

## **Closing Arguments in Civil Trials: How Far Can Lawyers Go?**

*It's important to know what is and is not permissible in closing arguments, not only so you won't say something you shouldn't, but so you won't fail to say something you should. This article analyzes the case law governing the scope of closing argument in a civil trial, which a look at what is and is not permissible.*

### **I. Introduction**

Closing argument is a highly emotional point in any trial. It is not uncommon for trial lawyers to become caught up in the argument to the extent that something regrettable, i.e., reversible error, occurs.

By knowing the bounds of permissible argument in a civil trial, you can maximize your persuasiveness to the jury. This article explores the permissible bounds of closing argument.

### **II. Scope and Character of Closing Arguments**

An attorney must confine closing arguments to matters in evidence,<sup>1</sup> though lawyers have broad latitude in drawing reasonable inferences from the evidence.<sup>2</sup> They also have wide latitude in choosing which subjects to address and which persuasive techniques to employ.<sup>3</sup>

The scope of argument to the jury is left largely to the trial court's discretion. The trial judge observes the demeanor of counsel and the general trial atmosphere, and thus, it is thought, is better situated to determine the effect of prejudicial remarks during the course of closing arguments.<sup>4</sup> It is error for counsel to use profanities in closing argument<sup>5</sup> unless such language is material to an issue in the case. Nor may lawyers express their personal beliefs about the case or vouch for witnesses during closing argument.<sup>6</sup>

Failure to object to the opposing counsel's remarks during closing statements constitutes waiver of the objection.<sup>7</sup> Even so, if counsel engages in conduct so prejudicial during argument that the other party cannot receive a fair trial, a reviewing court might assign error even though no objection was made and no ruling preserved in the trial court.<sup>8</sup>

Thus, you are not required to make repeated objections to improper arguments if the trial court's attitude is clear and repeating the objections would tend to prejudice the jury.<sup>9</sup> The trial court is in the best position to make rulings on potential errors objected to

during the trial, including closing arguments, and such rulings will be upheld unless there is a clear abuse of discretion.<sup>10</sup>

If an improper statement is made, the trial court must cure the situation by asking the jury to disregard the remark.<sup>11</sup> That usually eliminates any error, but not if it reasonably appears that the improper argument has influenced the verdict.<sup>12</sup> The lesson is that you must pay close attention during closing argument and object when an improper statement is made; otherwise, the error is waived.

### **III. Emotional Appeals to the Jury**

#### ***A. Asking the Jury to Put Itself in the Place of a Party***

In *Brandt v Wabash R. Co.*,<sup>13</sup> an appellate court held that it was error for counsel to ask the jury to put itself in the place of his client. The court reasoned that the plaintiff's appeal to jury sympathy in closing arguments deprived the defendant of his right to a fair trial in light of the cumulative effect of the remarks.<sup>14</sup> This argument caused the jury to identify with the plaintiff and made subjective deliberations rather than objective deliberations to which the parties are entitled.<sup>15</sup> Therefore, the broad latitude permitted during closing argument does not extend to asking the jury to put itself in the "shoes" of a party.<sup>16</sup>

Conversely, it is not improper to rhetorically ask whether a reasonable person would have acted similarly to a party of a lawsuit. In *Bruske v Arnold*,<sup>17</sup> the Illinois Supreme Court ruled that asking the jury if they would have acted the same as the defendant immediately prior to the accident was not designed to make the jurors sympathetic to the defendant's case. Rather, the request "seem[ed] perfectly consistent with the ultimate task of the jury; namely, to apply 'the reasonable man' standard to the defendant's conduct."<sup>18</sup> Although no objection was made, the appellate court noted the remarks were not "so inflammatory and prejudicial as to deteriorate the judicial process" and require a relaxation of the waiver rule.<sup>19</sup>

In *Copeland v Johnson*,<sup>20</sup> defense counsel argued,

Now I don't know if any of us have ever been faced with these circumstances, but the only thing that I ask you as the one representing the defendant in this case is to place yourself in the same circumstances and ask you what would you do. And if you find yourself with the same results that happened here, I think that you must say that she used ordinary care and she was not guilty of negligence.<sup>21</sup>

The plaintiffs made no objection and, hence, any error was waived. From a practical standpoint, be careful how you argue this concept to the jury. When in doubt, use the "reasonable person" standard. If you oppose such an argument, object to preserve your record.

Addressing a juror by name in closing argument is improper and impermissible.<sup>22</sup>

***B. Appealing to the Jury Based on the Ethnicity or Financial Status of Either Party***

References to client's race and/or financial status are not per se error but may not be made to arouse prejudice.<sup>23</sup> In determining whether they were, the court must decide if they were relevant to issues of the case or simply calculated to arouse prejudice in the jury.

For example, in *Lagoni v Holiday Inn Midway*,<sup>24</sup> the court concluded that comments regarding the defendant's national origin and immigration from Pakistan were not prejudicial because they did not constitute attempts to interject the defendant's nationality into the case. The court reasoned that the jury already knew the defendant's national origin from a prior examination by his attorney.<sup>25</sup>

In *Ramos v Pankaj*,<sup>26</sup> it was not error for counsel to refer to the defendant's mastery of the English language because it was not designed to embarrass or belittle plaintiffs or their counsel. Comments regarding the race, religion, or nationality of either party are not prejudicial when it had been an issue in the case but may be prejudicial if they are introduced in an attempt to invoke jury sympathy or prejudice.<sup>27</sup>

If the financial status of a party is raised to appeal to the jury, the argument is highly improper.<sup>28</sup> When only compensatory damages are recoverable, the financial conditions of the parties are irrelevant.<sup>29</sup> In *Eizerman v Behn*,<sup>30</sup> counsel for the defendant stressed his client's "poverty and the impossibility of their paying a large judgment." The court recognized that the remarks were improper but did not declare a mistrial because they were invited by remarks made by the plaintiffs and no prejudice took place.<sup>31</sup> Similarly, it is improper to argue that plaintiff's counsel was asking for a large damages award.<sup>32</sup>

In *Northern Trust Bank v Carl*,<sup>33</sup> repeated references to the plaintiff's "Mercedes Benz" were not improper because the car was in fact a Mercedes Benz. Moreover, counsel's use of the phrase "poor truck driver" was found to be inadvertent and not designed to mislead the jury.

Although it is improper to stress the financial position of a party to the litigation, it is not error to discuss a party's financial position by revealing his or her occupation.<sup>34</sup> In *Delany v Badame*,<sup>35</sup> defense counsel did not prejudice the plaintiff by arguing that he was a student. Counsel may not, however, refer to the impact of the case on a client's professional reputation in an attempt to excite jury prejudices.<sup>36</sup>

Typically, the residence of a party is not relevant. The Wisconsin Court of Appeals held it was improper for a party to argue the plaintiff's residence status in a personal injury trial.<sup>37</sup> Such information can only mislead the jury.

As a general rule, it is highly improper to deliberately state in closing argument, either directly or through insinuation, that the defendant carries insurance<sup>38</sup> or that a party is not insured.<sup>39</sup> Neither the defendant nor defense counsel can bring out that fact and then move for a new trial or reversal on appeal. Counsel may not take advantage of his or her own misconduct.

### **C. Appealing to the Jury Based on the Nature of the Case**

Counsel may not appeal to a jury's passions based on the nature of the case. For example, in *Zoerner v Iwan*,<sup>40</sup> the second district appellate court reversed a judgment based on comments by counsel that "urge[d] the jury to reach a certain verdict because it would send a message against drunk driving and not reward plaintiff for antisocial behavior." Counsel argued that "denying plaintiff recovery 'will not reward somebody for drinking and driving on the county highways' and get them 'hundreds of thousands of dollars.'"<sup>41</sup>

Although the plaintiff did not object, the court relaxed the waiver rule because the remarks were sufficiently prejudicial to the plaintiff to warrant review.<sup>42</sup> The court noted that the remarks "clearly appealed to the jurors' sense of moral outrage with an argument that had no bearing on the case – a tactic hardly directed at helping the jury impartially to resolve the fact questions presented to it."<sup>43</sup>

### **IV. Permissible Argument on Liability**

Where the issue of liability is close and the jury might reasonably return a verdict for either party, the trial must be conducted in an orderly manner so that the jury will not be improperly influenced.<sup>44</sup> It is improper for counsel to attack corporations in a way that incites prejudice in the jury.<sup>45</sup>

In *Wellner v New York Life Ins. Co.*,<sup>46</sup> the first district appellate court held that it was error for the plaintiff's counsel to refer to the vast resources of the corporate defendant. The court appreciated that while "it may be common knowledge that the defendant is a company of vast resources, it does not justify emphasis of that fact in an argument to the jury, which can only have a tendency to prejudice the jury against this defendant."<sup>47</sup>

Similarly, in *Bednar v Commonwealth Edison*,<sup>48</sup> counsel for plaintiff attempted to "demonstrate during closing argument that a substantial award of damages in this case would have a minimal effect on the rate-payers' utility bills." The court ruled that this argument was improper because it appealed to juror prejudices toward the corporation's vast resources.<sup>49</sup>

In *Panelle v Chicago Transit Authority*,<sup>50</sup> it was improper for defense counsel to argue that the CTA would go broke if it paid all the claims filed against it. The Illinois Supreme Court held that these remarks went beyond the merits of the case because nothing in evidence or in any arguments by counsel related to the defendant's ability to

pay a judgment entered against it.<sup>51</sup> To constitute reversible error, the language complained of must be reasonably understood to refer to the financial status of one of the parties, and it must result in prejudice to the complaining party.<sup>52</sup>

It is improper to refer to judgments awarded in other cases against a defendant.<sup>53</sup> In *Stennis v Rekkas*,<sup>54</sup> plaintiff's attorney referred to a case involving Texaco in an attempt to appeal to the jury. The court held that it was error to make such a reference, but because the verdict in the case at bar was not in the \$60 billion range as in the Texaco case, the comment did not warrant a new trial.

The same rationale applies when plaintiff's counsel refers to similar claims waged against the defendant. Moreover, it is error for counsel to tell the jury what he had done in other cases having no relation or pertinence to the case at bar.<sup>55</sup> Illinois courts have consistently found it improper to argue to the jury the results of other non-pertinent lawsuits.

Attacks on a party used to persuade the trier of fact to find for a party are improper in closing arguments. For example, in *Hickey v Chicago Transit Authority*,<sup>56</sup> counsel for plaintiff said in his argument to the jury that "CTA employees had been working the plaintiff over." This remark implied that the CTA was putting pressure on the plaintiff by improper means.<sup>57</sup> The comment was improper. It is also improper for counsel to relate a loan or settlement agreement to liability and damages in an attempt to excite jury prejudice.<sup>58</sup>

Counsel's primary responsibility is to be an advocate for the client, and lawyers are granted considerable latitude in doing so.<sup>59</sup> A defense attorney may note that another defendant is liable for the plaintiff's injury; however, he or she cannot attempt to place the blame on a party not involved in litigation. In *Downs v Camp*,<sup>60</sup> the court held that the defendants were entitled to argue that a party who settled with the plaintiff was at fault; however, it was improper to argue that this party was not sued.

## **V. Analogies Involving the Burden of Proof**

In most cases, jurors are non-lawyers. Therefore, you should speak clearly and free of legalese. If you discuss a legal concept, you should first translate it into English. In defining burden of proof, however, how far may you go in using analogies to educate the jury?

A lawyer in a civil lawsuit may use a "scales of justice" analogy when addressing the burden of proof.<sup>61</sup> A similar argument was made in *Stennis v Rekkas*,<sup>62</sup> where the plaintiff's attorney attempted to make a "balance-beam scale" argument to compare the civil and criminal burdens of proof. This argument was permitted as the court instructed the jury about the law after the closing argument.<sup>63</sup> Therefore, it is proper to make a "scales of justice" or "teeter totter" analogy to educate the jury about the civil burden of proof.

In *Burns v Michelotti*,<sup>64</sup> defense counsel analogized plaintiff's burden of proof to three separate mountains. Despite plaintiff's objection to the argument on grounds that it distorted the burden of proof, the court allowed it because it was not unduly prejudicial and any prejudice was rebutted by counsel for plaintiffs.<sup>65</sup> The mountain analogy, however, seems to more accurately represent a criminal "reasonable doubt" than a civil "more probably true than not" burden.

## **VI. Use of Exhibits in Closing Arguments**

Lawyers may use exhibits to illustrate the closing argument if they are not misleading to the jury.<sup>66</sup> In *Caley v Manicke*,<sup>67</sup> counsel was permitted to prepare a chart listing each element of claimed damages with specific sums of money next to each category.

However, as the court noted in *Martin v Zucker*,<sup>68</sup> not all uses of a chart are proper. There, plaintiff's counsel used a chart outlining the elements of his client's damages; however, because the plaintiffs did not receive bills from all of the defendants, counsel placed question marks next to those defendants on the chart.<sup>69</sup> The defense objected to the use of the chart because the question marks would imply an admission of liability by the defendants who failed to tender medical bills.<sup>70</sup> The objection was sustained by the trial court and affirmed by the appellate court, which stated that "[b]y refusing to permit the question marks, the trial court avoided, rather than committed, prejudicial error."<sup>71</sup>

Using photographs in closing arguments is also permissible.<sup>72</sup> In *LeMaster v Chicago R.I. & P.R. Co.*,<sup>73</sup> plaintiff's counsel used photographs in a closing argument to illustrate the plaintiff's permanent physical condition. Counsel pointed to the photograph numerous times while commenting on the plaintiff's condition.<sup>74</sup>

The first district appellate court noted that it is within the discretion of the trial court to permit the jury to take into its deliberations those objects properly admitted into evidence.<sup>75</sup> It is the function of the trial court to balance the probative value of the evidence against the prejudicial effects.<sup>76</sup> Ultimately, the court allowed the use of the photographs in counsel's closing argument because they accurately depicted the extent of the plaintiff's injuries without elaboration or passion and were not gruesome.<sup>77</sup>

## **VII. Permissible Argument on Damages**

### **A. Per Diem Arguments**

In *Caley v Manicke*,<sup>78</sup> the Illinois Supreme Court held that per diem (i.e., "by the day") arguments on damages were improper. Counsel for the plaintiff argued to the jury that damages for his client's pain and suffering should be awarded on a per diem basis.<sup>79</sup> In his closing argument, he stated:

“Now, let’s put in (sic) into hours in the last two years. Let’s confine it to a per diem type of situation. It is logical to say that he is entitled to ten dollars a day up to today? That isn’t one dollar an hour for suffering. It is less than one dollar an hour, and is that unreasonable? If we said that, that would be fifty-one hundred dollars, which would being (sic) us up to today.”<sup>80</sup>

“that would be 8760 days and at \$1.00 a day instead of \$10.00 a day, figuring at 8760 days, you would have the figure for future pain. So we would give him eight thousand seven hundred and sixty dollars for future pain.”<sup>81</sup>

The supreme court held per diem arguments improper, but did not forbid lawyers from suggesting a total monetary award for pain and suffering, because such an argument is less misleading than a per diem argument.

Courts are less likely to find reversible error if counsel’s use of per diem is only a minor part of the argument and is being used to suggest to the jury what the plaintiff believes is fair compensation for his or her injuries.<sup>82</sup> In *Watson v City of Chicago*, counsel argued “[the plaintiff] has roughly 49 years of pain. If you calculate a total of \$49,000 for 49 years, you think about that.”<sup>83</sup>

The trial court found that this argument amounted to the type of mathematical formula found in *Caley*, but the first district appellate court found it distinguishable from *Caley*.<sup>84</sup> The court reasoned that counsel never used a mathematical formula because he did not ask the jury to multiply a sum of damages by the plaintiff’s life expectancy.

Conversely, he properly suggested a lump sum figure for pain and suffering in conjunction with the plaintiff’s life expectancy.<sup>85</sup> He did not argue a per diem formula as detailed as that in *Caley*, and it was not improper to argue a lump sum award in connection with the plaintiff’s life expectancy. Additionally, the court was not “aware of any cases which interpret[ed] *Caley* as prohibiting any relationship between life expectancy and the amount of damages requested, nor [did it] believe that such a broad interpretation is possible or logical.”<sup>86</sup>

The willingness of modern courts to distinguish *Caley* is also seen in *Friedland v Allis Chalmers Company of Canada*.<sup>87</sup> In closing argument, counsel stated:

“I propose to the jury of \$7,500 per year for the rest of his life, to cover not just the better times he is able to exist [sic] with a lesser amount of pain today, but to cover for the future as well as when the pain for the degenerative process will be there \*\*\* at 48.7 years times \$7,500 that figure equals \$365,250.”<sup>88</sup>

The court noted the argument “did not approach the comprehensiveness of the argument in *Caley*; counsel did not assert that this was the only correct approach for

computing damages.”<sup>89</sup> Counsel recommended the figures to the jury based on what he thought would be reasonable compensation for the plaintiff’s injuries, not as the ultimate answer as the lawyer did in *Caley*.<sup>90</sup> Moreover, defense counsel did not object to the argument at the time of trial, and this issue was not so prejudicial as to relax the waiver rule on appeal.<sup>91</sup> Thus, *Friedland* falls within the exception to *Caley* as established by *Watson*.<sup>92</sup>

The *Caley* ruling is narrow and applies only when the fact situation is markedly similar. Courts permit references to per diem arguments by counsel who introduce lump sum figures for damages in conjunction with the plaintiff’s life expectancy. Additionally, courts allow per diem arguments when counsel makes it clear to the jury that the figures presented are merely suggestions about adequate compensation for the plaintiff’s damages. When used carefully, per diem arguments can help trial attorneys present their damage cases to the jury.

Although counsel can argue for a lump sum award, it is error to argue that the proceeds from a settlement between the plaintiff and another defendant adequately compensate the plaintiff.<sup>93</sup> Further, it is error for defense counsel to argue that the interest earned from a verdict would accommodate the plaintiff for life and leave the principal intact.<sup>94</sup> Similarly, it is improper for defense counsel to argue or insinuate that plaintiffs were asking for more than they expected to be awarded.<sup>95</sup> From the plaintiff’s perspective, both arguments should be considered as motions in limine.

## **B. *Medical Testimony***

In most civil casts, medical testimony plays a significant part in helping the jury determine the value of a case. It is improper for the defense to argue that the plaintiff did not call a treating doctor to testify at trial.<sup>96</sup> Additionally, it is not error for plaintiff’s counsel to refer to the plaintiff’s fear of future operations, provided the proper foundation is in place.<sup>97</sup> However, it is improper to misrepresent a client’s potential for future medical complications to the jury in closing argument.<sup>98</sup>

## **C. *Damage Analogies in Closing Arguments***

Analogies and stories can help illustrate complex legal doctrines or calculate damages.<sup>99</sup> Lawyers need not parrot legal language as it is written in books but may speak in plain language that the jury understands.<sup>100</sup> A trial attorney may demonstrate his or her argument with reference to history, personal experience, fiction, legal experience, and/or logic<sup>101</sup> and may analogize a client’s injuries to objects of known value to give the jury direction in awarding damages.<sup>102</sup>

In *Dotson v Sears, Roebuck and Co.*,<sup>103</sup> counsel attempted to illustrate the gravity of the plaintiff’s injuries by noting that horses, paintings, and computers are frequently bought and sold for millions of dollars. The court held that this argument was proper.<sup>104</sup>

In *Goad v Evans*,<sup>105</sup> plaintiff's counsel suggested to the jury a total monetary amount for his client's non-economic injuries and noted they "were equivalent to the losses sustained by the owner of a destroyed car or were equivalent to the value of a race horse." The court held that this argument did not constitute prejudicial error because the size of the jury's verdict did not convince the court that the comparison resulted in an excessive verdict in Goad's favor.<sup>106</sup> Plaintiff's lawyers should take care not to equate the injuries with objects of value; instead, they should illustrate by analogy the magnitude of the injuries or loss by comparing it to objects of value, such as a race horse, computer or painting.

In *Wofford v DeVore*<sup>107</sup> counsel prefaced the closing argument by emphasizing the sanctity of human life. In support of this argument, the attorney pointed out that the government spends millions of dollars to guarantee that space travelers return to the earth safely.<sup>108</sup> The court held that the argument was proper to show the value of a human life.<sup>109</sup>

### **VIII. Comments on Expert Witness Credibility in Closing Arguments**

Attorneys may question the credibility or judgment of a witness if they have legitimate grounds, but they may not use inflammatory language to stir up jury prejudice or insult a witness without cause.<sup>110</sup> In *Cecil v Gibson*,<sup>111</sup> defense counsel referred to the plaintiff's attorney as a "slick attorney from Chicago" and a "slick hired-hand" and called plaintiff's medical expert witness a "sidekick" and a "right-hand man."

He further compared the relationship between the plaintiff's attorney and the expert witness to "Cisco Kid and Poncho" and "Mat(sic) Dillon and Chester."<sup>112</sup> The court found the remarks were sufficiently prejudicial and inflammatory to constitute error.<sup>113</sup>

Not all references to the opposing party's expert witness are error.<sup>114</sup> For example, in *Ellington v Bilsel*,<sup>115</sup> opposing counsel argued that the medical expert was a "polished witness" who "presents himself very well" and who was a "very bright, intelligent man," and "a performer." The court noted that these remarks did not give rise to the same level of prejudice as the "torrent of inflammatory statements made by counsel in the *Cecil* case" and therefore did not require reversal.<sup>116</sup>

Additionally, counsel may comment on the opposing party's expert's background and history of testifying in lawsuits. Opposing counsel may argue to the jury that an expert witness is distorting the truth for financial gain or regularly testifies for plaintiffs or defendants.<sup>117</sup> Counsel is also permitted to tell the jury how much money the expert witness is receiving for testifying; however, it is improper to imply that the expert's opinion is being purchased.<sup>118</sup> Courts are more likely to grant a new trial if numerous improper and abusive remarks are made about the witness than isolated, inadvertent remarks about an opposing party's expert witness.<sup>119</sup>

### **IX. Judicial Admissions by Counsel in Closing Arguments**

It is possible for counsel to make what amounts to a judicial admission in closing argument.<sup>120</sup> A judicial admission is a formal act by a party or his or her attorney in court that dispenses with proof a fact claimed to be true and substitutes for legal evidence at trial.<sup>121</sup> To determine if a statement or action is a judicial admission, the trial court analyzes it in the context of the trial.<sup>122</sup>

For example, a statement made during cross-examination may not constitute a judicial admission; however, the same statement may constitute a judicial admission if made in opening or closing argument.<sup>123</sup>

In *Lowe v Kang*,<sup>124</sup> the court held that statements made by an attorney in closing argument may constitute a judicial admission. There, the defense attorney's statement that "[t]here is no question that there was fault on the part of both parties to this occurrence" amounted to a judicial admission because counsel made it in closing argument with full knowledge that both drivers were disputing liability in the case.<sup>125</sup>

Conversely, some statements made by counsel may constitute an evidentiary admission rather than a judicial admission.<sup>126</sup> Courts consider counsel's opinion about what the evidence showed to be an evidential admission rather than judicial.<sup>127</sup> Therefore, be careful when discussing a client's position about liability in summation. When in doubt, express your opinion about what you believe the evidence demonstrates rather than making blanket statements that may amount to a judicial admission.

## **X. Transcripts**

Some courts hold that the trial court has discretion to permit counsel to read from the trial transcript during closing argument,<sup>128</sup> reasoning that it would be more prejudicial to inaccurately summarize than to read accurate testimony.<sup>129</sup> However, other courts do not allow it.<sup>130</sup> In *People v Ammons*,<sup>131</sup> the court held that reading from the trial transcript was improper during closing argument because the jury must weigh the entire testimony free from overemphasis on any portion that could result from verbatim repetition at the end of trial.

## **XI. Instructions**

Counsel can express their beliefs about the content of the court's instructions during closing argument unless such remarks are misleading.<sup>132</sup> It is reversible error to deny an attorney that right. It is also error, however, for an attorney to slant and distort the anticipated jury instructions in their favor.<sup>133</sup>

Conversely, in *Sidorewicz v Kostelny*<sup>134</sup> it was reversible error for the court, sua sponte, to interrupt plaintiff's counsel during his closing argument and prevent him from discussing the anticipated instructions to the jury regarding the burden of proof and the "scales of justice." Moreover, it is proper for counsel to read the verdict form to the jury<sup>135</sup> and to use an enlarged poster of the jury instructions<sup>136</sup> in closing argument.

## XII. Time Allowed for Closing Arguments

The time allowed for closing arguments is left to the trial court, which will only be reversed on appeal if there is a manifest abuse of discretion.<sup>137</sup> The trial court is in the best position to observe the nature and complexity of the issues and limit the time for closing arguments accordingly.

In *Grunsten v Malone*,<sup>138</sup> the plaintiff's claim that he was denied a fair trial because he had insufficient time to prepare for closing arguments was rejected because he did not request additional time to prepare and the record failed to show how he was prejudiced.

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<sup>1</sup> *Ryan v Blakey*, 71 Ill App 3d 339, 389 NE2d 604 (5<sup>th</sup> D 1979). See also *Flynn v Cusentino*, 59 Ill app 3d 262, 267, 375 NE2d 433, 437 (3d D 1978).

<sup>2</sup> *Friedland v Allis Chalmers Company of Canada*, 159 Ill App 3d 1, 511 NE2d 1199 (1<sup>st</sup> D 1987).

<sup>3</sup> *Id.* See also *Croall v Massachusetts Bay Transportation Authority*, 26 Mass App Ct 957, 959, 526 NE2d 1320, 1324 (1988).

<sup>4</sup> *City of Chicago v Chicago Title & Trust Co.*, 331 Ill 322, 163 NE17 (1928); *Enloe v Kirkwood*, 120 Ill App 2d 117, 256 NE2d 459 (5<sup>th</sup> D 1970).

<sup>5</sup> *Wise v Hayunga*, 30 Ill App 2d 324, 174 NE2d 399 (2d D 1961). (Abstract only).

<sup>6</sup> *People v King*, 276 Ill 138, 154, 114 NE 601, 607-08 (1916). (Counsel is not justified in expressing his personal belief about the case); *Appel v Chicago City Ry. Co.*, 259 Ill 561, 568, 102 NE 1021, 1023 (1913). (Counsel is not permitted to vouch for a witness's credibility in closing argument).

<sup>7</sup> *Graham v City of Rockford*, 238 Ill 214, 97 NE 361 (1909); *McElroy v Force*, 38 Ill 2d 528, 535, 532 NE2d 708, 712 (1967).

<sup>8</sup> *Muscarello v Peterson*, 20 Ill 2d 548, 170 NE2d 564 (1960).

<sup>9</sup> *Schoolfield v Witkowski*, 54 Ill App 2d 111, 203 NE2d 460 (1<sup>st</sup> D 1964).

<sup>10</sup> *Rockwood v Singh*, 258 Ill App 3d 555, 630 NE2d 873 (1<sup>st</sup> D 1993).

<sup>11</sup> *Chicago City Ry. Co. v McDonough*, 221 Ill 69, 77 NE 577 (1906).

<sup>12</sup> *People v Garreau*, 27 Ill 2d 388, 189 NE2d 297 (1963).

<sup>13</sup> *Brant v Wabash R. Co.*, 31 Ill app 2d 337, 340, 176 NE2d 13, 15 (4<sup>th</sup> D 1961).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* See also *Shaffer v Ward*, 12 Fla L Weekly 1132, 510 SO2d 602, 603 (5<sup>th</sup> D 1987).

<sup>16</sup> But see *Fedt v Oak Lawn Lodge, Inc.*, 132 Ill App 3d 1061, 478 NE2d 469 (1<sup>st</sup> D 1985).

<sup>17</sup> *Bruske v Arnold*, 44 Ill 2d 132, 254 NE2d 453 (1969).

<sup>18</sup> *Id.*, 44 Ill 2d at 137-38.

<sup>19</sup> *Id.*, 44 Ill 2d at 137.

<sup>20</sup> *Copeland v Johnson*, 63 Ill App 2d 361, 211 NE2d 387 (2d D 1965).

<sup>21</sup> *Id.*, 63 Ill App 2d at 367.

<sup>22</sup> *People v Davis*, 46 Ill 2d 554, 560, 264 NE2d 140, 143 (1970).

<sup>23</sup> *Lagoni v Holiday Inn Midway*, 262 Ill App 3d 1020, 635 NE2d 622 (1<sup>st</sup> D 1994)

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, 262 Ill App 3d at 1036.

<sup>26</sup> *Ramos v Pankaj*, 203 Ill app 3d 504, 510, 561 NE2d 744, 747 (4<sup>th</sup> D 1990).

<sup>27</sup> *Lagoni*, 262 Ill app 3d at 1036. But see *Corwin v Dickey*, 91 NC App 725, 728, 373 SE2d 149, 151 (1988).

<sup>28</sup> *Eizerman v Behn*, 9 Ill App 2d 263, 132 NE2d 788 (1<sup>st</sup> D 1956).

<sup>29</sup> *Pagel v Yates*, 128 Ill App 3d 897, 901, 471 NE2d 946, 951 (4<sup>th</sup> D 1984).

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<sup>30</sup> 9 Ill App 2d 263, 285, 132 NE2d 788.  
<sup>31</sup> Id, 9 Ill App 2d at 297.  
<sup>32</sup> *Schultz v Siddens*, 191 Ill App 3d 622, 628 548 NE2d 97, 90 (5<sup>th</sup> D 1989).  
<sup>33</sup> *Northern trust Bank v Carl*, 200 Ill App 3d 773, 779, 558 NE2d 451 (1<sup>st</sup> D 1990).  
<sup>34</sup> *Delany v Badame*, 49 Ill 2d 168, 177, 274 NE2d 353, 357 (1971).  
<sup>35</sup> Id.  
<sup>36</sup> *Rush v Hamdy*, 255 Ill App 3d 362, 358, 627 NE2d 1119, 1123 (4<sup>th</sup> D 1993).  
<sup>37</sup> *Gonzalez v City of Franklin*, 128 Wis 2d 485, 383 NW2d 907 (1986). See also *Clemente v State of California*, 40 Cal 3d 202, 707 P2d 818 (1985).  
<sup>38</sup> *Bishop v Chicago Junction Ry. Co.*, 289 Ill 63, 124 NE 312 (1919).  
<sup>39</sup> *Wise v Hayunga*, 30 Ill App 2d 324.  
<sup>40</sup> *Zoerner v Iwan*, 250 Ill App 3d 576, 619 NE2d 892 (2d D 1993).  
<sup>41</sup> Id, 250 Ill App 3d at 586.  
<sup>42</sup> Id, 250 Ill App 3d at 585.  
<sup>43</sup> Id, 250 Ill App 3d at 586. See also *People v Crossno*, 93 Ill App 3d 808, 823, 417 NE2d 827, 837 (3d D 1981); *Anderson v Johnson*, 441 NW2d 675, 677 (1989).  
<sup>44</sup> *Owen v Willett Truck Leasing Corp.*, 61 Ill App2d 395, 209 NE2d 868 (1<sup>st</sup> D 1965).  
<sup>45</sup> *Wellner v New York Life Ins. Co.*, 331 Ill App 360, 73 NE2d 156 (1<sup>st</sup> D 1947).  
<sup>46</sup> Id.  
<sup>47</sup> Id, 331 Ill App at 366.  
<sup>48</sup> *Bednar v Commonwealth Edison*, 156 Ill app 3d 568, 509 NE2d 687 (3d D 1987).  
<sup>49</sup> Id, 156 Ill App 3d at 575.  
<sup>50</sup> *Panelle v Chicago Transit Authority*, 31 Ill 2d 560, 202 NE2d 484 (1964).  
<sup>51</sup> Id, 31 Ill 2d at 561-62.  
<sup>52</sup> *McMahon v Richard Gorazd, Inc.*, 135 Ill App 3d 211, 223, 481 NE2d 787, 795 (5<sup>th</sup> D 1985).  
<sup>53</sup> *Stennis v Rekkas*, 233 Ill App 3d 813, 599 NE2d 1059 (1<sup>st</sup> D 1992).  
<sup>54</sup> Id, 233 Ill app 3d at 832.  
<sup>55</sup> *Hansel v Chicago transit Authority*, 132 Ill App 2d 402, 270 NE2d 553 (1<sup>st</sup> D 1971).  
<sup>56</sup> *Hickey v Chicago transit Authority*, 52 Ill App 2d 132, 140, 201 NE2d 742, 746 (1<sup>st</sup> D 1964).  
<sup>57</sup> Id.  
<sup>58</sup> *Eckley v St. Therese Hospital*, 62 Ill App 3d 299, 379 NE2d 306 (2d D 1978).  
<sup>59</sup> *Hopwood v Thomas Hoist Co.*, 71 Ill App 2d 434, 219 NE2d 76 (1<sup>st</sup> D 1966).  
<sup>60</sup> *Downs v Camp*, 113 Ill App 2d 221, 230, 252 NE2d 46, 51 (1<sup>st</sup> D 1969).  
<sup>61</sup> *Lounsbury v Yorro*, 124 Ill App 3d 745, 750, 464 NE2d 866, 869 (2d D 1984). See also, *Schaffner v Chicago & North Western Transportation Co.*, 129 Ill 2d 1, 32, 541 NE2d 643, 656 (1989).  
<sup>62</sup> *Stennis v Rekkas*, 233 Ill app 3d at 830.  
<sup>63</sup> Id, 233 Ill App 3d at 831.  
<sup>64</sup> *Burns v Michelotti*, 237 Ill App 3d 923, 939, 604 NE2d 1144, 1156 (2d D 1992).  
<sup>65</sup> Id. See also *People v McGee*, 110 Ill App 3d 766, 443 NE2d 1057, 1064 (2d D 1982).  
<sup>66</sup> *Caley v Manicke*, 24 Ill 2d 390, 394, 182 NE2d 206, 209 (1962). See also *LeMaster v Chicago R.I. & P.R. Co.*, 35 Ill App 3d 1001, 343 NE2d 65 (1<sup>st</sup> D 1976).  
<sup>67</sup> Id. See also *Grimming v Alton & Southern Ry. Co.*, 204 Ill App 3d 961, 562 NE2d 1086 (5<sup>th</sup> D 1990).  
<sup>68</sup> *Martin v Zucker*, 133 Ill App 3d 982, 989, 479 NE2d 1000, 1005 (1<sup>st</sup> D 1985).  
<sup>69</sup> Id.  
<sup>70</sup> Id.  
<sup>71</sup> Id.  
<sup>72</sup> *LeMaster v. Chicago R.I. & P.R. Co.*, 35 Ill app 3d at 1025.  
<sup>73</sup> Id.  
<sup>74</sup> Id.  
<sup>75</sup> Id. See also *Kaspar v Clinton-Jackson Corp.*, 118 Ill app 2d 364, 254 NE2d 826 (1<sup>st</sup> D 1969).  
<sup>76</sup> *LeMaster v Chicago R.I. P.R. Co.*, 35 Ill app 3d at 1025.  
<sup>77</sup> Id at 1027. But see *Boersma v Amoco Oil Co.*, 276 Ill app 3d 638, 650, 658 NE2d 1173, 1183 (1<sup>st</sup> D 1995).  
<sup>78</sup> *Caley v Manicke*, 24 Ill 2d at 392-93.  
<sup>79</sup> *Caley v Manicke*, 29 Ill App 2d 323, 334, 173 NE2d 209, 214 (2d D 1961).

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80 Id.  
81 Id.  
82 *Friedland v Allis*, 159 Ill App 3d at 8.  
83 *Watson v City of Chicago*, 124 Ill App 3d 348, 350, 464 NE2d 1100 (1<sup>st</sup> D 1984).  
84 Id. 124 Ill app 3d at 351.  
85 Id.  
86 Id.  
87 *Friedland v Allis*, 159 Ill App 3d at 8.  
88 Id.  
89 Id.  
90 Id, 159 Ill App 3d at 8-9.  
91 Id, 159 Ill App 3d at 9.  
92 Id.  
93 *American National Bank & Trust Co. v Peoples Gas Light and Coke Co.*, 42 Ill App 2d 163, 184, 191 NE2d 628, 639 (1<sup>st</sup> D 1963).  
94 Id.  
95 *Cancio v White*, 297 Ill App 3d 422, 697 NE2d 749 (1<sup>st</sup> D 1998).  
96 *Hildebrand v Baltimore & Ohio Railroad Co.*, 41 Ill app 2d 217, 227 190 NE2d 630, 635 (4<sup>th</sup> D 1963). See also *Onion v Chicago & Illinois Midland Ry. Co.*, 191 Ill App 3d 318, 322, 547 NE2d 721, 724 (4<sup>th</sup> D 1989); *Yates v Chicago National League Ball Club*, 230 Ill app 3d 472, 484, 595 NE2d 570, 579 (1<sup>st</sup> D 1992).  
97 *Friedland v Allis*, 159 Ill App 3d at 5.  
98 *Ferrer v Vecchione*, 98 Ill App 2d 467, 474, 240 NE2d 439, 442 (1<sup>st</sup> D 1968).  
99 *Beaumont Traction Co. v Dilworth*, 94 SW352, 355 (1906).  
100 Id.  
101 Id.  
102 *Goad v Evans*, 191 Ill App 3d 283, 547 NE2d 690 (4<sup>th</sup> D 1989).  
103 *Dotson v Sears, Roebuck and Co.*, 157 Ill App 3d 1036, 1042, 510 NE2d 1208, 1211 (1<sup>st</sup> D 1987).  
104 Id.  
105 *Goad v Evans*, 191 Ill app 3d at 310 (emphasis added).  
106 Id.  
107 *Wofford v DeVore*, 73 Ill App 2d 92, 98, 218 NE2d 649, 652 (5<sup>th</sup> D 1966).  
108 Id.  
109 Id, 73 Ill App 2d at 99.  
110 *Regan v Vizza*, 65 Ill App 3d 50, 53, 382 NE2d 409, 411 (1<sup>st</sup> D 1978). See also *Cecil v Gibson*, 37 Ill App 3d 710, 346 NE2d 448 (3d D 1976).  
111 *Cecil v Gibson*, 37 Ill app 3d at 711.  
112 Id.  
113 Id.  
114 *Ellington v Bilsel*, 255 ill App 3d 233, 238, 626 NE2d 386, 390 (5<sup>th</sup> D 1993).  
115 Id.  
116 Id, 255 Ill App 3d at 239-40.  
117 *Moore v Centreville Township Hospital*, 246 Ill app 3d 579, 592, 616 NE2d 1321, 1331 (5<sup>th</sup> D 1993). (Reversed on other grounds by *Moore v Centreville Township Hospital*, 158 Ill 2d 543, 634 NE2d 1102 (1994)).  
118 *O'Donnell v Holy Family Hospital*, 289 Ill App 3d 634, 682, NE2d 386 (1<sup>st</sup> D 1997).  
119 *Lee v Calfa*, 174 Ill app 3d 101, 113, 528 NE2d 336, 334 (2d D 1988).  
120 *Lowe v Kang*, 167 Ill App 3d 772, 521 NE2d 1245 (2d D 1988).  
121 *Sabo v T.W. Moore Feed & Grain Co.*, 97 Ill app 2d 7, 20, 239 NE2d 459, 465 (5<sup>th</sup> D 1968).  
122 *Lowe*, 167 Ill App 3d at 776, 521 NE2d at 1247.  
123 Id, 167 Ill App 3d at 777.  
124 Id.  
125 Id, 167 Ill app at 778.  
126 *Deel v U.S. Steel Corp.*, 105 Ill App 2d 170, 180, 245 NE2d 109, 114 (1<sup>st</sup> D 1969).  
127 *Bunch v Rose*, 10 Ill App 3d 198, 208, 293 NE2d 8, 15 (4<sup>th</sup> D 1973).

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<sup>128</sup> *People v Davies*, 50 Ill App 3d 506, 365 NE2d 628 (1<sup>st</sup> D 1977); *People v Saxon*, 226 Ill App 3d 610, 588 NE2d 1235 (3d D 1992).

<sup>129</sup> *Id.*

<sup>130</sup> *People v Willy*, 301 Ill 107, 133 NE859 (1921); *People v Hoggs*, 17 Ill app 3d 67, 307 NE2d 800 (1<sup>st</sup> D 1974).

<sup>131</sup> *People v Ammons*, 251 Ill App 3d 345, 622 NE2d 58 (3d D 1993).

<sup>132</sup> *Sidorewicz v Kostelny*, 102 Ill app 3d 851, 854 430 NE2d 377, 379 (1<sup>st</sup> D 1981).

<sup>133</sup> *Backlun v Thomas*, 40 Ill App 2d 8, 13, 189 NE2d 682, 684 (3d D 1963).

<sup>134</sup> *Sidorewicz v Kostelny*, 102 Ill app 3d at 854.

<sup>135</sup> *Chicago v A.R. Co v Gore*, 202 Ill 188, 195, 66 NE 1063, 1065 (3d D 1903).

<sup>136</sup> *Boatmen's National Bank of Belleville v Martin*, 223 Ill app 3d 740, 744, 585 NE2d 1328, 1330 (5<sup>th</sup> D 1992).

<sup>137</sup> *Schmidt v Blackwell*, 15 Ill App 3d 190, 199, 304 NE2d 113 (1973); *Christiansen v William Graver Tank Works*, 223 Ill 142, 79 NE97 (1906).

<sup>138</sup> *Grunsten v Malone*, 125 Ill App 3d 1068, 1073, 466 NE2d 1209, 1212 (1<sup>st</sup> D 1984). See also *Dukes v J.I. Case Co.*, 137 Ill app 3d 562, 483 NE2d 1345 (4<sup>th</sup> D 1985).

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