

How to Use Graphics in Your Openings and Closings

By G. Christopher Ritter, Esq.

Bad opening statements tend to be littered with phrases like, the “sacred right to a jury trial” and “dates back to 1215,” as well as references to King John’s work on the Magna Carta (an event with which most American jurors are not familiar and about which they don’t much care). By the same token, bad closing arguments tend to be a repetition of opening statements (with the tense changed from “we’re going to show you that...” to “we *have* shown you that...”), plus a reiteration of the evidence presented and the arguments made, even when that evidence and those arguments are as dull as dry toast.

There is a whole other way of envisioning, constructing and presenting opening statements and closing arguments—one that creates an arc of engaging narrative from beginning to end. Indeed, the most successful opening statements plant the rhetorical seeds for the closing argument, and the most successful closing

arguments can trace their rhetorical antecedents back to the opening statement.

Graphics can help deliver more effective opening statements and closing arguments by easing the introduction of complex information and allowing attorneys to take a more teacherly role with jurors. Graphics can also help weave narrative threads from the beginning to the end of the case, which help create a more unified presentation.

In order to create this thread or narrative arc; however, the goals of both opening statements and closing arguments need to be understood. The first goal of the opening statement is to outline what the case is about, or as I like to say, outline what the case “is *really* about.” The “what it’s really about” version isn’t an explanation of tortious breach of contract or major financial fraud. Instead, it’s the version of the case that you would tell a friend at a PTA meeting: e.g., “This case is really about a man who was so greedy that he ignored the law and his conscience and stole millions of dollars from innocent elderly people.”

Trial graphics can help underscore what the case is “really about” by providing easy-to-digest visuals. In a case launched by the SEC against the former CFO of Waste Management, for instance, the SEC needed to show that the case was about a man who massively defrauded the government, investors and employees by falsifying financial reports. But in order to do that, the jurors had to understand the basics of corporate accounting procedures, the stock market and government oversight of publicly held companies. To do this, a series of slides was created to present a flow chart of how accounting departments normally give financial reports to CFOs, who then communicate the information to investors, employees and the government, who, in turn, provide feedback in the form of stock prices and investment behavior.

The next series of slides showed what the CFO did: he took the information provided by the accountants, falsified it, and then fed that false information to the investors, employees and government. Then a bold black arrow was used to show that he sent orders back along the chain of command demanding that the original information be destroyed. The final slide simply presented bullet

points stating that the CFO: “deceived the public; knew what he was doing; and had no excuse.”

The second goal of an opening statement is to provide the facts in some kind of memorable order. Often—but not always—this requires a chronological overview of the case.

The third goal of an opening statement is to display key documents and start the process of explaining their significance. Now, it's easy to throw a page from a deposition up on an overhead projector and let the jurors scan it for the most important phrases. However, it's far more effective to use highlighting, enlarged text and other emphases to call those words out to jurors, so the document and its significance can be quickly introduced – and then move on.

The fourth goal of an opening statement is to define key terms and concepts. This creates a foundation of understanding from which jurors can proceed to examine the evidence during the case-in-chief. For example, the jurors may need to know the definition of

“equivalent,” for instance, or what asbestos does in the lungs, or the nature of commercial loans.

The fifth and final goal of the opening statement is to demonstrate a basic level of expertise and mastery of the case. On the simplest level, graphics can help achieve this by giving the attorney something to stand next to besides the podium. (A really good graphic may even inspire an attorney to move their arms around a little bit.) On a more complex level, graphics help display mastery of the case because just the process of thinking about graphics makes you master both the core themes and intricate details of the matters at hand.

The graphics that are developed for closing argument will necessarily be of a different type, because the purpose towards which they are used is different. That is, a closing argument is not just a repetition of the opening statement – at least in the hands of a good lawyer. A good lawyer takes what they said in their opening statement and uses inference, larger connections and allusion to get past the facts to the deeper meaning of the case.

As such, the first goal of a graphic used for a closing argument is to address the law and argue how it should be used in your favor. Examples include lists of the elements necessary to make a claim, for instance, or other illustrations meant to make legal concepts more clear.

The second purpose of a closing argument graphic is, whenever possible, to turn your opponents' arguments against them. In highlighting flaws in the opposing counsels' own graphics with something as simple as a pointing finger or post-it note. Or a graphic designer create a new treatment of the graphic in question – perhaps by providing a blow-up of a section of a timeline that is inaccurate, for instance. Brand new graphics could be created that, say, juxtapose contradictory testimony (or testimony that leads to a totally different conclusion than that of opposing counsel). This can be an exceptionally satisfying exercise – until, of course, your opponent turns around and does the same thing to you.

The third purpose of a closing argument graphic is to argue— just plain argue, in the noble tradition of Abraham Lincoln, Clarence

Darrow and Atticus Finch. Attorneys don't argue that way anymore – perhaps because they go to trial less often and are not accustomed to structuring cases with argument in mind. However, the closing argument is where you can pull out all the stops and really try, rhetorically, to convince jurors that your version of the events is true and your opponent's version is false.

The truth is, you can argue your heart out in the closing argument, as long as it's relevant to the case and not overly prejudicial. That means you have a chance to be more than a historian – you have a chance to be a storyteller, a moralist, even an actor. Just as your opening statement sets the emotional tone for your entire case, your closing argument creates the last impression your jurors will have of your case – and how you handled it.

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