

TEXAS LAWYER

Discovery—Not Closing Argument—
Credited for \$667M Verdict

By Laura Lorek

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Trial lawyer Trey Cox told the State Bar of Texas that his record \$667 million verdict against Greenpeace was not about his closing argument. Instead, it was years of discovery work that helped him connect individual protesters to the group's leaders and finances.

"By the time you stand up to present at closing, the people on the jury have already made a tentative decision," Cox said.

"Some people want to call it a closing argument, I actually prefer summation, because what you are doing is you are summing up the evidence, and you are trying to teach your friendly jurors how to argue with your unfriendly jurors in the real final argument, which takes place back in the jury room."

Cox, who co-chairs Gibson, Dunn & Crutcher's global litigation practice, represented Energy Transfer in its case against Greenpeace over protests that delayed the Dakota Access Pipeline. The jury's verdict, later reduced to about \$345 million, was the largest commercial verdict in North Dakota's history.

Cox said the case was not won with rhetoric, but with a strategy he called "connecting the dots." He tied acts of sabotage, shown in police reports and protest photos, directly to Greenpeace's internal emails, training records, and reimbursement documents.

"You can't just have them get arrested," Cox said. "You have to connect the dots and take it from an individual action all the way back to Greenpeace."



Trey Cox, partner with Gibson Dunn, delivered a talk on "The Closing that Beat Greenpeace" on Friday, June 12 2026, at the State Bar of Texas' annual meeting.

Cox told the audience that his team lost the case three times in pretrial mock trials, even when he argued for Greenpeace himself.

"We didn't pull any punches," Cox said. "What we learned is that nobody wants to burn up the planet, and Greenpeace has an extraordinarily good and strong and favorable reputation in the community, not to mention I represent a big, bad oil and gas company from Texas."

He said this meant jurors needed more than the usual burden of proof. Mock jurors told his team that even if Greenpeace did "one or two things that are extreme," they would assume it was "for an appropriate purpose."

Cox said the solution was to stop focusing on outrage, like photos of arrests or bad behavior, and instead rely on paper trails.

A key part of that strategy, Cox said, was taking advantage of what he saw as Greenpeace's biggest mistake: using vague or unclear language to hide the truth or avoid giving a clear answer.

"Their basic defense was, 'I wasn't there, but if I was, we didn't do it, and if we did it, it really didn't have any effect,'" Cox said. "It is impossible to maintain your credibility when you equivocate."

Cox said his team used pretrial depositions from Greenpeace employees, who admitted their goal was to "delay the construction." They compared this to internal emails from executive director Annie Leonard, who testified that Greenpeace was "minimally involved."

One email, sent to 16 board members, described Greenpeace as having "provided massive support to this cause since day one ... in terms of people, material support and funding."

"The contrast is between what people say at trial and what contemporaneous records show," Cox said.

Cox explained how his team used Greenpeace's financial records, such as reimbursement forms for trainers, hotels, and "action materials," to link the group to protesters who locked themselves to pipeline equipment using "lock boxes."

One expense, labeled "lunch while scouting," showed that Greenpeace-funded scouts were mapping pipeline construction crews and sharing those maps with other paid protesters. Cox said this information was later used to organize a protest at an active site.

"That's a military operation," Cox said. "Spying on us, identifying exactly where our equipment is and where our people are."

He said Greenpeace did not have an email retention policy, unlike what he called the document discipline of "corporate America." This gave his team access to an unusually large number of internal communications.

Cox said the most damaging of the three defamatory statements at issue was Greenpeace's claim that Energy Transfer had "deliberately desecrated" Native American burial grounds and cultural sites.

"If you play with dead bodies, you are violating the law," Cox said. "And if you accuse people of doing

that, you are defaming them per se, because you're making a criminal allegation."

He said Energy Transfer rerouted the pipeline around 140 potential archaeological sites and received a letter from North Dakota's state historical preservation office stating that no historic properties were affected. When Greenpeace witnesses were asked for proof of the desecration claim, Cox said they repeatedly answered, "I do not recall."

Cox said he kept his slides simple, with just one point per slide and clear photos, names, and exhibit numbers.

"Do not overload your slides," he said. "Do not make them carry more cognitive weight than is absolutely necessary."

He also suggested putting the actual jury questions and the answers lawyers want right into the closing slides, even if some attorneys are uncomfortable with this approach.

"If you're uncomfortable saying it to them, they will never say it back to you," Cox said.

For punitive damages, Cox said he used an analogy from veteran plaintiffs attorneys Mark Lanier and Gerry Spence: a stereo volume dial.

"We told them: This is what we suggest is a fair result that will send a message," Cox said, "so that the next time Greenpeace thinks about doing a protest, whether it's in Shreveport, Louisiana, or Omaha, Nebraska, they will think twice about the tactics they use."

The jury awarded about \$667 million, including punitive damages that were twice the compensatory amount. A judge later reduced the total to about \$345 million by removing some claims and lowering punitive damages. Cox said Energy Transfer plans to appeal to seek restoration of the full verdict.

Cox ended by giving credit to his team at Gibson Dunn, including partners Collin Cox and Gregg Costa, and associates Ben Betner, Travis Jones, Lara Kakish, Brian Sanders, Bryston Gallegos, Cody Johnson, Johanna Smith and Hunter Heck.

"To the extent that I used the pronoun 'I,' that would be an error," Cox said. "Results like this are never the result of one person."