

New Hampshire Civil Trial Practice: A Primer on Summation

by Harvey J. Garod

INTRODUCTION

To many advocates, closing argument in a jury trial is the apex of the litigation process. Months—or years—of investigation and preparation culminate in trial. Summation, the final stage of trial, permits counsel a forum to utilize his or her creative talents to mold and polish the evidence and apply it to the law in a final, persuasive plea on the client's behalf.

The basic rules of closing argument do not at first appear complex, but initial impressions can be deceiving. Beneath these few general principles lurk a myriad of confusing and sometimes contradictory sub-rules, limitations and qualifications which are anything but easy to master.

This article briefly reviews and discusses the law of summation in New Hampshire, with a focus on civil jury trials. New Hampshire criminal case law and authority from other jurisdictions will be used in the absence of controlling precedent and for illustration.

THE SCOPE OF CLOSING ARGUMENT: GENERAL RULES

The law allows trial counsel the fullest freedom of speech to argue summation.¹ Comment, however, must be based upon evidence admitted at trial² or reasonable deductions from the evidence.³ Evidence consists of

testimony,⁴ exhibits,⁵ observations made by jurors during trial⁶ or at a view,⁷ and by the jury's collective common knowledge.⁸

Counsel may argue law applicable to the facts⁹ as well as a particular view of the evidence.¹⁰ Illustrative argument is permissible,¹¹ and rhetoric may be



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vigorous and emphatic,¹² picturesque¹³ and metaphorical.¹⁴ The criterion to determine the propriety of argument is whether the jury was misled on material matters.¹⁵ If not, argument is considered within the bounds of legitimate advocacy¹⁶ or otherwise harmless.¹⁷ If argument is erroneous, the court can render the offending statements harmless by curative instructions.¹⁸ Failure to cure improper prejudicial argument results in an un-

⁴ *Giguere v. Boston & Maine R.R.*, 86 N.H. 294, 297, 167 A. 561, 563 (1933) (direct and cross-examination).

⁵ *e.g.*, *Zogoplos v. Brown*, 84 N.H. 134, 139-140, 146 A. 862, 864-65 (1929) (shoe); *Burnham v. Stillings*, 76 N.H. 122, 128, 79 A. 987, 991 (1911) (treatise used for impeachment only and not admitted in evidence: argument using treatise as substantive evidence improper).

⁶ *e.g.*, *American Employers Ins. Co. v. Wentworth*, 90 N.H. 112, 118, 5 A.2d 265, 269, (1939) (improper conduct of counsel); *Williamson v. Derry Elec. Co.*, 89 N.H. 216, 217-18, 196 A. 265, 266 (1938) (object in plain sight); *Hall v. Wentworth's Location*, 84 N.H. 236, 239, 149 A. 81, 83 (1930) (absence of party representative).

⁷ *Gosselin v. F.M. Hoyt Shoe Co.*, 78 N.H. 149, 151-52, 97 A. 744, 746 (1916); *see New Hampshire Donuts, Inc. v. Skipitaris*, 129 N.H. 774, 779, 533 A.2d 351, 353 (1987) (view by master).

⁸ *e.g.*, *Putnam v. Bowman*, 89 N.H. 200, 205, 195 A. 865, 868 (1937); *State v. Davis*, 83 N.H. 435, 437, 144 A. 124, 125-26 (1928).

⁹ *e.g.*, *Girard v. Boston & Maine R.R.*, 78 N.H. 406, 407-08, 100 A. 1057 (1917); *Charrier v. Boston & Maine R.R.*, 75 N.H. 59, 63, 70 A. 1078, 1080 (1908).

¹⁰ *e.g.*, *Land Finance Corp. v. Grafton County Elec. Light & Power Co.*, 83 N.H. 518, 523, 144 A. 845, 848 (1929); *Gosselin v. F.M. Hoyt Shoe Co.*, *supra* n.7, 78 N.H. at 151-52, 97 A. at 746.

¹¹ *e.g.*, *Williamson v. Derry Elec. Co.*, *supra* n.6, 89 N.H. at 217-18, 196 A. at 266; *Sanders v. Boston & Maine R.R.*, 77 N.H. 381, 383, 92 A. 546, 548 (1914); *see Noble v. City of Portsmouth*, 67 N.H. 183, 184-85, 30 A. 419, 420 (1892) (comparison of recoveries in other cases not proper illustration).

¹² *e.g.*, *Torpore v. Boston & Maine R.R.*, 79 N.H. 169, 170, 106 A. 498, 499 (1919); *Girard v. Boston & Maine R.R.*, *supra* n.9.

¹³ *Norton v. Atlantic Gypsum Products Co.*, 83 N.H. 407, 410, 143 A. 469, 470-71 (1928).

¹⁴ *Land Finance Corp. v. Grafton County Elec. Light & Power Co.*, *supra* n.10, 83 N.H. at 523, 144 A. at 848.

¹⁵ *e.g.*, *J.P. Goddard Realty & Bakery Co., Inc. v. Bugbee*, 89 N.H. 34, 192 A. 154 (1937) (erroneous arithmetic calculations); *Christie v. New England T. & T. Co.*, 87 N.H. 236, 238, 177 A. 300, 301-02 (1935) (impermissible inference of culpability).

¹⁶ *e.g.*, *Pridham v. Cash & Carry Building Center, Inc.*, 116 N.H. 292, 296-97, 359 A.2d 193, 197 (1976); *Jones v. Jones*, 113 N.H. 553, 556, 311 A.2d 522, 525 (1973).

¹⁷ *e.g.*, *Dedes v. Dedes*, 93 N.H. 215, 219, 39 A.2d 13, 16 (1944) (unintelligible argument); *Beliveau v. John B. Varick Co.*, 81 N.H. 57, 59-60, 120 A. 884, 885 (1923) (minor error).

¹⁸ *e.g.*, *Clough v. Schwartz*, 94 N.H. 138, 141, 48 A.2d 921, 923 (1946) (erroneous statement of evidence); *Watts v. Derry Shoe Co.*, 80 N.H. 152, 154, 114 A. 859, 860 (1921) (erroneous statement of law).

¹ *Hilliard v. Beattie*, 59 N.H. 462, 465 (1879).

² *e.g.*, *McCourt v. Travers*, 87 N.H. 185, 188, 175 A. 865, 867 (1934); *Greenfield v. Kennett*, 69 N.H. 419, 45 A. 233 (1899).

³ *e.g.*, *Grogan v. York*, 93 N.H. 184, 187, 38 A.2d 295, 297 (1944); *Trudeau v. Manchester Coal & Ice Co.*, 89 N.H. 83, 86, 192 A. 491, 493 (1937).

fair trial¹⁹ and necessitates a mistrial²⁰ or new trial²¹ upon timely request²² by the aggrieved party.

THE NECESSITY OF EVIDENTIARY FOUNDATION

As previously mentioned, summation must be supported by an evidentiary predicate. This requirement circumscribes comment on substantive issues of liability²³ and damages²⁴ as well as matters of credibility.²⁵

A question routinely arises in those cases in which counsel asks the jury to draw evidentiary inferences from the record: is the attorney engaging in legitimate advocacy or providing new facts by way of unsworn testimony through argument?²⁶ It is, for example, clearly improper to request the jury to make any inference from excluded evidence.²⁷ Likewise, counsel may not expand upon evidence admitted for a limited purpose.²⁸ And the attorney may neither personally vouch

for the integrity of a witness²⁹ nor fill a factual void by urging the jury to deduce inferences necessitating absent expert opinion.³⁰

Poor tactical decisions often lead to embarrassing occurrences at trial. These incidents, in turn, may cause the attorney to try to explain or qualify evidence in the absence of the required foundation. For example, if the attorney had personally interviewed a witness who later denied giving the out-of-court statement to examining counsel, the statement must be properly admitted in evidence to support subsequent argument.³¹ Absent its admission, counsel may not ask the jury to infer the statement's substance by the mere fact that the matter was discussed, nor through the witness's comportment during the examination.³² In a similar vein, it is improper for the attorney in closing to rebut prejudicial statements he allegedly made to a witness,³³ deny he coached a witness³⁴ or explain why evidence was not produced,³⁵ absent some foundation in the record to support the argument.³⁶

Common or general knowledge can provide an evidentiary basis for summation. Common knowledge is limited to basic matters of experience in human nature, commerce and daily living.³⁷ It is generally known and accepted that motorists can be blinded temporarily by the sun³⁸ or distracted by the headlights of oncoming traffic,³⁹ and that snow continues to accumulate

on a windshield during a snowstorm.⁴⁰ It is also recognized that people have familiarity with the law of gravity.⁴¹ Matters of general knowledge truly must be common, and it is error to utilize the knowledge of some jurors to supply a material fact not otherwise in evidence.⁴²

PREJUDICIAL OR HARMLESS ERROR

Improper argument is harmful if it probably⁴³ misled,⁴⁴ unduly distracted⁴⁵ or prejudiced⁴⁶ the jury on material matters.⁴⁷ Minor misstatements of evidence⁴⁸ or imprecise language⁴⁹ may be considered harmless error. The courts take a different view when clear misrepresentations of material evidence occur⁵⁰ or when statements

⁴⁰ *Dube v. Sevigne*, 81 N.H. 221, 123 A.2d 894 (1924).

⁴¹ *Crowley v. New Hampshire Fire Ins. Co.*, 100 N.H. 477, 479, 130 A.2d 276, 277 (1957).

⁴² *Curtis v. Boston & Maine R.R.*, 78 N.H. 116, 97 A. 743 (1916) (dicta).

⁴³ e.g., *Menard v. Cashman*, 94 N.H. 428, 434, 55 A.2d 156, 161 (1947) (misstatement "not likely to mislead" is harmless); *Whipple v. Boston & Maine R.R.*, 90 N.H. 261, 267-68, 7 A.2d 239, 244 (1939) (possible prejudice insufficient to warrant judicial relief); *Wright v. Woodward*, 79 N.H. 474, 478, 111 A. 494, 496 (1920) ("not probable" jury misled); *But cf. Piechuck v. Magusiak*, 82 N.H. 429, 431, 135 A. 534, 535 (1926) (jury may have used incompetent evidence: new trial necessary); *Beliveau v. John B. Varick Co.*, *supra* n.7, 81 N.H. at 60, 120 A. at 885 (new trial not required unless it is "at least possible" inadmissible evidence produced the verdict).

⁴⁴ e.g., *Merchants Mut. Cas. Co. v. Smith*, 91 N.H. 204, 208, 17 A.2d 88, 92 (1940); *Williams v. Williams*, 87 N.H. 430, 433, 182 A. 172, 174-75 (1935).

⁴⁵ see *Smith v. Boston & Maine R.R.*, 87 N.H. 246, 265-66, 177 A. 729, 742 (1935) (dicta) (undue focus upon immaterial matters); see also *Able v. Yoken*, 104 N.H. 119, 124, 179 A.2d 456, 459-460 (1962) (argument on collateral matters permissible but not encouraged).

⁴⁶ e.g., *Dube v. Melhorn*, 88 N.H. 1, 183 A. 869 (1936); *Hinman v. Director Gen. of R.R.s*, 79 N.H. 518, 112 A. 382 (1920).

⁴⁷ see e.g., *Prokey v. Hamm*, 91 N.H. 513, 517, 23 A.2d 327, 330 (1941) (misstatement of irrelevant fact: harmless error); *Cutler v. Young*, 90 N.H. 203, 205, 6 A.2d 162, 164 (1939) (misstatement of irrelevant law: harmless error).

⁴⁸ Cases cited *supra* n.44

⁴⁹ *Berry v. Massachusetts Northeastern St. Ry. Co.*, 79 N.H. 161, 162, 106 A. 603, 604, (1919).

⁵⁰ e.g., *Dube v. Melhorn*, *supra* n.46; *Haselton v. Maser*, 83 N.H. 498, 499-500, 144 A. 784, 785 (1929).

¹⁹ e.g., *Benoit v. Perkins*, 79 N.H. 11, 19-21, 104 A. 254, 258-59 (1918); *Baldwin v. Grand Trunk Ry. Co.*, 64 N.H. 596, 598, 15 A. 411, 412-13 (1888).

²⁰ *Brigham v. Hudson Motors, Inc.*, 118 N.H. 590, 593-95, 392 A.2d 130, 133-34 (1978).

²¹ e.g., *Public Service Co. of New Hampshire v. Chancey*, 94 N.H. 259, 51 A.2d 845 (1947); *Cote v. Michou*, 80 N.H. 41, 113 A. 210 (1921).

²² A motion for mistrial should be made immediately after the offending statement. *Perry v. Faulkner*, 100 N.H. 125, 127, 120 A.2d 804, 806 (1956). A motion for a new trial should be made within ten days of the verdict. *Superior Ct. Rule* 73.

²³ Cases cited *supra* n.5.

²⁴ *Plume v. Couillard*, 104 N.H. 267, 269-270, 184 A.2d 452, 454 (1962).

²⁵ e.g., *Winslow v. Smith*, 74 N.H. 65, 65 A. 108 (1906) (expert witness); *Jordan v. Wallace*, 67 N.H. 175, 32 A. 174 (1892) (party plaintiff).

²⁶ e.g., *Wright v. Davis*, 72 N.H. 448, 450, 57 A. 335, 336 (1904); *Heald v. Concord & Maine R.R.*, 68 N.H. 49, 44 A. 77 (1894). Such conduct also constitutes unethical behavior. *N.H. Rules of Professional Conduct*, Rule 3.4(e) & 3.7; accord *Willey v. Ketterer*, 869 F.2d 648, 650 n.1 (1st Cir. 1989) (N.H.); *Maercks v. Birchansky*, 549 So. 2d 199 (Fla. 3d D.C.A. 1989).

²⁷ *Palmer v. Dimick*, 77 N.H. 565, 94 A. 268 (1915).

²⁸ e.g., *Mitrich v. Tuttle*, 90 N.H. 512, 513-14, 11 A.2d 818, 819-820 (1940); *Fuller v. Maine Cent. R.R.*, 78 N.H. 366, 370-71, 100 A. 546, 548-49 (1917).

²⁹ e.g., *Olena v. Standard Oil Co.*, 82 N.H. 408, 414-15, 135 A. 27, 31 (1926); *Bjork v. United States Bobbin & Shuttle Co.*, 79 N.H. 402, 111 A. 533 (1920); see *N.H. Rules of Professional Conduct*, Rule 3.4(e) & 3.7.

³⁰ e.g., *Wood v. Mfrs. & Merchants Mut. Ins. Co.*, 89 N.H. 213, 216, 195 A. 667, 669 (1937); *Carney v. Concord St. Ry.*, 72 N.H. 364, 375, 57 A. 218, 224 (1903).

³¹ *Moran v. Baldi*, 71 N.H. 490, 53 A. 307 (1902).

³² *Id.*

³³ *Kerzty v. Wardymka*, 83 N.H. 477, 144 A. 263 (1929).

³⁴ *Knapp v. Stone*, 79 N.H. 32, 103 A. 1005 (1918).

³⁵ *Concord Land & Water-Power Co. v. Clough*, 70 N.H. 627, 47 A. 704 (1900).

³⁶ *Parker v. Town of New Boston*, 79 N.H. 54, 104 A. 345 (1918).

³⁷ *Chellis Realty Co. v. Boston & Maine R.R.*, 79 N.H. 231, 234, 106 A. 742, 744 (1919).

³⁸ *Woodbridge v. Desrocher*, 93 N.H. 87, 90, 35 A.2d 802, 804 (1944).

³⁹ *Connors v. Turgeon*, 96 N.H. 479, 481, 78 A.2d 925, 926-27 (1951).

regarding irrelevant matters are used to excite prejudice.⁵¹

The court can cure most harmful error by proper instructions. Misstatements of fact⁵² or law,⁵³ comment absent evidentiary basis,⁵⁴ impermissible inferences,⁵⁵ or pleas to passion or bias⁵⁶ all may be rendered harmless by appropriate instructions at the time of the transgression⁵⁷ or in the final charge.⁵⁸ But it is critical that instructions be clear⁵⁹ and sufficient,⁶⁰ lest a question remain whether the court approved or adopted erroneous argument. If such a question exists, a new trial will be necessary.⁶¹

Early case law required a stiff, ritualistic method to cure harmful error. Upon objection, offending counsel was compelled to withdraw the remark, apologize to the jury and solicit the court to give curative instructions. The court would comply with the request and make a specific finding that the trial was fair. The error was then generally considered cured.⁶² Over the years, the courts have abandoned this stilted procedure. Modern practice places the burden to make a timely objection upon the

attorney for the aggrieved party,⁶³ and that attorney also must make a request for desired relief.⁶⁴

It is presumed that the jury will follow instructions.⁶⁵ The overruling of an objection to argument⁶⁶ or denial of a motion for mistrial⁶⁷ or a new trial⁶⁸ raises an implied finding of no prejudice. Because the judge who observed the argument is in the best position to evaluate its prejudicial impact,⁶⁹ appellate reversal is rare.⁷⁰

THE PROBLEM OF INFLAMMATORY ARGUMENT

Prejudice, sympathy and passion should play no part in jury deliberation.⁷¹ It is, however, the inexperienced advocate who fails to recognize that these human emotions to some degree affect the deliberative processes of many jurors. The unsettled problem remains just how far the attorney can cultivate these sentiments without jeopardizing the integrity of the trial process. The courts often examine the good faith of counsel to determine prejudicial impact of improper argument or whether the offending statements were made in response to similar comments by opposing counsel.

The vintage case of *Benoit vs. Perkins*⁷² held that the intent of counsel

making improper argument was immaterial. The only matter to determine was whether the statements deprived the aggrieved party of a fair trial.⁷³ It is questionable whether *Benoit* is still good law. The trial judge in that case had failed to make the requisite finding of harmless error, as was required at that time;⁷⁴ and the High Court's statement may be considered *dicta*. Furthermore, an abundance of later decisions take good faith into account,⁷⁵ apparently overruling *Benoit sub silentio*.

The courts use an objective standard to determine good faith. Were the improper remarks repetitious or singular? Cumulative misconduct gives rise to an inference of intent to prejudice.⁷⁶ The courts may not so construe inadvertent error or individual transgression.⁷⁷ Of course, certain argument can be so inflammatory that it is incapable of cure,⁷⁸ in which event the intent of counsel is irrelevant.

Argument otherwise improper is considered invited and harmless if made in response to similar comments

⁵¹ *Williams v. United Box & Lumber Co.*, 80 N.H. 137, 114 A. 817 (1921).

⁵² *e.g.*, *Fitzgerald v. Sargent*, 117 N.H. 104, 106-07, 371 A.2d 456, 457-58 (1977); *Casey v. M.L. Pike & Son, Inc.*, 104 N.H. 521, 525-26, 191 A.2d 533, 537 (1963).

⁵³ *Voullgaris v. Gianaris*, 79 N.H. 408, 109 A.2d 838 (1920).

⁵⁴ *e.g.*, *Weiss v. Wasserman*, 91 N.H. 164, 166-67, 15 A.2d 861, 863-64 (1940); *Hamlin v. Philbrook*, 78 N.H. 144, 146, 97 A. 977, 978-79 (1916).

⁵⁵ *e.g.*, *Brown v. Gottesman*, 103 N.H. 33, 35-36, 165 A.2d 43, 46 (1960); *Butler v. Webster*, 79 N.H. 125, 106 A. 283 (1919).

⁵⁶ *e.g.*, *Smith v. Bailey*, 91 N.H. 507, 511-12, 23 A.2d 363, 366 (1941); *Abbott v. Ladd*, 85 N.H. 541, 161 A. 373 (1932); *cf. Smith v. Boston & Maine R.R.*, 88 N.H. 430, 436, 190 A. 697, 701 (1937) (*dicta*) (direct appeal for sympathy: incurable error).

⁵⁷ *e.g.*, *LaBonte v. Nat'l Gypsum Co.*, 113 N.H. 678, 682, 313 A.2d 403, 406 (1973); *Brown v. Gottesman*, *supra* n.55.

⁵⁸ *e.g.*, *Smith v. Bailey*, *supra* n.56; *Weiss v. Wasserman*, *supra* n.54.

⁵⁹ *Lemire v. Haley*, 91 N.H. 357, 362-63, 19 A.2d 436, 441 (1941).

⁶⁰ *Monroe v. Sterling*, 92 N.H. 11, 15, 26 A.2d 21, 22 (1942).

⁶¹ *Id.*; *Lemire v. Haley*, *supra* n.59.

⁶² *e.g.*, *Tuttle v. Dodge*, 80 N.H. 304, 311-12, 116 A. 627, 632 (1922); *Univ. of Illinois v. Spalding*, 71 N.H. 163, 165, 51 A. 731, 732 (1901).

⁶³ *State v. Hopps*, 123 N.H. 541, 545-46, 465 A.2d 1206, 1209 (1983); *see N.H.R. Ev. Rule 103*.

⁶⁴ *e.g.*, *Murray v. Boston & Maine R.R.*, 107 N.H. 367, 375, 224 A.2d 66, 72-73 (1966) (limiting instruction); *Dimarco v. Smith*, 90 N.H. 378, 9 A.2d 512 (1939) (motion to strike and cautionary instruction).

⁶⁵ *e.g.*, *Hoyt v. Horst*, 105 N.H. 380, 388-89, 201 A.2d 118, 124 (1964); *Richards v. Rizzi*, 99 N.H. 327, 329, 110 A.2d 275, 276-77 (1954).

⁶⁶ *Richards v. Rizzi*, *supra* n.65.

⁶⁷ *e.g.*, *Hoyt v. Horst*, *supra* n.65; *Kelley v. Lee*, 89 N.H. 100, 105, 193 A.2d 228, 231 (1937).

⁶⁸ *e.g.*, *LaBonte v. Nat'l Gypsum Co.*, *supra* n.57; *Lampesis v. Travelers Ins. Co.*, 101 N.H. 323, 330, 143 A.2d 104, 109 (1958).

⁶⁹ *e.g.*, *Brigham v. Hudson Motors, Inc.*, *supra* n.20, 118 N.H. at 595, 392 A.2d at 134; *Hoyt v. Horst*, *supra* n.65.

⁷⁰ *Beaule v. Weeks*, 95 N.H. 453, 460, 66 A.2d 148, 152 (1949) (no curative instructions given: finding of no prejudice from improper statements of witnesses and counsel reversed).

⁷¹ *N.H. Const. Pt. 1*, art. 35; *Tuftonboro v. Willard*, 89 N.H. 253, 260, 197 A. 404, 409 (1938).

⁷² *supra* n.19.

⁷³ *Id.* 79 N.H. at 20, 104 A. at 259.

⁷⁴ Cases cited *supra* n.62.

⁷⁵ *e.g.*, *Ferris v. Saulnier*, 90 N.H. 96, 98, 4 A.2d 651, 653 (1939) (failure to correct argument); *Smith v. Boston & Maine R.R.*, *supra* n.56; *see Dane v. MacGregor*, 94 N.H. 294, 297, 52 A.2d 290, 292 (1947) (cross examination).

⁷⁶ *e.g.*, *Bruce v. Capital Motor Transp. Co. Inc.*, 87 N.H. 462, 183 A. 265 (1936); *Harvey v. Welch*, 86 N.H. 72, 74-75, 163 A. 417, 418 (1932).

⁷⁷ *e.g.*, *Charles v. McPhee*, 92 N.H. 111, 116-17, 26 A.2d 30, 34 (1942); *Adams v. Strain*, 80 N.H. 90, 113 A. 209 (1921).

⁷⁸ *Brigham v. Hudson Motors Inc.*, *supra* n.20, 118 N.H. at 592-95, 392 A.2d at 132-33 (insinuation by defense counsel that the plaintiff had the option to bring a later suit against a third party); *Smith v. Boston & Maine R.R.*, *supra* n.56; *e.g.*, *Adams v. Camp Harmony Ass'n, Inc.*, 190 Ga. App. 506, 379 S.E.2d 407 (1989) (comment by defense counsel that the defendant could not survive a large judgment in favor of the plaintiff); *Lasky v. Baker*, 126 Mich. App. 524, _____, 337 N.W.2d 561, 564-65 (1983) (defense counsel requests jury to infer that the trial court had made an evidentiary determination adverse to the plaintiff); *Corwin v. Dickey*, 91 N.C. App. 725, _____, 373 S.E.2d 149, 151 (1988), *pet. for rev. denied*, 324 N.C. 112, 377 S.E.2d 231 (1989) (defense counsel calls for Divine retribution upon greedy litigants and lawyers).

by opposing counsel.⁷⁹ The instigating party is estopped to claim prejudice.⁸⁰ However, excessive retaliatory argument is prejudicial when it denigrates the integrity of the trial or amounts to unprofessional conduct.⁸¹

⁷⁹ *Benway v. Cole*, 99 N.H. 51, 54, 104 A.2d 734, 736 (1954); e.g., *Fahy v. Dresser Industries, Inc.*, 740 S.W.2d 635, 641-42 (Mo. 1987) (En Banc), cert. denied, 485 U.S. 1022, 108 S.Ct. 1576, 99 L.Ed.2d 891 (1988); *Metropolitan Dade County v. Dillon*, 305 So. 2d 36, 40 (Fla. 3d D.C.A. 1974), cert. denied, 317 So. 2d 442 (Fla. 1975); *Contra, Baldwin v. Grand Trunk Ry. Co.*, supra n.19.

⁸⁰ e.g., *Frederick v. Dreyer*, 257 N.W.2d 835, 838-39 (S.D. 1977); see *Damboise v. Goodman*, 86 N.H. 360, 169 A. 6 (1933) (unsolicited mention of insurance by the defendant during examination).

⁸¹ e.g., *Werner v. Lane*, 393 A.2d 1329, 1332-38 (Me. 1978); *Borden, Inc. v. Young*, 479 So. 2d 850 (Fla. 3d D.C.A. 1985), pet. for rev. denied, 488 So. 2d 832 (Fla. 1986).

CONCLUSION

Drafting and executing an artful, effective and proper summation can be a strenuous task. The general principles of closing argument do not seem difficult to understand, but as the author has attempted to show, this apparent simplicity is misleading. A thorough working knowledge of the law of summation is important, but practical application of that knowledge through experience is essential. Only by tempering knowledge with experience can counsel master the intricacies involved and present a skillful, persuasive and rewarding presentation to the jury.

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