

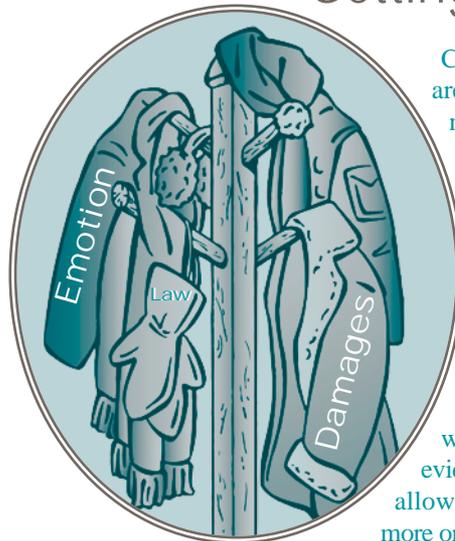
# SOLO

Summer 2007

Vol. 14, No. 1

LAW OFFICE INFORMATION FOR SOLO & SMALL FIRM PRACTITIONERS

## CLOSING ARGUMENTS Getting the Jury on Your Side



By Ted A. Waggoner

### FEATURES

Solo v. Big Firm

Picking a Jury—the Top Ten List

‘Twas the Night Before Trial

The Psychodynamics of Trials

Closing arguments are the final opportunity you have to influence the jury.

It is simple: there is a story to be finished and this is our chance to do that (consider me on your side).

I assume we have started the trial with a theme. Our evidence has been allowed to be heard, more or less in accordance with the design you had developed. The opposing side’s evidence went in more successfully than was expected or hoped, but their motions have not closed the case out yet.

Now is the last and best time to deliver on the theme. It is time to get the jury on our client’s side. You have just a few moments to pull the case together. Don’t take too many

moments (a 90-minute final argument for a day-and-half trial is too much) to remind the jurors of the purpose of this trial. Justice needs to be done, and they are sworn to do justice (and let’s hope justice is helpful to our client.)

They need a few hooks to hang their discussion on when they get into the jury room. The law is a good hook. What law allows our client to prevail? Tell them, show them, and let them know that the law is on our side. A statute can be read and shown with PowerPoint. Case law can be discussed, if we get the judge to instruct on it.

Emotion is another good hook. If possible, we need to get the jury to want to help our client. The client has suffered an injustice, and the jurors should want the good guy to win in this battle

(continued inside)

## editor/staff

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(continued from cover)

we call a trial. We want the client to win, so there should be a mutual desire—if they understand that our client is the good guy.

Damages are the final hook. We must convince the jurors of the damages our client has suffered. They have to understand and accept the losses actually suffered, more than the

amount told them. Twenty-five years ago, I tried a trashed apartment case. My client, the landlord, had \$7,438 in damages suffered. I explained to the jury several times that he was out \$7,438 in damages, with a broken stove, a dented refrigerator, ripped carpet (can you believe that!) and the need for new paint. We

had photos, and the testimony of the landlord, a local businessman. The other side had “poor kid who didn’t do it, and please ignore the repair sheet the kid had signed when he moved in” as its best argument. In rebuttal, I remind the jury one last time about the damages, I pause for dramatic effect, and juror #3 says, “We

know—\$7,438.” I was so proud, my client was so happy, and the other side was crestfallen.

So be sure to tell the jurors what they need for the hook that is the damages, it is critically important. They won’t award you a fair judgment without knowing about the damages suffered.

Yes, the jury came in,

and its award on the trashed apartment was \$1,174. The judge said he thought he had seen justice done.

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By Bryan C. Ramos

## Solo v. Big Firm

It’s the classic match-up between David and Goliath—the supersized mega-firm versus Atticus Fitch, P.C.; my client and me against the world. As solos or members of the small firm, we have all been there. Sometimes out-resourced, but never outmatched.

Don’t be intimidated. Generally, the bigger firms

are paid on an hourly basis, and they’ll attempt to drown you in paper. Be not afraid. Your client will be more sincere, and you’ll have the winning facts. The big firm client will likely be a faceless entity or “adjuster-type” with too many files. As a solo, you’re trained to be focused and are able to sift the wheat from the chaff. Take heart in your facts

and don’t allow the bigger firm to gain mental advantage over you just because of its overhead costs.

Everyone loves the underdog, but this sentiment can only take you so far. Judges and juries will give you some leeway, but you must still carry the day in court. Interestingly, sometimes being “David” may weigh against you, as some triers of fact will presume that the “Goliath firm” must be right because its services cost more. Given the general population’s idea of justice, this false presumption may be more prevalent.

### Technology

Technology is the great equalizer. As the proverb goes, “necessity is the mother of invention.” With the advent of case manage-

ment software, scanning, and Internet research, solos are able to produce high-quality results without hoards of associates churning a file. You’ll find that many solos are quick to share information regarding technology. In fact, solos are often on the cutting edge of technology, as their practices are built on efficiency. Electronic documents will enable you to organize the file and eliminate the danger of misplacing paper. However, diligently back up your files. Nothing is scarier than a computer malfunction with crucial information lost. Also, a solid laptop and projector can make a sophisticated impression in court.

The community of solos is the largest firm

(without all the bad stuff). The collective experience of solo practitioners will be your greatest resource of all. There’s no reason to reinvent the prevailing motion for summary judgment when your fellow solos are more than happy to share it with you. You’ll be surprised how many practitioners have come across the same issues, difficult opponents, motions, judges, or situations that you’ll face at the trial level. This resource will be more valuable than any treatise or form book.

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## PICKING A JURY—THE TOP TEN LIST

By Jonathan G. Stein

**M**ore has been written on selecting a jury than probably any other part of trial. Highlighted below—*a la* David Letterman's *Top Ten* list—are the "Top Ten Jury Selection Points":

**10.** Get your jury talking. A silent jury pool is a bad jury pool; it doesn't matter what side you're on. You can't possibly make informed decisions about who to keep and who to excuse without listening to what they have to say.

**9.** Open-ended questions are preferred because they get jurors talking. There is a time and place for a closed-ended ques-

tion: For example, in a personal injury case, you may ask "Is there any reason you would not give the plaintiff money for her wage loss?" But always followed up with an open-ended question.

**8.** Keep private matters private. It's strange that this needs to be listed, but some lawyers read something marked "private" on a juror questionnaire and then ask about it in open court. Jurors need our discretion. If you really must find out about something marked "private," ask for a sidebar with the judge. You owe the potential juror that much.

**7.** Follow the judge's rules! Some

judges don't want you to ask about hardships or how long a juror can serve. Some judges want to ask a lot of questions before you get a turn. Follow the judge's rules and you'll keep the judge happy.

**6.** Practice, practice, practice. Jury selection may be the hardest part of the trial. You're speaking with an audience of 30 to 60 people or more—so practice!

**5.** Let the jurors feed off of each other. If a juror is talking and you see other jurors nodding their heads, ask them about it.

**4.** Give jurors an "out"—an opportunity to express their concerns. For example, at the end of your questions, follow up with "Ladies and gentlemen, is there any reason you cannot be fair to my client? Maybe I forgot to ask you something. Maybe there is an issue you think I need to know about."

**3.** Be yourself. Jurors can tell when you're putting on an act.

**2.** A good jury consultant is worth his or her weight in gold! If you have a case that warrants the use of a jury consultant, hire the consultant and use that expertise to tell you what you need to know.

**1.** Remind jurors "'Tis better to not serve on a case sometimes." Although jury duty is an important civic responsibility, it's sometimes best that jurors not serve. Maybe aspects of the case makes it impossible for them to be fair and impartial. In that situation, remind them that there are other opportunities.

Picking a jury is one of the most important parts of a trial. Review this "Top Ten" list and keep these points in the back of your mind when you're making your picks.

**Jonathan G. Stein is a solo at the Law Offices of Jonathan G. Stein in Elk Grove, CA. Visit his Web site at [www.jonathangstein.com](http://www.jonathangstein.com).**

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# 'Twas the Night Before Trial

By jennifer.j. rose

done some background work, just so you can know what he likes and what she doesn't.

Your job now is to sell your client's position to the court, telling the story just as if it's never been told before. The judge hasn't spent the time living with

have. The court's heard cases just like yours over and over again, but the court hasn't heard this case. You may have tried cases just like this one many times, but the odds are that you haven't tried this client's case before.

It's deep breathing time.

curves and bends in the road has the client and the problem traversed since then? What was that defining moment when something happened that brought your client to the point at 9 a.m. tomorrow morning when the bailiff sings out "Oyez, oyez?"

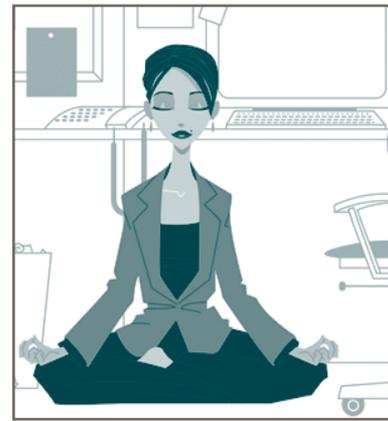
Christopher Columbus and Ferdinand Magellan didn't do as much discovery before setting off for terra incognita as you did on this case. You know it upside down and backwards, and you could recite every salient detail in your sleep. You're prepared for all form of surprise and sneak attack. You've gone through every angle with your client, prepared witnesses, and have

anticipated every possible objection. You've told your client not to wear that T-shirt with the provocative slogan on it, and you've instructed the client that courtroom decorum means not hissing, "He's a liar" when other people are speaking.

Your trial notebook is the very model of what a trial notebook should be, whether it's your first trial or your fiftieth. You know what the judge's file looks like, because you've

prepared a clone. All of the exhibits have been exchanged, and you've prepared ample copies of everything, ready to be marked and submitted. You've laminated those cheat sheets to the Rules of Evidence for easy reference.

You've researched the judge. If the judge is one you've appeared before many times, you already know what will fly and what won't. If the judge is an unknown entity, you've



and learning the file like you and your opponent

Settle yourself into one of the Zen-ish zones of quiet. Close your eyes, and clear your mind with those meditative nothingness thoughts that somehow always seems to involve centering on your navel. Think back to the first time the client entered your office and sold you on the case. What

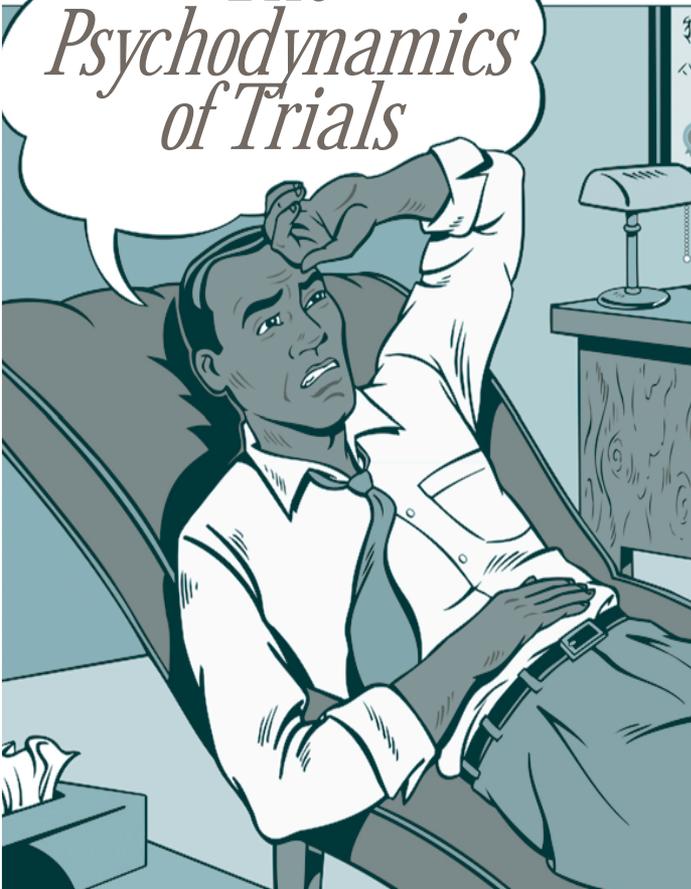
Distill that roadmap of the case into something that you could easily explain to a 10-year-old. The rest is simply detail.

And now, get a good night's sleep.

**jennifer. j. rose, a lawyer and writer living in Mexico, is secretary of the GP|Solo Division and former editor-in-chief of *GPSolo*. She can be reached at [jjrose@jjrose.com](mailto:jjrose@jjrose.com).**

## The Psychodynamics of Trials

By Chuck Driebe



Psychodynamics is a term that originated in psychology first used by Sigmund Freud more than a century ago. The term roughly means the interaction of persons' background and emotions with his or her current experience, namely a trial. Psychodynamics here means developing a theme(s) or story line(s) that will emphasize and use this interaction to advance your case.

A general practitioner can be considered a jack-of-all-trades and a master of only a few. However, a skill that is almost always necessary is the ability to try a case either before a jury or a judge. Lawyers sometime get so caught up in the minutia that they overlook the psychodynamics. Your theme or story line should be emphasized

throughout the case from voir dire to closing argument. And don't forget the experienced lawyers on the other side probably have their theme, too. You just hope your psychodynamics are more appealing than theirs.

How do you come up with the theme? Of course, you first need to analyze the law, then the facts, either through the witnesses or exhibits, and then assess the goal of each of the parties to the case. As you go through this process, a theme will usually come floating to the surface that will give the trier of fact the context or big picture for your case. Remember the emotional appeal of your words.

Every trial seems to go off the tracks in some way, creating problems for your

case. If you keep your theme firmly in mind, you won't get too distracted when the evidence or rulings don't exactly go the way you had planned or hoped. If a witness doesn't testify exactly as you anticipated, just go back to your framework (theme) and don't get derailed.

How about some examples of themes from my experience:

- A Marine Corps veteran shot his brother-in-law 31 times in self defense. He had been discharged as a schizophrenic paranoid and quit taking his medications. The theme was obvious: he was legally insane at the time of the shooting. We got him off . . . to the state mental hospital!

- A fraudulent conveyance case brought by the ex-wife of a man accused

of giving stock to his girlfriend (my client). I got so consumed with the legal arguments and details that I lost my way and forgot the psychodynamics. The result: a quick jury verdict against my client.

- A will contest between two sisters. We attacked the will procured by the other sister giving her all of the estate. She was quite strident and her lip was poked out all of the trial. Our client was well-manned and soft spoken. The theme: good sister vs. greedy sister. The jury reached a verdict in 30 seconds after a four-day trial.

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