

The Opening Act

Cognitive research substantiates the importance of the Opening Statement at trial. For Plaintiff it's the first chance to persuade the jury by planting a credible story in their fertile minds; for Defense, it's the opportunity to paint an alternative picture, raise questions, seed doubts. For both sides, well-chosen demonstratives help jurors understand your story by visualizing key arguments and selected critical information. No good storyteller reveals all the plot points at the beginning.

Effective Opening demonstratives can be as simple as a chart that lists the principal players in the case, or as complex as an interactive animation that shows how a specific technology works. In either circumstance, it's vital that the visuals fully support—not dictate—the story you want to tell. This marriage of words and image is actually more difficult than it sounds.

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Those of you who have worked with Clear Case know that we come from a media background, having spent many years producing national television programming. Before beginning production, we would typically write a story outline or a draft script to provide a framework for producing the visuals. Besides identifying the beginning, middle and end that every well-told story must have, the script gave us a production roadmap and a sense of plot points, story flow and timing. (There's a reason why most TV shows and films run between sixty and ninety minutes—the extent of most viewers' attention spans.)

Unfortunately, the realities of the legal system conspire to flip this process on its head; for reasons you're all too well aware of, the Opening Statement usually doesn't get written until days—sometimes hours—before the start of trial. Because effective demonstratives have to be developed (and often exchanged with opposing counsel) well before that, the challenge too frequently becomes tailoring the story to fit the visuals, a bit like the tail wagging the dog.

From our perspective, a good compromise is to craft your story outline—however rough—sooner, rather than later, with the caveat that things will assuredly change. Be sure to articulate the case theme, describe key arguments (corresponding to story plot points), key documents, evidence, witnesses and experts. Armed with this preliminary information, we can begin to think about—then develop—strategic demonstratives to support your Open.

Because jurors' attention levels are at their highest at the beginning of trial, we recommend introducing visual concepts and icons during Opening that act as signposts. As the trial progresses, these visual motifs recur, threading through the case-in-chief to help jurors connect the dots, leading them to the conclusions you want them to reach during deliberation.

In a legal malpractice case in which we represented defense, one opening graphic built from counsel's rough outline was a timeline chronicling plaintiff's history of litigation. The current trial was just the latest in a long string of suits filed by plaintiff to further his political agenda. The graphic provided context for the current action *without having to go into the details of the complex underlying action*. In mock trial, jurors repeatedly referred to this graphic as substantiation that this suit was without merit. During the actual trial, lead counsel returned to the timeline after Opening, revealing more information about each of the suits. It was also used during plaintiff's cross. While we don't know what was said in the jury room, deliberations lasted less than an hour with the verdict strongly in favor of our client.

As for fine-tuning demonstratives to your final "script" as you get closer to trial, fortunately digital technology offers great flexibility in making last minute changes. Text changes for PowerPoint™ slides take seconds; electronic demonstratives created with more sophisticated graphics programs such as Photoshop™ and Illustrator™ usually can be altered quickly as well. More problematic are hardboards, which require time-consuming reprinting and mounting.

Opening Statement is only the first salvo in a long battle, but telling your story simply, clearly and *visually* goes a long way towards engaging your jury and achieving the verdict you want.