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presents

Annual Trial Skills Update Seminar

Closing Arguments: Closing Argument Brings it All Together for the Jurors

Saturday, April 6, 2024
1:30pm - 2:00pm

Speakers: Cuauhtemoc Ortega and Eddie Jauregui

Conference Reference Materials

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Closing Argument

California Lawyers Association
2024 Annual Trial Skills Seminar, CSU East Bay

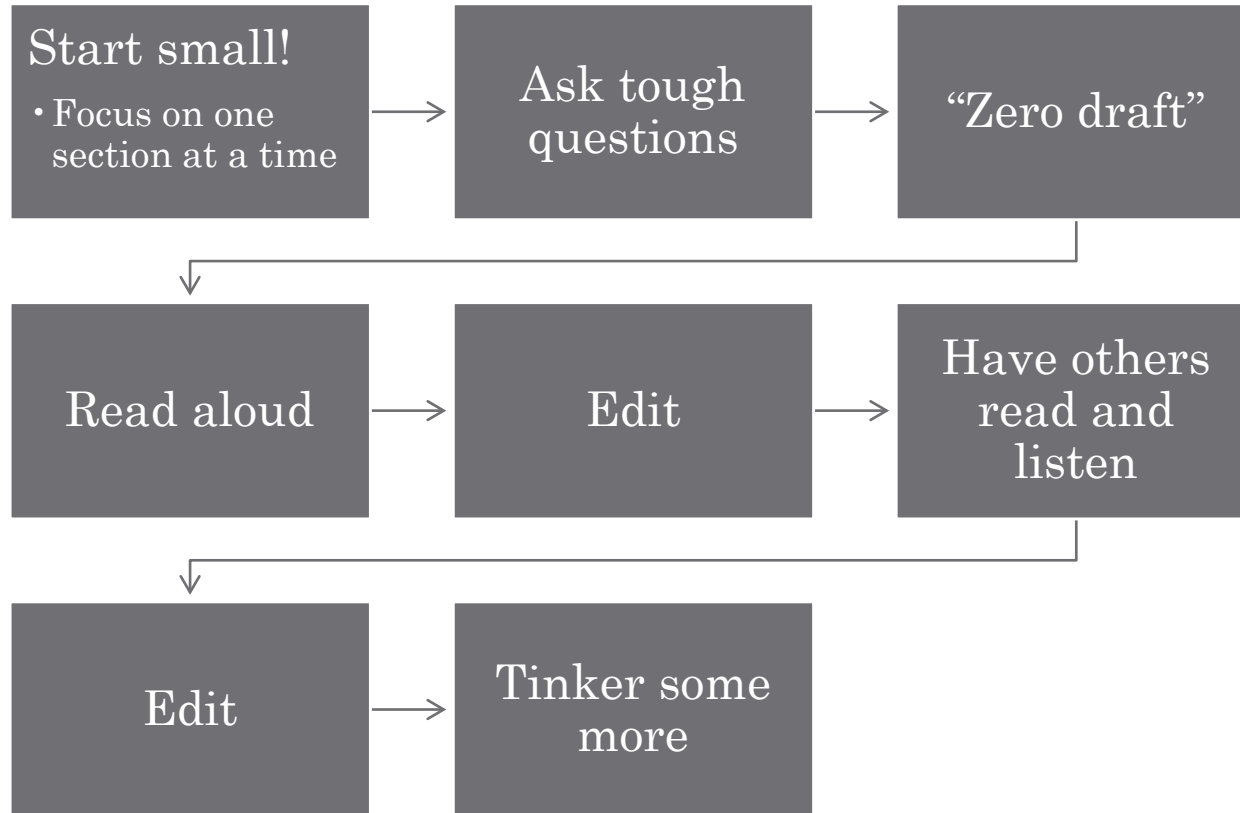
Eddie Jauregui, *Partner, Holland & Knight LLP*
Cuauhtemoc Ortega, *Federal Public Defender, Central District of California*

Discussion Topics

- Preparation
- Structure
- Stylistic Techniques

Preparation

- Pre-Trial Theory and Theme Development
 - Storylines to Merge in Closing
- Outline Methods
 - Tying to Direct and Cross Examination Outlines
- Practice Methods
 - Drafting
 - Mooting



Getting
started on
your closing

Structure

Components of a Closing Argument

1. Introduction and Theme(s)
 - Affirmative story / strongest evidence / what is most important
2. Constitutional and Legal Principles
3. Story and Analysis for Acquittal
4. Compelling Ending

1. Introduction and Theme(s)

Introduction

- The jury will pay most attention to the beginning of your closing
- After having heard the government's closing, they'll want you to get straight to the point
- This must be the most confident and attention-grabbing portion of the presentation
- This section should:
 - Reorient the jury to the themes established in opening and in examinations
 - Give an overview of the strongest evidence/arguments in favor of acquittal
 - Confidently preview a rebuttal theory for the prosecution's strongest evidence

Themes

- Sound bites for your theory of the case
 - general proposition that most people can relate to that incorporates the dominant emotion of the case
- Use stylistic techniques to make it punchy and memorable
- Predict prosecution themes; defense themes should reorient the story line
- *Examples*

2. Legal and Constitutional Principles

Not Many Jurors Understand Core Principles, But Be Cautious About Belaboring Them

1. Presumption of Innocence
2. Burden of Proof
3. Reasonable Doubt
4. Elements of the Offense
 - Spending too much time on them can bog down your closing; jurors tend to zone out during technical legal overviews.
 - The prosecutor will have already discussed the elements of the offense, so be cautious about avoiding repetition that will interfere with your flow.
 - Tying the concept of reasonable doubt to an element of the offense, with citations to trial evidence, is more important than spelling out the definition of reasonable doubt, so don't spend too much time on the latter.
 - Use jury instructions to your advantage where you can
 - Avoid cheesy graphs and demonstratives that try to illustrate these principles visually.

3. Story and Analysis for Acquittal

Considerations

- Prosecution goes first; by the time you start, jurors are looking for a reason to continue having an open mind about the defense case.
- Cases turn on a handful of key questions, witnesses, and exhibits; these factors should inform every aspect of your preparation before trial starts so that you tie them all together in closing.
- Balance not showing weakness about bad evidence with not losing credibility with the jury.

Techniques – Storytelling

- Selecting the Strongest Narrative for the Facts of the Case
 - Identifying the issues that will resonate with the jury, even if the client is unlikeable
 - Making non-dispositive concessions that buy you credibility

Examples

Techniques – Reasonable Doubt

- Reasonable Doubt Applied
 - Absence of Evidence (non-existent evidence)
 - Failure by Prosecutor to Investigate
 - Absence of Evidence (exists, but not presented by prosecutor)
 - Maintain outline that includes motion orders and in-trial prosecutorial decisions
 - Witness Credibility
 - Go beyond the obvious biases everyone anticipates, and search for substantive questions/omissions that undermine credibility.

→ Outlining is important here because the jury will be looking for specific witnesses, exhibits, and details re: how reasonable doubt applies.

Examples

Techniques – Preempting Rebuttal

- Preempting Rebuttal
 - The prosecutor knows what your closing is going to say and will have preformulated a rebuttal. It is necessary to anticipate and address the rebuttal arguments in your closing.
 - There are always some unanswered questions in the prosecution's narrative; seek control of their rebuttal time by refocusing them to weak areas.

Examples

Stylistic Techniques

Visuals

In the smartphone age, jurors need stimulation to sustain attention

PowerPoint

Prezi

Elmo

Easel

Acting / Movement

Literary Devices

- Alliteration
- Repetition / looping
- Analogies and metaphors
- Trilogies

→ Styles differ; if it feels cheesy/performative to use these, then don't. The jury can tell when you're uncomfortable/not yourself, and it detracts from your credibility.

Words and Word Choice

- Every word must be intentional. Ask what sort of information each word is conveying.
- What to call the players in your case?
 - Can you emphasize the role or characteristic you'd like the jury to apply to them by what you call them?
- 1st or 3rd person narrative use
- Client's words, another person's words
- Repeat important words
- Avoid legal technical speak

Sentences and Paragraphs

- Sentences and paragraphs must be intentional
- Strong, vigorous, energetic, and clear sentences
- Vary length, tone, and rhythm to keep the jurors' attention
- Think about how you start and end your sentences and paragraphs