

California Practice Guide: Civil Trials and Evidence
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Chapter 13. Closing Argument

E. Presentation Of Closing Argument

5. [13:362] **Use of Visual Aids (Graphs, Charts, Blow—Ups, etc.):** Visual aids enhance any presentation, and this is particularly true in closing argument. Pictures, graphs, charts, computer graphics, electronically-based multimedia presentations, etc. focus the jury's attention and convey information better than words alone. Even abstract information can usually be communicated effectively through visual aids (e.g., charts showing chronology of events, computation of damages, etc.).

=> [13:363] **PRACTICE POINTER:** *Make sure your visual aids are large enough to read from the jury box!* Take your chart, graph, etc. to the courtroom well in advance of closing argument. Ask a colleague to sit in the jury box and see whether the diagram/chart is readable to the juror most distant from you. If not, order an enlargement!

a. [13:364] **Visual aids admitted into evidence:** Where a diagram, graph, chart, or physical thing has been admitted into evidence, there is no problem in using it as part of closing argument. Counsel may simply remove it from the evidence tray and hold it up to the jury during the course of argument.

b. [13:365] **Visual aids not admitted into evidence:** Although the matter is discretionary, most courts also permit counsel to use in closing argument visual aids (diagrams, graphs, charts, overhead transparencies, etc.) *not* admitted into evidence ... as illustrations of counsel's argument or of evidence in the record or instructions that will be given.

(1) **Application**

(a) [13:366] **Enlargements of exhibits:** There is no absolute right to use blow-ups or enlargements of documents or other exhibits in evidence without court permission. Opposing counsel may object to your showing the jury something not part of the record.

However, the court will almost always allow use of an enlargement of an exhibit that has been admitted into evidence.

=> [13:367] **PRACTICE POINTER:** Ask for permission to use the blow-up, etc. *when the original is introduced* in evidence. You can put it up and use it when questioning the witness, and it will avoid any problem at time of closing argument. (It is not necessary to offer the blow-up, etc. into evidence.)

(b) [13:368] **Enlargements of jury instructions:** Likewise, court permission should be obtained where counsel plans to use photo enlargements of key portions of jury instructions in closing argument.

=> [13:369] **PRACTICE POINTER:** Significant lead time may be required when planning to use blow-ups of special jury instructions because they have to be approved by the court before they can be photographed and enlarged.

(c) [13:369.1] **Enlargements of verdict forms:** Blow-ups of the verdict forms can be used in closing argument with the court's permission. This is particularly helpful where the jury is being asked to return special verdicts (*see* ¶¶ 17:5 *ff.*). Counsel can explain to the jurors how to fill out the verdict forms and tell the jurors what entries should be made (*see* ¶¶ 13:401).

=> [13:369.2] **PRACTICE POINTER:** Clear this with the court in advance. Some judges may have problems with counsel telling the jurors the amounts to be filled in on a verdict form, and might admonish counsel in the middle of closing argument.

(d) [13:370] **Blackboard, butcher paper:** Counsel is generally permitted to write out diagrams and charts on the courtroom blackboard or butcher paper easel, to illustrate his or her closing argument (e.g., diagram of accident scene). [See L.A. Sup.Ct. Rule 8.49]

But opposing counsel can interrupt and object to inaccuracies; *see* ¶¶ 13:227 *ff.*

(2) [13:371] **Consider chart of key elements of claim/defense:** The most effective visual aid is often a simple chart of the elements of each essential claim or defense covered in the judge's instructions. (An equally effective chart may be prepared for *weaknesses* or *defects* in your opponent's case.) The chart provides an outline for you to follow during closing argument, minimizing the need for other notes. It also summarizes the case graphically for the jurors. You'll often see them writing down your list in their notes!

=> [13:372] **PRACTICE POINTERS:** Here are some suggestions for such a chart:

—Use a chart prepared in advance rather than simply writing the elements on a blackboard or

butcher paper during argument. Professionally prepared charts may be more expensive but are usually worth it.

—Again, make sure it is *large enough* to be read easily from the jury box.

—Cover each entry on the chart with a separate piece of cardboard. Then, as you reach each element ““pull the cover.”” This technique usually rivets the jury's attention throughout your entire presentation!

(3) [13:373] **Disclosure to opposing counsel:** Court rules may require counsel to show any visual aid that has been *prepared in advance* to opposing counsel before commencement of the argument. [See L.A. Sup.Ct. Rule 8.74]

=> [13:374] **PRACTICE POINTER:** Even if not required to do so by court rules, it is a good idea to show any visual aid you plan to use to opposing counsel in advance of argument to provide opportunity for any objection and ruling by the court. *Allow enough time* for you to change or replace the visual aid (prepare a new chart, etc.) to overcome any objection by opposing counsel.

(4) [13:375] **CAUTION**—*opposing counsel may use your visual aid in argument:* Court rules may require that visual aids not admitted into evidence be *marked for identification* and ““remain available for reference”” during the balance of the trial. [See L.A. Sup.Ct. Rule 8.74]

This allows opposing counsel, in responding to your argument, to use whatever graph, chart or diagram you used in argument. E.g., if you drew a diagram on the blackboard showing how the accident occurred, opposing counsel may ask that you not remove or erase it at the end of your argument; and then draw lines on your diagram showing their version of how it occurred (often obscuring the effect of your visual aid!).