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The Use of Technology in Complex Cases: Courtroom Tools for a Visual Culture

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TRIAL GRAPHIX.

Today's society is bombarded with visual stimuli. We are surrounded by competing messages on billboards, in magazines, on the Internet, and on television that seek to influence us on a variety of levels. Messages may appeal to us as consumers, as citizens, or to our ideologies. Each of us, whether we are conscious of it or not, filters these messages, incorporating some into our mindsets and discarding others. In short, we are all subject to visual stimuli in what can be called visual learning. Nowhere is this more evident than with the medium of television.

We are accustomed to receiving important information via our sense of sight. According to a recent study, the average American household watches 7 1/2 hours of television per day. By the time a student graduates from high school, he or she has spent 11,000 hours in classrooms, and in that same time an average of 15,000 hours in front of a television. Obviously, television is a medium with which we are quite familiar.

A crucial aspect of the visual learning process is retention – we retain more information when visuals are used. While statistics vary slightly, 83% of what the average person learns and remembers comes from sight, but only 11% from hearing. Material presented orally with visual backup is far better retained than material presented only orally. The advantage of the oral/visual combination increases over time; three-day retention of material presented orally with visuals is six times greater than information without visuals.

Finally, visuals help to hold the audience's attention. This is especially important in the presentation of dry or complex information. They punctuate a presentation by drawing attention to key ideas and information. The use of a visual to communicate a specific point is a powerful signal to your audience that a particular issue is important. The message is clear: "The speaker wants us to remember this."

These facts are not revelations to most of us. We are well aware that other industries, such as advertising, use these concepts to their advantage and profit. The uses for visual learning, however, are clearly not limited to other fields. In short, the visual age has come to the courtroom.

As a litigation tool, the benefits of visual aids are nearly limitless. Litigation professionals across the country recognize that the strategic use of visual aids to teach, clarify and persuade judges and juries do more than just that. They increase the likelihood that the message will be understood, remembered and believed as well as reinforce key themes, facts and testimonies. The bottom line: Visual aids help win cases.

Every case, whether it is a medical malpractice matter or an antitrust lawsuit, contains key information that can be conveyed in visual form. Common visual tools include the time line – a juror's road map – to show a sequence of events; diagrams to show relationships; insets to highlight critical testimony; and terminology charts to define uncommon terms.

Multimedia Presentation Systems

Trials today are often characterized by multimedia presentations designed to communicate visually through the use of computers. It is not uncommon for both parties in complex litigation to use high-tech presentation systems. These systems can also be used for mediations, arbitration and settlement segments converted to digital information on a hard drive or CD-ROM allow for instantaneous retrieval and display, eliminating the need to fast-forward or rewind.

Most trial presentation systems retrieve exhibits with a bar code reader, which in effect mimics computer keystrokes. Bar code labels are printed for each document page, graphic, photo, video clip or computer animation. Exhibit binders are created and indexed to client/case needs. Additional labels are printed so that the attorney can affix the proper exhibit label to the trial outline.

During trial, the attorney simply waves the bar code reader across the bar code and the exhibit selected instantly appears on monitors in the courtroom. Scanned documents, video deposition clips, photographs, graphics, and computer animation can be presented in any combination with instant, easy access to any exhibit. For example, one attorney referred to an exhibit so frequently during the course of trial that he affixed a label to his coffee mug and swiped the mug when displaying that exhibit.

Even on large, high-resolution monitors, it may be difficult to read a full document page on the screen. By using a light pen to outline the relevant text, a word, sentence, or paragraph can be enlarged instantly. The pen can also be used to write on the screen, chalkboard-style, in a variety of colors for additional emphasis. Key documents can also be pretreated graphically.

The attorney is in complete control of the presentation environment with the ability to access any exhibit, start, stop and pause any video or computer animation with a wave of the bar code reader.

Videotaped depositions, which are increasingly prevalent, allow the jury to experience the personality of the witness more fully than is possible when deposition tes-

timony is merely read into the record. A compelling way to impeach a witness on the stand is to quickly access and display a deposition clip that contradicts live testimony.

Computer-generated 2-D and 3-D animation or live-action video segments can be combined into powerful communication tools. These demonstrative aids can be played uninterrupted as a summary of several days of complex testimony, or used by the expert to walk through information with instant stop, start and pause capabilities – without the distortion encountered when using a VCR. Animation is especially useful to explain concepts or processes not easily understood, or objects not readily seen by the naked eye.

Benefits

There are five principal benefits obtained through use of a multimedia trial presentation system:

1. Time Savings

Judges have indicated that use of such systems cuts trial time from 25-50%. In post trial interviews, judges and juries alike have provided positive feedback for the system's ability to streamline and shorten the trial process. The system eliminates playing hunt-and-peek through boxes of documents and the frantic search by remote for a specific video clip.

2. Cost-Effectiveness

Hand in hand with saving time goes saving dollars. Manpower and paper trails can be cut significantly. In addition, both parties can share the cost of display monitors.

3. Flexibility

Use of a trial presentation system enables revisions to existing files as well as the addition of new documents or graphics by simply loading the updated files on the system by disk. The database can also be easily revised to delete any exhibits objected to by opposing counsel.

4. Interactive

CapabilitiesThe ability to enlarge, annotate, start and stop instantly, and "build" information through graphic sequences contributes to the increased interaction between presenter and audience, making for a more interesting and persuasive presentation.

5. Control/Ease of Use

User-friendly computer tools allow attorneys to successfully orchestrate the presentation of a broad array of

media options while remaining focused on the strategic issues of the case.

Keys to Effective Visuals

A common error in using visuals is to present too much information at one time. It is important to limit each exhibit to one message for effective communication. Below are additional guidelines for developing visuals that are memorable and persuasive:

1. If the jury only needs to know the time, don't teach them to build a watch.

Carefully evaluate just how much the jury needs to understand. For example, if the present value discount rate used is not in dispute, there is probably not a need for more than a cursory explanation of the concept. If the discount rate is a major source of disagreement, further explanation on how the discount rate varies with risk may be advisable. Graphics can make the cursory or in-depth explanation easier to understand.

2. Walk before you run.

When a difficult concept must be thoroughly explained, develop it one step at a time, with one idea per graphic.

3. Give the jury "permission to believe."

Perhaps a difficult concept does not require complete explanation, but it does require enough detail to allow the jury to accept your expert's viewpoint. Graphics can help give the expert credibility on complex issues without causing the jury to tune out.

4. Educate, don't decorate.

Your objective is not to create art, but to persuade a jury. That is why there is value to employing an expert with skill in communications as well as design, preferably with litigation as a specialty. The result will be persuasive, admissible demonstrative evidence designed for courtroom viewing.

5. Eschew obfuscation

Say it plainly. Boil issues down to the bare essentials, and use terminology your jury will understand.

6. The mother-in-law test.

Show your exhibits to someone unfamiliar with the case. What unintended messages might be received from the exhibit?

7. The Doberman test.

Will this exhibit "come back to bite you"? How might

your opposition turn this exhibit to his! her advantage?

8. Use your exhibits well.

Don't reveal an exhibit until it will be used. Orient your jury to the exhibit. Allow them to view the exhibit long enough to absorb its meaning, but not so long that it becomes stale or a distraction. Keep in mind that words and visuals should be in sync. When the words no longer match (the witness is testifying on a new subject), the visual should be removed. As long as the information being displayed is admissible, the system should be permitted to present that information in a fast and efficient manner. We highly recommend notifying both the judge and opposing counsel of your intention to use such a system well in advance.

The costs for use of trial presentation systems continue to decline. Factors affecting cost include the types and volume of material you wish to display, the number of monitors needed, and the estimated length of the trial.

Current Obstacles

While computer use continues to increase, admissibility and cost concerns have presented barriers to more widespread use of trial presentation systems. With respect to admissibility, the technology is simply a medium used to present evidence.

Preparing a Budget Estimate

Multimedia presentation hardware and software can be purchased or leased. Leasing is a common option. Cost estimates for programming and bar code generation are dependent upon the quantity and type of demonstrative exhibits to be incorporated into the system. To develop a detailed budget estimate for use of the system in a specific case, it is helpful to think about the following questions and talk with consultants who have experience in the creation of multimedia presentations for the courtroom.

1. Approximately how many pages of documents will be randomly accessed during the courtroom presentation? Have the documents been imaged/scanned? If so, at what resolution?
2. What percentage of the total document pages will require enhancement or treatment?
3. How many hours of source video depositions will have been taken? What is your best estimate of the number of edited minutes! hours, from the source videotapes, that you will need to access?

a) How many total tapes are there?

b) What format are the tapes (VHS, Beta)?

c) Are they visibly time-stamped?

4. If there is other video footage to be used in the presentation besides deposition testimony, the above questions should also be applied.
5. Will there be a need to design and produce demonstrative exhibits for presentation on the system (i.e., charts and graphs, video, computer animation, etc.)?
6. Will there be a need to incorporate any additional visual elements such as photographs or other already-completed visual items not including documents? If so, approximately how many frames/pages?
7. To determine system hardware requirements (e.g., the number and size of monitors), is this a jury trial, bench trial, arbitration panel or public hearing?
8. How long will the trial/presentation run (estimated number of weeks)? Will a system be required for pretrial preparation?

In sum, the enormous benefits that multimedia presentation systems can provide to the litigation process are clear to see. Visual aids provide counsel, judges and clients with valuable tools to manage the limited commodities of time and money, while increasing the salience of arguments for juries. This combination of factors has proved successful in courtrooms across the United States. In the increasingly competitive arena of the courtroom, who can afford to be without the option of such powerful weapons?

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