

**“Tying It Together:
Voir Dire, Opening Statement, & Closing Argument”**

• **General Observations**

Very limited opportunities to talk directly with, and to, the jury. **Make the most of it.**

Establish your credibility & professionalism early on in the process.

- **BE YOURSELF !** - Develop your own successful style. Not robots, no cookie-cutters.
- Be engaging, courteous, likeable, friendly..... don't be BORING. Don't over-do the humor.
- Know your case. Facts, facts, facts. (Salesman example) Avoid ever simply reading to jury.
- Maintain eye-contact

• **Prepare for battle**

Dictate the terms of engagement / “Frame the Battlefield” - PT motions & briefs

Law, Facts and Evidence Code = Sword and Shield

Let's don't be naïve = Jury Trials ARE a “contest of impressions”.

Be in control of the courtroom. Appropriately aggressive, assertive,... not timid or passive.

“Never let them see you sweat.” **Nervousness**= OK, even expected.

Fear = jurors can sense it.

“Poker face.” Exude confidence. Avoid arrogant swagger/strut. Find the proper balance

Develop your own repertoire, classic stock examples, “shtick”.

No need to re-invent the wheel. “Borrow” from other successful DDAs.

Don't be anchored to the podium. Move around (a little). Don't distract or “crowd” them.

Vary the tone and pace of your speaking. Proper use of pauses and silence.

• **Present and Develop your “Theme” of case**

Weave it throughout your jury selection, opening statement, and closing arguments

Voir Dire

- **General Observations** Preparation is the key.

Know what kind of “ideal juror” you are looking for given the facts of your case, and more importantly, what kind of potential jurors to avoid.

First impressions are CRUCIAL. Long-lasting. Credibility as the prosecutor.

- **Objective** =

Get a group of fair jurors who will base their decisions (verdicts & findings) on the facts and the law.

[If you can get a group of jurors that for the most part likes and trusts you, all the better]

- **The ideal “Prosecution Jury”** =

1. Have a Stake in the Community
2. Can Work Together
3. Are Mature Individuals
4. Respect the System

- **Strategies during selection:**

1. Tie to a theme/Theory of your case
2. Ask open-ended questions,..... if time permits!
3. LISTEN and maintain eye-contact.
4. Educate the jury as to legal principles.
5. Make jurors aware of their important role in the process.

They are “individually, and collectively, the finders of fact”. They will embrace it.

6. Mention case weaknesses & anticipate defense arguments – Defuse them!

- **WATCH THE JURORS**

Body language. Non-verbal communication. -- “GO WITH YOUR GUT INSTINCTS !!”

Opening Statement

- **General Observations**

Take the opportunity to control the jury. Immediately. Establish momentum.

First chance to “paint a clear picture”.

Rock the defense back on their heels. Put them in a hole to start.

ABA Study: Many jurors make up their minds/deciding case on opening statements and spend rest of case justifying their decisions.

Roadmap / Picture on the box of a jigsaw puzzle – Help jurors put evidence into context

SIMPLIFY it for jurors - Reduce the complexities.

Do NOT overstate your case. RISKY. - Be careful with assertions if you “can’t deliver the goods”.

- **Establish/continue a theme**

Jealousy, anger, greed, revenge, deception/manipulation, selfishness, choices,.....

Repeat throughout case (Voir Dire, Opening Stmt, Closing Argument)

- **Consider using diagrams, photos, Power Point**

You’ve been “living the case”. DDA: Very familiar with facts. Jurors: “First Impressions”

Goal: make jurors comfortable. As they acquire facts – it is “familiar”. Credibility?

-- Caveat: Get prior-Court approval of exhibits/demonstrative evidence to be used

- **Tell what happened (“The Story”) - Like at a party w/ friends-- “war stories”**

Dress it up! Be creative. You’ve got “a captive audience.”

Inject some drama & intrigue (if you’ve got it) - Be sincere.

Use “word alerts”: Predator, bait & lure, vulnerable, innocent.....

Demonstrative facial expressions. Voice intonation, tone & pace, inflection.

Maintain eye contact! Do NOT simply read. Be as specific as you can.

Also consider: “Evidence will disprove A, B, C...” (mistaken ID, rising BA, self-defense, etc)

Closing Argument

- **General Observations** - LAST WORDS - Send them off to deliberate with word "Guilty" ringing in their ears. Goal: Make it easy for them to sign

Trial Notebook- accumulate material for your arguments before, during and after trial.

Practice your argument. Bounce it off spouse, friends, neighbors.

Have a theme. (revenge, choices & accountability, unrequited love, greed,etc)

Tie it back in together with Voir Dire & Opening Statements

Time to be creative, let your personality shine through - (entertaining?)

Anecdotes, humor, quotes, historical or folksy illustrations & other relevant examples

"Oh! what a tangled web we weave, when first we practice to deceive."

"Revenge is a dish best served cold."

"Hell hath no fury like a woman scorned."

Old Chinese proverb: "The dullest pencil is better than the sharpest memory."

"When a crime is committed in hell, you don't have angels for witnesses."

SODDI - Two hunters and the grizzly bear...

Etc etc

Don't be afraid to use emotions. Human nature, emotional topics. Be Careful. (example)

- **Preparation is Crucial**

- Power-Point: Jurors expect it. TV: "CSI" – high expectations (flash and sizzle). Entertainment

- Always with elements chart, key definitions, salient facts.

- Photos, diagrams, maps, transcripts - demonstrative evidence

"If you've got it, USE it!"

- Make a "dry-run". Practice. Test the technology. Be proficient, comfortable.

- **Avoid Misconduct**

- Griffin Error - Careful
- Doyle Error - No comments re: Defendant's "post-arrest silence".
- Personal Comments/Opinions about guilt and/or "Vouching" for witnesses
"I think/believe....." vs. "Based on the 'state of the evidence'"
- Misstatements of Law / Misstatements about Facts --- YOUR Credibility at Issue
- Personal Attacks on Defense Attorney

- **TYPICAL STRUCTURE OF ARGUMENT** - [See: sample]

Intro – Give a general brief overview

Law & Facts

Steal defense "thunder"- discuss weaknesses, anticipate defense, explain

Show why Defendant guilty beyond a reasonable doubt.

Always end on a high note

- **REBUTTAL ARGUMENT**

Keep it "short and simple"

Remind jurors that they "are the neutral objective fact-finders".

Let the chips fall where they may.

Don't expect time to answer every defense argument.

Give jury credit that they'll reject the ridiculous

Pick 'n choose your battles. Time constraints. Balancing

End on a high note.

Have your closing few words pre-planned. "Canned" conclusion.