The Art of Closing Argument: Effective Use of Visual Aids at Trial

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“Now, gentlemen, in this country, our courts are the great levelers. In our courts, all men are created equal. I'm no idealist to believe firmly in the integrity of our courts and of our jury system - that's no ideal to me. That is a living, working reality! Now I am confident that you gentlemen will review, without passion, the evidence that you have heard, come to a decision and restore this man to his family. In the name of GOD, do your duty. In the name of God, believe... Tom Robinson.”

Closing Argument of Atticus Finch, To Kill a Mockingbird (1962)

I. Introduction

Closing argument is a crucial moment in any trial. It is an attorney's final opportunity to give context and meaning to the evidence presented, and to solidify the case narrative in the minds of jurors. A great closing argument may persuade an uncertain trier of fact, while a poor closing argument can undermine even the strongest evidence at trial.

Although the blueprint for an effective closing argument will be unique to each case and attorney, scholars of trial advocacy have identified a number of essential principles for successful closing arguments, including:

1. Building and maintaining credibility;
2. Identifying and integrating the case theme;
3. Structuring the closing argument to maximize persuasiveness;
4. Engaging in a horizontal dialogue with the jury;
5. Employing the tools of argument;
6. Using demonstrative aids and exhibits;
7. Recognizing the limits of your audience;
8. Adopting a persuasive style;
9. Displaying passion and conviction – invoking both logic and emotion with the jury; and,
10. Taking the rebuttal seriously.¹

Each of these principles is a useful reminder in any case for every attorney. However, this paper focuses on the use of demonstrative aids, specifically visual aids such as PowerPoint presentations, for most effectively communicating with jurors at trial. We live in a visual age, and modern jurors now expect more than monologue – even from the most profound legal orators. Indeed, researchers have found that “juries remember 85 percent of what they see as opposed to only 15 percent of what they hear.”² Thus, it is important to ensure that jurors recall the key points of your arguments through the thoughtful use of polished and professional visual presentations, particularly in closing argument. This paper first describes some important legal limitations on the use of visual aids in court; second, outlines trial techniques that can maximize the effectiveness of visual aids in a closing argument.

II. Legal Framework

Courts widely acknowledge that “the decision to allow the use of visual aids rests squarely with the trial court.” However, visual aids must be relevant to the facts; their probative value must not mislead or confuse the jury; and their value must not be outweighed by the prejudicial effect.

A. Computer Animations and Videos

Utilizing computer animations during closing argument presents unique challenges, particularly because their accuracy can be difficult to verify. For example, in State v. Farner, the Tennessee Supreme Court found that the trial court abused its discretion in admitting a computer animation of vehicles in a vehicular homicide case where the video clearly contradicted certain eyewitness testimony. The Tennessee Supreme Court held that the video’s “probative value was substantially outweighed by the danger of unfair prejudice.” Similarly, in State v. Stewart, the Supreme Court of Minnesota held that admitting an inaccurate computer animation of a shooting in a murder trial was in error. However, the Stewart court held that the error in admitting the video was harmless because the district court instructed the jurors that they should “disregard the animation if it did not correctly reflect the testimony or other evidence.”

Showing portions of videotaped testimony during closing argument can also be problematic. Generally, permission to replay portions of trial testimony falls within the discretion of the trial judge. However, some courts have admonished counsel on the potential pitfalls of this strategy:

“The court recognizes, however, that there are a number of pitfalls which must be avoided when showing portions of the videotape. The portions of the videotape testimony shown during summation should not be so lengthy as to constitute a second trial emphasizing only one litigant’s side of the

3 Miller v. Mullin, 354 F.3d 1288, 1295 (10th Cir. 2004); see also U.S. v. Crockett, 49 F.3d 1357, 1360, 41 Fed. R. Evid. Serv. 1027 (8th Cir. 1995) (“the use of diagrams, charts and other visual aids is generally permissible in the sounds discretion of the trial court”).
4 See Fed. R. Evid. 403 (“although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice…”).
5 As the Connecticut Supreme Court has stated: “[C]ounsel is entitled to considerable leeway in deciding how best to highlight or underscore the facts, and the reasonable inferences to be drawn therefrom, for which there is adequate support on the record. We therefore have never categorically barred counsel’s use of such rhetorical devices, be they linguistic or in the form of visual aids, as long as there is no reasonable likelihood that the particular device employed will confuse the jury or otherwise prejudice the opposing party. Indeed, to our knowledge, no court has erected a per se bar to the use of visual aids by counsel in closing arguments. On the contrary, the use of such aids is a matter entrusted to the sound discretion of the trial court.” State v. Anacona, 270 Conn. 568, 598 (2004).
7 State v. Stewart, 643 N.W.2d 281, 296 (Minn. 2002).
case. The court must exercise discretion to limit the amount actually played by counsel during summation.

Further, the court must take precautions to guard against the edited portions of the videotape misstating the evidence. By editing portions of the trial testimony evidence could be presented out of context and could easily confuse the issues or mislead the jury. In order to eliminate this problem ... a hearing should be conducted. The court, out of the jury’s presence, should therefore view the proposed portions of the videotape testimony in open court on the record to make sure that it accurately reflects the evidence.”

Overall, it is important to ensure that any computer animations or videos used in closing argument are accurate and faithfully reflect the testimony at trial. Moreover, these visual aids should not be used as a “second trial” in a manner that could mislead the jury.

**B. PowerPoint Presentations**

Like other visual aids, the use of a PowerPoint presentation during closing argument is allowed at the discretion of the court. However, like any closing argument illustration, a PowerPoint may not introduce matters that have not been admitted into evidence or that cannot be reasonably deduced from the evidence. Courts are likely to permit the use of closing argument presentations that summarize evidence already admitted, although this will depend on the specific facts and circumstances.

Unique issues may arise when a closing argument PowerPoint explores scientific evidence, as illustrations of complex scientific theories or processes can raise Daubert scrutiny. For example, in the case of Robinson v. Missouri Pacific R. Co., the 10th Circuit noted that as “gatekeeper” a district court should “carefully and meticulously make an early pretrial evaluation of issues of admissibility, particularly of scientific expert opinions and films or animations illustrative of such opinions” under Rule 702 of the Federal Rules of Evidence and Daubert to ensure scientific validity.

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9 *Condella*, 298 N.J. Super. at 689.

10 *Farmer*, supra note 6.


12 *Robinson v. Missouri Pac. R. Co.*, 16 F.3d 1083, 1089 (10th Cir. 1994).
Finally, the use of photographs in closing argument, including in a PowerPoint presentation, may raise additional issues. Like other visual aids, the use of photographs is within the discretion of the court. The nature and purpose of the photograph may influence its admissibility; for example, courts have held that emotionally-charged or inflammatory photographs that do not have independent evidentiary value may be inadmissible.

In summary, a PowerPoint presentation should be used to concisely organize key evidence and testimony, and should not include inadmissible evidence or graphics solely intended to elicit an emotional reaction from jurors.

III. Trial Techniques to Maximize Effectiveness of Visual Aids in Closing Argument

Deciding whether to use a visual aid such as a PowerPoint presentation in closing argument is an individual choice; it is important that an attorney be comfortable with the presentation as a tool. If an attorney is comfortable using this technology, there are several techniques that can improve a presentation’s success:

1. **Begin with the end in mind**: develop a presentation by first setting goals or goals to achieve, and then work to achieve that end.
2. **Use the presentation as a roadmap for trial**: use a presentation in both the opening and closing, if allowed. In the opening, explain to the jury what the evidence will show, and in the closing show them what the evidence did show.
3. **Tie together themes, timelines, and issues**: use a presentation with repetitive slides and graphics to tie information together; for example, use the same color for certain themes, witnesses, and issues. Use lists and timeline graphics to show how evidence fits together.
4. **Use the closing presentation as a “trip down memory lane”**: show the jury the journey you have been on together, using actual evidence and pulling quotes from testimony.
5. **Anticipate/preempt negative comments about your presentation**: explain that this is for the jury’s benefit, to help them to understand the evidence and the truth.
6. **Keep it simple, clear, and easily understandable**: a presentation should be clear and easily read from a distance; use simple graphs and charts and keep slides from being too crowded.
7. **Practice, practice, practice**: if you are unfamiliar with the equipment, practice several times leading up to the trial and again at the venue. Avoid a situation where the judge and jury stand by while the attorney struggles with the technology.

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14 See e.g., *Com. v. Auker*, 545 Pa. 521, 543, 681 A.2d 1305, 1317–1318 (1996) (“When the trial judge is confronted with gruesome or potentially inflammatory photographs, the tests for determining their admissibility is whether the photographs are inflammatory and, if so, whether they are of such essential evidentiary value that their need clearly outweighs the likelihood of inflaming the minds and passions of the jurors”); *but see State v. LaMar*, 95 Ohio St. 3d 181, 2002-Ohio-2128, 767 N.E.2d 166 (2002) (prosecutor’s displays of photographs of victims during closing arguments was not misconduct, where prosecutor focused his comments on what the photographs proved and he made no emotional appeals to jury to find defendant guilty solely on basis of photographs).
The organization of a PowerPoint presentation for a closing argument should be tailored to an attorney’s style and goals for the case. Generally, a presentation should begin by thanking the jury for their attention, and by setting out your argument in plain terms. This is an opportunity to remind the jury of your roadmap for the case and how promises made in your opening argument were fulfilled. Next, it is effective to explain what the case is and is not about, eliminating any “time wasters” or red herrings from trial. Then, a timeline of events can be used to illustrate the case chronology. The timeline should be succinct and limited to key points, and should reinforce themes, soundbites, and key messages. It is often helpful to repeat the opening argument timelines, edited to include references to evidence presented during trial.

After the basic case background and argument have been laid out, the presentation should move to the key themes of the prosecution or defense. Each theme from the opening argument should be reiterated, along with testimony that supported each theme. The presentation can next address lingering questions, gaping holes, or misleading arguments from opposing counsel. The presentation should also outline the legal framework, including jury charges. After the legal framework is established, the presentation should remind the jury who testified and highlight the significance of their witness testimony. Attorneys may choose to include an expert “match up” slide in the presentation to illustrate witness agreements and disagreements, preferably using actual testimony and sound bites from trial. References to witness testimony should be supported with direct quotes from the trial transcript when possible. As the presentation ends, attorneys should include several slides on what the evidence has shown, as well as any closing remarks. Finally, thank the jury for their time and attention.

**IV. Conclusion**

One of the most important elements of a persuasive closing argument is the thoughtful use of demonstrative visual aids, such as PowerPoint presentations. Visual aids can greatly enhance jurors’ ability to recall information during deliberation, particularly in complex litigation. The decision to allow use of visual aids is within the discretion of the trial court, and much will depend on the presiding judge. However, there are common pitfalls and problems to avoid, such as inaccurate computer simulations, lengthy video clips of witness testimony, and inflammatory photographs. Overall, visual aids can be an extremely effective tool for communicating with jurors and should be part of every attorney’s trial practice.
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Greenberg Traurig, LLP is an international, multi-practice law firm with approximately 1,800 attorneys serving clients from 37 offices in the United States, Latin America, Europe, Asia, and the Middle East. The firm is among the “Power Elite” in the 2014 BTI Client Relationship Scorecard report, which assesses the nature and strength of law firms’ client relationships. The firm’s Pharmaceutical, Medical Device & Health Care Litigation Practice is an integral part of the firm’s 600-plus member national Litigation Practice. The team is nationally recognized for its dynamic courtroom presence, responsiveness to clients and deep subject matter knowledge. Recent recognitions include national rankings for 2014 “Products Liability & Mass Torts” from Chambers USA Guide; national rankings for 2014 “Practice Liability & Mass Torts Defense: Pharmaceuticals and Medical Devices” from The Legal 500 United States; and a first-tier national ranking for “Litigation – Mass Tort Litigation and Class Actions – Defendants” from U.S. News – Best Lawyers® 2015 Best Law Firms. In addition, Greenberg Traurig is recognized as a “Product Liability Litigation Standout” in the BTI Litigation Outlook 2015 published by BTI Consulting Group. For additional information, please visit www.gtlaw.com.