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Articles of Note

Closing Statement Strategy: An In-Depth Interview with Trial Lawyer Miranda Soto

by Editor Nicole Diaz



Miranda Soto

This edition of Trial Tactics, we embark upon a new series of articles featuring members of our community dispensing hard-earned trial wisdom. Our accumulated wisdom about practical trial skills is what makes Trial Tactics unique: much of which you cannot readily gain from any book. The article below is based on a conversation between Trials and Tribulations Editor Nicole Diaz, and Miranda Lundeen Soto, one of the trial attorneys featured at this past March's Trial Tactics Seminar.

It had been two tough days for the defense at the mock jury trial held at the Trial Tactics Seminar. The live opinion-tracker displayed in bold relief in back of the jury consistently showed that the jury favored the plaintiff, a sympathetic young woman who testified about the bullying she had allegedly endured at the hands of the defendant, and to which the other defendant—the school—had turned a blind eye. The ratings were not wholly surprising, as there was a smoking gun: an image of a gun emblazoned with the words: “This is For You” that the defendant had allegedly posted to a group chat board.

I met Miranda Lundeen Soto, an experienced trial attorney, as she was gearing up to give the closing statement in this case. The final product was a polished closing relying heavily on a detailed chronology and two core trial themes: Personal Responsibility (which the defense hammered from the beginning) and Opportunity (which Miranda added at the end). Ultimately, while the jurors were still overwhelmingly pro-plaintiff, two jurors expressed enough doubt that it may well have resulted in a hung jury. For the inaugural article in this series, I decided to go behind-the-scenes and speak with Miranda about her closing in this case.

What was your sense of the case leading up to the closing?

When I was reviewing the materials, I knew it was going to be challenging for the defense because it was an emotionally charged case. Our team had several conference calls and came up with the theme of “personal responsibility.”

Sure enough, during the opening, the results on the opinion-tracker revealed a Plaintiff oriented jury. Particularly, every time opposing counsel showed the gun, the tracker spiked dramatically in favor of the Plaintiff. During the trial, I paid attention to the tracker and noted where there was some movement in favor of the Defendant. I made sure to hit all of those points in the closing, to remind the jurors of where the Defense was favored. We were scoring points during the trial, but due to the high emotional content, I sensed it was particularly important to remind the jury of each of these points during closing.

For your closing, you used a PowerPoint timeline. Why did you decide to present your closing that way?

I always like to do a timeline. It is more “real” than simply discussing abstract themes. You can literally “**walk the jurors through time.**” I find that jurors will walk with you, even if they are skeptical. As they walk with you, they learn the case and understand what you are saying much better than if you just told them. It is one of the most effective tools for closing. Additionally, some people are visual learners and can remember details better if they see them.

The timeline is particularly effective in a case like this where there are key time details that the jury might not pick up on during the course of the trial. Here, there was a large gap in time between when the events in the case occurred and the actual trial itself. My client was a young girl at the time of the alleged bullying and surely would not engage in that type of behavior presently.

However, it doesn't have to be a PowerPoint presentation; it can simply be a pen and paper. I used to write on a whiteboard or an easel, and I may still use those in direct examinations with my client or an expert. The advantage to those formats is that the witness can write things down and actively teach the jury. It is more interactive, and lets the jury invest in your case. You do not want to use this format during cross-examinations though, because then you risk the witness writing things down that hurt your case.

I noticed during your closing that you were very careful and rather conservative in terms of how you spoke to the jury. Can you talk a bit about your approach?

I never push a verdict down their throats. My job is to lead them up to the point of decision and then give them enough material to make the decision on their own. I don't tell them what to do. The more you push the jury to come out in your favor, the more they will "pull" back. If you are ever in a situation where someone tells you that you have to do something, you immediately don't want to do it. I learned this the hard way when I was a prosecutor because I used to say: "You must find him guilty," and instead the jurors would compromise, and return a verdict of a lesser-included offense.

I remember one case in particular, where the Defendant was charged with aggravated assault with a deadly weapon. I thought it was a slam-dunk case. I conducted a textbook cross examination of one of the Defense witnesses, who witnessed the assault. My supervisor was watching, and he walked out in the middle of the cross; I didn't understand why. In the end, the jury returned a verdict for a lesser-included offense. I went back to the office and told my supervisor: "I lost." He said "I know—you lost right after you did that cross." At first I didn't understand, but my supervisor explained: "You made her into the victim and they felt sorry for her, and they got mad at you." He was right. I thought I was doing what I was supposed to do; beat the witnesses and jurors into submission, but it had the opposite effect. Now, I understand that the jury is in charge. You have to let go of "winning" and respect the jury's right to reach its own conclusions. My role is to educate and empower the jurors to fight for me. I like the phrase: "Help me, help you."

My advice is to craft your closing argument for the jurors who will be receptive to your point of view. Ask yourself, what facts will the jury be deliberating? What facts would help them during the deliberation process? How can I help those jurors do my work for me in the jury room? What key phrases, words or themes will assist them to vote in my client's favor?

Additionally, as the trial lawyer, you should never develop preconceived notions about the jurors, just as you do not want them to develop preconceived notions about your case. For example, there was one woman on the mock trial jury, who would not meet my eyes throughout the closing. I was certain she was dead set against me but I still knew it was paramount to argue my case to her nonetheless. But she turned out to be one of the jurors who probably would have hung. So you have to stay open to all jurors and never assume any of them are a lost cause.

You added a new trial theme at the last minute. Can you explain this decision?

It is important to be able to pivot. You never know how a trial is going to unfold. If you just stick to the themes in your opening you may not be as responsive as you need to be. For example, in this mock trial there were several facts added during the trial that were not in the fact pattern, so I had to account for those. I actually had done a draft closing before the Seminar, but I had to go back and re-do everything because the facts came out so differently;—which is exactly what would happen in real life. I also knew that the jury was very pro-Plaintiff. So my focus at closing became to create enough doubt to hang the jury. You only need one juror to hang a case. I needed to put hairline fractures into the Plaintiff's vase and hope that the water wouldn't hold at the end of the case.

So at the last minute, I added the trial theme of "Opportunity" because I thought it could spark doubt about the Plaintiff's motives. I wanted the jurors to ask themselves questions such as: "Was this whole case an 'opportunity' for Plaintiff's father to send his daughter to the school of his choice for free?" And I believe that I accomplished that goal when we had an opportunity to question the jurors after the verdict. In fact we heard one of the jurors, who said he would not have awarded any money, repeat some of those questions verbatim when asked about his decision-making process.

There was another angle to that trial theme. When I was in-house counsel, I learned that there is "no such a thing as a problem, only a solution." A solution is positive. I have learned over the years that defense-oriented jurors tend to be more positive-thinking, solution-based people. They don't want to look backwards and punish, they want to look forward and figure out what is the solution that would work best for everyone, which may actually be hampered by a large jury award. Sometimes a large jury award is not the solution, rather fixing the underlying problem will serve a greater good. So you are not saying nothing needs to change, you are just saying a large jury award is not the best way to effect change. In this case, the potential bullying might have been best addressed through constructive dialogue--not through adversarial litigation and finger-pointing. So the trial theme of "Opportunity" was designed to speak to people who are solution-oriented. And I think that angle hit home because at the end one the jurors said: "Was this the best way to handle this issue? Is awarding a lot of money the best way to respond?" Mission accomplished.

Finally, I liked the word "Opportunity" because it reminded the jurors that they were writing the end of the novel. Now they were getting the "Opportunity" to decide the case. Overall, "Opportunity" is a very strong, empowering word. I find it beneficial to choose strong, powerful words – that sometimes have double meanings – for my trial themes, ones that work on multiple levels.

Did you learn anything new from this mock trial?

Yes, I did. The lawyer who did the closing for the plaintiff, Kari Sutherland, did an excellent job. I noticed that when she began, she did not introduce herself right away. Instead, she started by painting a very, strong picture, repeating some of the emotionally charged words my client called the Plaintiff with no context. The jury was immediately hooked, and gave her very high ratings from the beginning.

I had been taught to always begin by thanking the jurors for their time and service. Kari's mock closing made me realize that it was effective to grab the jury's attention immediately and there is always time to thank them later. A trial lawyer is an artist, as well as an actor or actress. The jurors are watching everything you do: the dramatics, the inflection. Believe it or not, some jurors expect to be entertained! I did a subsequent mock right after the Seminar, and tried this technique and it went very well.

I very much enjoyed the opportunity to interview Miranda, and look forward to more interviews with the Trial Tactics community. If you have a case that you think would provide a valuable teaching opportunity, please contact me at ndiaz@willenken.com.

***Miranda Soto** is a board certified civil trial lawyer and has tried over 50 cases including bench and jury trials. She has defended a wide range of matters, including professional and legal malpractice claims, personal injury cases, premises liability, commercial and business disputes, product liability, franchisee/franchisor cases and complex fraud matters at the state and federal levels. Miranda was appointed by The Florida Bar to serve a three-year term on an Eleventh Judicial Circuit's Grievance Committee and regularly investigates alleged violations of the rules professional conduct and responsibility. Miranda is special trial counsel for Altria in Engle Progeny tobacco litigation as well as other companies in complex commercial and personal injury matters. Before coming to Shook, Hardy & Bacon, Miranda was a partner and chair of the Fraud and Special Investigations Unit practice group at an international law firm. Miranda served as Lead Counsel for the Miami and Fort Myers offices of Allstate Insurance Company, where she received the company's highest honor, the Distinguished Performance Award. Miranda has presented national seminars on preparing expert witnesses, trial strategies, product liability, social media and the law, Bad Faith, Reptilian Theory, insurance fraud and advanced mediation strategies. She has provided legal opinions to CNN News and was a felony prosecutor in Miami-Dade County.*

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