

EFFECTIVE USE OF COURTROOM VISUALS

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The use of demonstrative evidence and visual aids in the courtroom has increased dramatically. Courthouses throughout the country, including those in Tennessee, are being redesigned to facilitate large-scale projection of images and the use of computer technologies. Medical malpractice cases are particularly appropriate for the use of visual aids and technology. However, simply because there is the ability to project every document and photograph to “wall size” does not mean that such technological “wizardry” should be employed. Visuals have such high impact that they should be used only for points that must be emphasized. A good visual clarifies better than words (a map is much better than words) or persuades better than words (a hospital record blowup is more convincing than testimony as to the record reveals). David Ball’s excellent book, *THEATER TIPS & STRATEGIES FOR JURY TRIALS* (National Institute for Trial Advocacy, 2 ed. 1997) sets forth the following tips and caveats for the use of courtroom technology:

1. **Operation -- Will it work?** Where will your case be if the VCR, video table (Elmo) or projector suddenly fails to work? Do you have a back-up or your spare ready to go? Something as simple as the special bulb on an x-ray viewer or multi-media projector can burn out. By the time a replacement is found, your expert is back on the flight to Washington, D.C.
2. **Do you know how to work it?** It is essential to rehearse how to use all the equipment: recorders, projects,

easels and charts -- to know how they work and what they are intended to do. The attorney must be able to work them while simultaneously speaking, and without being distracted, whatever may be asked at the time. While your attention is spent figuring out the CD-ROM drive or easel legs, you are not persuading. You look inept and confused.

3. **Appearance** -- Does it make you seem you have infinite dollar resources? Will you come across as a rich lawyer with tens of thousands of dollars worth of equipment lined up against some poor opponent who has nothing to do but present a guy in a suit? Will it be clear to the jury that your use of technology is necessary or will it be seen as distracting, showboating or even intentionally diverting from the main issues?
4. **Admissibility and Effectiveness** -- Videos, models and computer animations can clarify complex expert testimony but your best and most expensive demonstrative aids, especially those generated by technological means, may not get in if you don't take pains to anticipate potential objections and prepare counters and briefs. For purposes of admissibility, animations and day-in-the-life videos are best presented in brief segments in tandem with an expert's testimony or voice-over. This provides credibility and helps convince the judge that the animation or video is a legitimate adjunct to expert or witness testimony. Verbal communication plus visual communication or a voice-over by your expert is 700% more effective. *See Bogen, Lights, Camera, Action -- Computer- Generated Evidence Gets Its Day in Court, BOSTON COLLEGE LAW REVIEW, September, 1993, p. 1101.*

5. **Beware of Boomerangs** -- However effective your document blow-up, video or piece of evidence may be for your side, it is that much more effective if your opponent uses it to make their own case against you.
6. **Appropriateness** -- Animations and other visuals can implicitly convey impressions that trivialize or otherwise undermine your case. Ball tells the story of a Kentucky jury who smiled at a \$28,000 computer-generated animation of a car wreck. They smiled, not because the wreck killed two girls and their mother, but because those little cartoon cars and cartoon dump trucks were so cute.
7. **Pinpoint Clarify** -- Do the main points you intend to make with your visual aid come across quickly, easily and clearly or must jurors squint to interpret or puzzle them out. Visual evidence is useless if its main points cannot be taken in at first glance.

VISUALS PRESENTATIONS THAT ARE EFFECTIVE

1. Charts

Charts can be made in a word processing program and can be blown up several hundred percent at a copy shop. Two feet by three feet is barely adequate. Three feet by four to five feet is better. Size alone is not the issue. You have to make an impact.

A. **Print Size** -- the print should be large and dark to be easily read by a near-sighted juror in the farthest seat. Go in early to make sure all of your blow-ups can be seen by the farthest seat.

B. **Highlighting** -- a blow-up of textual material is defective only if the impact is visual. A 3x5 blow-up of a contract page is useful but it is more effective if it is highlighted in yellow. Charts can be extremely effective by using software programs which develop dramatic use of charts. In particular, Power Point, Astound and Excel.

2. Photographs

A. **Size** -- an 8x10 photograph is not adequate to be seen by all jurors at once. An 11x14 is barely large enough to be viewed. Thus, it is essential for a very important photograph that it be displayed either by a slide, overhead projector, video table or multimedia projector.

- By cropping a photograph you emphasize the relevant image and focus in on what you really want to emphasize.

- B. **Highlighting** -- if possible, draw lines to emphasize where important information is in the photograph.
- C. **Surface Finish** -- if actual photos are being introduced, it is better to have a flat photo finish, not glossy.

Gloss finish reflects light unpredictably.

D. **Scale** -- unless the real size of the object is obvious, tape an appropriately scaled image along side of it where scale is important.

In medical malpractice cases, I prefer to use a video table (Elmo presenter) or multimedia projector. Finally, sequence-to-sequence video or photos can create a dramatic impression.

3. **Medical Illustrations**

Medical illustrations are often crucial in a medical malpractice case. The availability of ADAM and Internet resources have made it possible to produce medical illustrations in-house without hiring an expensive outside firm. These options include ADAM and the Internet sources as well as color copies and blow-ups from textbooks and other sources.

4. **Physical Evidence**

Some of the most effective use of courtroom visuals is simple and low-end. If done skillfully, you can actually use a juror as a visual. You can look to the jury and say, "If you run your finger along the back of your elbow, you'll feel the same bone that you see in this x-ray." You have to be careful, however, not to put a juror in the shoes of the plaintiff or

the defendant. As David Ball states, you cannot say, "Run your tongue along the front of your teeth and imagine how you would like it if your teeth were all smashed up like the plaintiff's," but you can say, "If you run your tongue over your front teeth you'll feel how thin the incisors are and how necessary it is that they be well protected." Actual physical evidence of medical equipment and medical devices is extremely effective. It is much more effective to put these pieces of physical evidence in the hands of a witness on the stand while they are testifying. They can then be marked and introduced into evidence.

5. Medical Records and Documents

Copies for the jury and blow-ups or charts, TV or big screens are extremely helpful in getting the point of access of what the records show.

6. Videotape

Videotape is a valuable source for persuasion. If a video deposition is being used, it is important to explain why the witness could not be in court. It is recommended that the video not be shown in the late afternoon because people get drowsy watching a video in the late afternoon. Try to have the witness videotaped in the best possible context--a physician in their office, not a Holiday Inn conference room. Appropriate visual background should include the books on

the shelves, diplomas and the right stuff on the desk. You should have the video witness use visual evidence such as charts, diagrams, and articles. Try to take advantage of the video's portable nature to give the witness reason to walk across her office or work area to show how something works. A witnesses' work area adds interest and authority to the video. During video testimony, make sure it is clear who is asking the question. Off-camera voices can sound alike to a jury. Because video depositions are boring, it is an ineffective way to end your case. Whatever your opponent does next will automatically seem more interesting unless he or she shows another video deposition. Videotape also provides a way for sequencing photographs.

7. Animations

Animations can be done to provide the ultimate, simple direct visual to explain an issue to the jury. Professional firms such as BioMedia in Illinois can inexpensively produce an animation that is case-specific based upon story boards. Animations have to be carefully thought out and planned in advance to avoid objections on the basis of speculation, error, distortion, omissions, false impressions, cumulative and prejudice.

8. Timelines

One of the most effective visual aids is a timeline. A clear, simple and large timeline of events lets the jurors see the correct chronology and prevents your opponent from muddying the waters. An effective timeline can be created on the lap top and enlarged several feet a local copy shop. Black and white lines are sufficiently effective but an inexpensive

color printer will make a better impact. If you have color you can color-code similar events: tropical visits in blue, symptom manifestations in red, medications in green, etc. Again, be careful. Many people are color blind.

9. **Video Tables and Presenters**

Video tables and presenters allow virtually any object to be displayed as a video source to then be projected on a television screen or overhead projector with a multi-media projector. Overhead projectors can also be used with LCD panels or a simple old-fashioned overhead projector with a transparency.

CONCLUSION

Pick a few themes and points that are crucial to your case. Then select the best visual means to get the point across.