

“Why You Shouldn’t Respond to EVERY Closing Argument Your Opponent Makes”

WHY ISSUE SPOTTING PROWESS MAY HURT YOUR CHANCES OF SUCCESS

By Elliott Wilcox

During closing arguments, your opponent may tell the jurors **dozens** of reasons why they should rule against you. If you’re like most trial lawyers, you’ll want to address each and every one of those arguments during your opportunity for rebuttal. But before you do, here’s a quick word of advice:

Don’t.

Responding to every argument is a knee-jerk response that many of us fall trap to. You do it because you’re afraid that if you don’t counter every point your opponent makes, you’ll give the jurors justification to rule against your client and you’ll set yourself up for a malpractice complaint. But in practice, not only is there no need to counter every argument, it can actually be detrimental to your case.

Too many attorneys argue from their heels. They backpeddle away from the strengths of their cases and respond to their opponent’s case from a defensive posture. No one ever looks their strongest when they’re on the defensive, yet in courtrooms around the country, that’s **exactly** how most attorneys

are presenting their closing arguments. For example, when I critique attorneys during their closing arguments, I regularly see this scenario: The plaintiff attorney lists 27 reasons why the defendant is liable. While he’s arguing, the defense attorney dutifully writes down every single one of those 27 arguments, and then spends the first 30 minutes of his closing argument responding to each and every point. By the time he’s done responding to the plaintiff’s arguments, the jurors have lost any interest in listening to the rest of his closing argument, and they ignore the strongest arguments in his case.

So why do we do it?

The compulsion to counter **every** argument probably arose in law school, where you were awarded points for identifying every possible argument, no matter how ridiculous or non-persuasive it might be. Although issue spotting is a useful exercise for developing your legal skills, it’s a dangerous practice when applied in the courtroom.



Not every argument is worthy of a response

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Obviously, you don't want to take a "wishful thinking" attitude and just hope that the jury ignores your opponent's points. If they poked some serious holes in your case, you better get out the duct tape and patch things up before you conclude your argument. But for the most part, you don't need to waste your time responding to **every** attack made against your case.

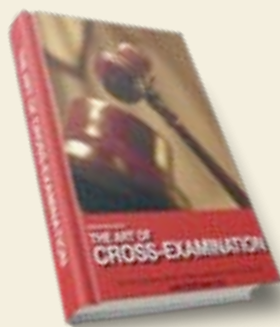
While it's important that you counter your opponent's strongest arguments, it's also essential that you don't lend credibility to impotent arguments by validating their existence. In deciding which arguments to respond to and which ones to ignore, you need to move beyond issue-spotting and begin making the critical decision, "Should I respond to this argument, or should I ignore it?" When deciding which arguments to ignore and which arguments to rebut, you'll be evaluating the strength of each argument. The strength of each argument will be determined by three factors: logical persuasiveness, legal persuasiveness, and emotional persuasiveness. If an argument compels the jurors on emotional,

logical, *and* legal levels, that's an argument that probably **must** be rebutted. If an argument is logically compelling but has no emotional or legal strength, maybe that's one that you decide to ignore.

Responding to every argument dilutes the strength of your closing arguments. Don't let your opponent lead you down rabbit trails, because those trails never lead anywhere that you want to go. Instead, stick to the theme of your case, argue your strongest points, and only address the arguments that you **need** to rebut. When you do, your closing argument will be more persuasive, compelling the jurors to give you the verdict that your client deserves. ■

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