



Harry's Magical Flip Chart

To extol the virtues of the humble flip chart in this day of Twitter, Facebook, Instagram and the iPad seems very frumpish and uncool. How could anyone but a quaint old country lawyer or an unrepentant Luddite embrace such a banal product? As presentation technology, it's pathetic - a big pad of paper held up by three flimsy aluminum legs. Perhaps a graffiti artist might be thrilled at the possibilities of painting with multicolored Sharpies (did you know that you can get fruit-scented ones now?), but most trial lawyers would grimace at the thought of bringing a flip chart to court. What would your client think? You might just as well come to the courthouse on a horse. Well, get the saddle and blanket out of the barn because the flip chart still has a place in the courtroom.

Let me tell you about Harry because he taught me the value of the flip chart. I ran into him a few years ago in Milwaukee on a product liability case. He was a 66 year old, craggy-faced, baggy-eyed, chain-smoking defense lawyer who looked like a cross between Yogi Berra and Mr. Magoo. He had a gravelly voice, simple tastes, rumpled suits and a huge heart. His dad was an iron worker. Harry was old school, smart as hell and had a great feel for juries. He had tried over a hundred jury cases to verdict.

I watched his opening statement. The case included some complex medical evidence and the trial team had prepared about a dozen PowerPoint slides to help educate the jury. Jill Murphy was Harry's 33 year old second chair. She was a size five redhead with a size twelve legal mind and had a confidence that belied her inexperience in jury trials. She spent many hours preparing the PowerPoint slides. She thought they were good - no clutter and to the point - and she was excited to see Harry use them. Her paralegal was stationed at his laptop awaiting the signal from Harry to begin the PowerPoint show. It never came.

Harry started off his opening with what I assumed was practiced self-deprecation. He bumbled around a bit like that old TV character Detective Colombo but he always had a warm smile and kindly eyes. At some point he retrieved an easel and a flip chart. It almost fell down but I suspect he might have intended that. He positioned it about five or six feet away and directly in front of the jury box. He stood a little to its right. Opposing counsel left his chair and moved to the right rear corner of the jury box to see the chart. The physical effect was to create a small dramatic stage; the flip chart was in the center but Harry was the center of attention.

Harry flipped over the first sheet of paper. He had written a few key points on it. He talked about them quietly, always looking at the jurors with his kindly eyes. He never turned his back on them and they never lost sight of him. He flipped over a second sheet. It was blank but the rustling sound of the paper pinched our expectations. He picked up a blue marker pen and wrote down a key theme. The

script was longhand but the lettering was solid and clear and honest. He rested his left hand on the top of the chart as if putting his arm around a good friend.

Every now and then he'd use a red marker to underline a word, the color contrast shouting for our attention. Then he flipped over a third page. There were just two words on it. He paused and let the jury digest those words. He put his hand back on top of the chart, as if to shelter the words, and then took his red marker and slowly circled them. The marker squeaked; the grating sound echoing in the silence of the courtroom. I don't know if Harry intended the squeaking sound but I'll never forget the words: "He knew." That was his defense. It was an operatic performance. It was pure theater.

After Harry sat down Jill shot him a disapproving look. He hadn't used a single PowerPoint slide. She thought to herself: "A flip chart for God's sake! That's ridiculous in this day and age. It's embarrassing. How will the jury begin to understand our medical defense without those demonstratives?"

After court Jill went back to the office. She was still steaming about Harry's flip chart. She poked her head in Frank Goldman's office to see if her mentor was there. The fifty year old head of the litigation group was leaning back in his chair pensively looking out the window. Jill asked tentatively: "May we talk?" It had been a long day dealing with firm management issues but Frank smiled: "Of course, come in Jill."

She closed the door, sat down on a well-worn upholstered chair and with some mixture of apprehension and anger explained what she had seen. "Frank, it's potential malpractice. If Harry goes on this way for the rest of the trial, I'm worried about what the client will do if there's a bad verdict!"

Frank thought for a minute and leaned over his desk. "Jill, you know I learned this business at Harry's feet. That was twenty-five years ago. There was no email then. Reagan was in his last year as President. We used flip charts and boards and we had quaint terms for them like 'chalks' and 'illustrative aids.' We didn't live in log cabins but we probably felt closer to an argument by Abe Lincoln than to a PowerPoint presentation by a bright young graduate of Harvard or Stanford. Trial exhibits were simpler but that doesn't mean they were unsophisticated."

Frank gazed out the window, thinking back to the last time he was Harry's second chair: "Harry is a great trial lawyer partly because he's a good actor and a natural teacher and partly because he's authentic and passionate. PowerPoint can be a barrier for a lawyer. It doesn't let you into the scene; it doesn't let you be the central actor; and it doesn't allow physical interaction with the exhibit. Jill, good demonstrative exhibits are valuable – you know I use them all the time – but they're simply not as human as a flip chart. Let me ask you if you thought Harry's use of the flip chart was effective."

Jill answered skeptically, "To a degree, yes. I thought he was effective as a down-home country lawyer but I still think the flip chart was stupid." Frank smiled: "Well, you may be right. I haven't tried a case with Harry in ten or twelve years. I will say that in its own way the flip chart is an attention-getter." Jill shot back: "Yeah, like a stagecoach going down Main St."

Frank grinned: "I was thinking more along the lines of a handwritten note. Do you know how you feel when you get a longhand letter from your grandmother? It triggers something inside of us. I think watching someone write on a flip chart may trigger early childhood experiences of drawing with

crayons or seeing a teacher draw on a whiteboard or blackboard. It may trigger something deep in us – an archetypal learning experience.”

“Frank, for God’s sake, nobody under thirty played with crayons as a little kid. And a blackboard? That went out with the horse and the one-room schoolhouse!”

In the long run Jill is probably right, although I suspect most jurors today appreciate a handwritten note and the majority probably used crayons as kids (and there are digital crayolas today on pen tablets). But the flip chart is not extinct and Harry is not the only presenter to use one. This coming Sunday in Menlo Park, California Pastor John Ortberg will probably use a flip chart to preach to his congregation of 4,500 members. As he summarizes the key themes in his sermon, he’ll bend over like Harry and write a few words or sketch an image on the paper.

The congregation will lean forward in their seats, curious about what he’s writing. There is anticipation, even mild excitement in watching a live, spontaneous production. It seems raw and unscripted and real. As Ortberg writes on the paper, his back is turned to the audience like a magician just before he reveals his rabbit. When he steps back to display his message there is dramatic effect. It is a moment of revelation and the central message is not soon forgotten.

Pastor Ortberg is very sophisticated in using presentation media and technology. Since his sermon is broadcast to remote locations, a video feed magnifies the flip chart on to a large screen in those locations. Someday he will take it to the next level and digitize his flip chart. How will he do that? He can do it now. And so can every one of you who are still skeptical of the flip chart for fear of what your client will think. All you do is get a pen tablet, prop it up on the podium, connect to your computer or projector and scribble away. Your words will show up on the big monitor as you write.

Let’s not be too quick to throw Harry’s flip chart into the ashcan of courtroom history. It still has a few advantages over electronic media:

- It keeps the jury’s eyes focused on you as well as on the message
- It creates a private space that increases dramatic effect
- It promotes authenticity and spontaneity

No presentation software does that. The flip chart can still have a place in a closing argument or an expert’s direct – not a big seat but perhaps a three legged camp stool.