quotes can be used persuasively, as well as creatively, in closing argument. While religious references may have a positive impact on a jury, such phrases may not be favored in some jurisdictions. A lawyer should research the jurisdiction, the specific jury pool, local rules, and case law before embarking upon use of religious terminology in the closing argument.

Other sources of quotes are famous speeches and historical documents. The Declaration of Independence, for example, has been used in many good closings to emphasize citizens’ rights and the jury’s role in upholding those fundamental rights as a part of the justice system. The words, “[w]e hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness,”¹⁶ may be used very dramatically.

D. Hound Dog

The “hound dog” technique focuses on establishing eye contact with the jurors and using facial expressions to engage the jury, especially during closing argument. Animated facial expressions indicate the speaker is emotionally and intellectually involved. If a lawyer presents an argument without expression, then the jury will similarly feel indifferent. Conversely, if a lawyer scowls when refuting an accusation or appears joyous when speculating about a hopeful future, then he indicates the emotion he wishes the jury to feel. Practicing these expressions before the closing can help the ordinarily-reserved lawyer feel and look more natural in communicating the emotion behind the expressions. It is here that the ability to convey emotion has the potential to produce favorable jury decisions. Consistent eye contact is essential for the lawyer to form a bond with the jury. Maintaining eye contact with the jurors earns their trust and keeps their attention. It is easier for jury members to understand a lawyer who has their attention. Eye contact also makes the jurors feel that the lawyer is talking *to* them, not *at* them.

¹⁴ *Matthew* 6:14.

¹⁵ *Exodus* 20:13.

¹⁶ THE DECLARATION OF INDEPENDENCE ¶ 2 (U.S. 1776).

E. Aikido

The aikido technique is one that is used to divert animosity away from a client. Aikido is a martial art that does not involve offensive kicks or punches, but instead harnesses the energy of an opponent's attack to immobilize the opponent¹⁷ with joint-locks or to throw the opponent to the ground. This technique can be effectively used at trial to mitigate testimonial and evidentiary damage, especially in defending a criminal or civil matter. Clarence Darrow employed this technique defending William Haywood against a conviction and possible death penalty sentence for allegedly murdering former Idaho Governor Frank Steunenburg. In this trial, Darrow diverted the focus of the trial away from Haywood by placing the focus on the struggle between two trade unions. The following is an excerpt from the trial:

Gentlemen, you short-sighted men of the prosecution, you men of the Mine Owners' Association, you people who would cure hatred with hate, you who think you can crush out the feelings and the hopes and the aspirations of men by tying a noose around his neck, you who are seeking to kill him not because it is Haywood but because he represents a class, don't be so blind, don't be so foolish as to believe you can strangle the Western Federation of Miners when you tie a rope around his neck. Don't be so blind in your madness as to believe that if you make three fresh new graves you will kill the labor movement of the world. I want to say to you, gentlemen, Bill Haywood can't die unless you kill him. You have got to tie the rope. You twelve men of Idaho, the burden will be on you. If at the behest of this mob you should kill Bill Haywood, he is mortal. He will die. But I want to say that a hundred will grab up the banner of labor at the open grave where Haywood lays it down, and in spite of prisons, or scaffolds, or fire, in spite of prosecution or jury, these men of willing hands will carry it on to victory in the end.¹⁸

By shifting the focus of the trial to the larger issue of the labor disputes, Darrow was able to convince the jury to acquit William Haywood.

¹⁷ See generally MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 26 (11th ed. 2005) (stating the "Japanese art of self-defense . . . [uses] the principle of nonresistance to cause an opponent's own momentum to work against him").

¹⁸ Clarence Darrow, Criminal Defense Attorney for William Haywood, Trial Commentary, in CLARENCE DARROW, THE STORY OF MY LIFE 153 (1932).

I employed the aikido technique in the case of a young woman accused of stealing money. There were two other people who had access to the money at the time it went missing. By pointing out this fact in closing, I was able to divert the jury's attention to another plausible scenario. I also developed other scenarios of how the events could have transpired, as follows: (1) The husband and wife had a fight in the store earlier that day about the employee and wife may have taken money to frame the employee; (2) a different employee who took the money to the bank stole the money and framed the manager; (3) the manager was careless in counting and recording the amount of money taken in that day; and (4) after making the deposit at the bank, a bank employee took or misplaced the money. The jury exonerated my client because the evidence cast reasonable doubt as to who took the money. Using hypothetical examples helped the jury envision alternative circumstances that could have led to the same result.

F. Stories and Illustrations

At trial, storytelling is used to create the moment that bonds the jury, the lawyer, and the client. A good lawyer creates a story based on the jurors' knowledge, not his own. In this way, he can build a sympathetic bond between the jury and his client. Jurors need to hear, feel, and experience the client's story. The lawyer can serve the role as a friend introducing two people who immediately find compatibility and attraction.

A story familiar to many Americans is that of George Washington and the cherry tree.¹⁹ When asked if he had cut the tree down, Washington famously replied, "I cannot tell a lie."²⁰ This type of story is particularly effective because it contains principles of honesty and integrity, which all people admire. To construct an effective story, determine what principles or facts you want to emphasize and build the story around them. It is important that the story touch the heart to create a personal connection.

¹⁹ See Christopher Harris, *PUBLIC LIVES, PRIVATE VIRTUES: IMAGES OF AMERICAN REVOLUTIONARY WAR 13-18* (2000).

²⁰ *Id.*

Illustrations can further advance persuasion, making a scenario of facts come alive. For example, in a civil case where the plaintiff has sustained an injury with lingering effects, the persistent pain could be compared to gravel in a shoe. The pain is a constant reminder of the injury. This is a simple illustration that jurors can relate to in their everyday lives, allowing them to empathize with the plaintiff.

Criminal attorney Gerry Spence employs this technique by telling what he calls the "Spence Bird Story."²¹ It is a story that he says "wonderfully empowers the jury and at the same time beseeches them to do justice—the justice [for his] side of the case."²² His story is related in the following excerpt:

Once there was a wise old man and a smart-aleck boy. The boy was driven by a single desire—to expose the wise old man as a fool. The smart aleck had a plan. He had captured a small and fragile bird in the forest. With the bird cupped in his hands so that the old man could not see it, the boy's scheme was to approach the old man and ask, "Old man, what do I have in my hand?" To which the wise old man would reply, "You have a bird, my son."

Then the boy would ask, "Old man, is the bird alive or dead?" If the old man replied that it was dead, the boy would open his hands and allow the bird to fly off into the forest. But if the old man replied that the bird was alive, the boy would crush the bird inside his cupped hands until it was dead. Then the boy would open his hands and say, "See, the bird is dead!"

And so, the smart-aleck boy went to the old man, and he said, as planned, "Old man, what do I have in my hands?"

The old man, as predicted, replied, "You have a bird, my son."

"Old man," the boy then said with disdain, "is the bird *alive* or is it *dead*?"

Whereupon the old man looked at the boy with his kindly old eyes and replied, "The bird is in your hands, my son."

It is then that I turn to the jury and say, "And so, too, ladies and gentlemen, the life of my client is in yours."²³

According to Spence, after he finishes, "the jury knows from the story that, despite their complete power, they must not kill the bird—the life of my client, which I have put in their hands."²⁴ This is a powerful example

²¹ Gerry Spence, *Lessons From Lawyers—Arguing Effectively*, PSYCHOL. TODAY, Nov.-Dec. 1995, at 24.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

of how a story can bring the jurors to an emotional level with the client. It allows them to identify with the characters in the story, whether they like the story or not. It empowers them with the choice to determine the outcome of the trial. On that note, acknowledging the jury's ultimate power to decide the fate of the client displays humility, and can serve as a final attempt to win over a juror who believes lawyers are haughty or snobbish.

One way I use stories is to help the jury better identify with me as the lawyer and, therefore, my client. Particularly in criminal defense, one of the stories I have effectively employed involves a white horse. The story is as follows:

Once there was a farmer who saw a beautiful white horse. He wanted the horse very badly, but became ill before he could go and look at the animal. So he sent his wife to go and look at the horse. If the horse was white, then she was to buy it. The wife went to the horse trader's farm and saw a beautiful white horse with a flowing mane and tail. She called her husband and he told her to buy the white horse for \$1000. So the wife bought the horse. When she got the horse home and the trader was unloading the horse from the trailer, the farmer saw a large black spot on one side of the horse. The wife would have sworn on the Bible that the horse was completely white. However, things are not always as they appear.

This story is particularly well suited for a criminal defense attorney. The idea presented is acceptable and true to almost everyone. After this narrative, the lawyer should analogize the events in the story and the facts in evidence. Jurors are then forced to decide whether to apply the story to the defendant, hopefully leading them to the conclusion of reasonable doubt.

G. Historical Perspective in Stories

Using historical perspective can also persuade a jury. This method generally incorporates the storytelling technique. American history is a common and powerful bond to which all jurors can relate. I sometimes like to incorporate a patriotic illustration such as the following:

I was walking through my home this morning and happened to see a picture of D-Day, taken in Normandy in 1945. What does this picture really mean? Some would say that those in this picture gave their lives foolishly, for nothing. But I say they fought for a day such as this. Today, you, the jury, will have the chance to do exactly as they did. Stand up for our rights and see justice done. Many have given their lives to protect our rights and now it is your turn to protect the rights of another through our American judicial system.

Stories with patriotic themes are especially versatile in that they may be useful for a prosecutor or a defense attorney. For example, a prosecutor can point out that America is a country that does not tolerate crime. On the other hand, a defense attorney may emphasize that soldiers are not sacrificing their lives for a system in which defendants can be convicted without sufficient evidence. Either party can play on notions of justice and the principle of the strong protecting the weak.

Conclusion

Closing arguments are the last opportunity in a trial to win the hearts and minds of the jurors. The goal of a closing argument is to sell your client's story through persuasive and effective communication. To reach this goal, preparation is essential. Proper preparation includes knowing your jury and the effective use of language, gestures, and multimedia while speaking. In addition to preparation, you must ensure that the jury is captivated and moved by the closing argument. The use of the right technique—or a combination of techniques—is important because it guarantees that your closing argument will appeal to the various personalities and intellects of the jury members. Regardless of the technique employed, you must present your argument with passion and enthusiasm. By creating word pictures for the jury, a romantic moment, or a moving story, the jurors will be drawn into the case and see the facts from the perspective of your client. With preparation and the right technique you can be transformed into the consummate salesman—fully able to close the hardest sale.