

# **1. The Basics of Visual Communication in the Courtroom**

# **“The Basics of Visual Communication in the Courtroom (Avoiding the Common Traps)”**

## **WELCOME TO THE REVOLUTION**

**DEBRA MILLER AND DAVID BALL, PH.D.**

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### **VISUAL POWER.**

Jurors are far better at looking than at listening or reading.

Like any audience, most jurors perceive, digest, and remember good visual input four to ten times better than what they hear or read. This means, among other things, that you should use at least one good visual exhibit for each pivotal point of your case.

For example, reasonable doubt is almost always a pivotal point in criminal cases, so defense counsel should use a visual to show -- not merely tell -- what reasonable doubt means. In a civil case where, say, the line of sight between vehicles is pivotal, counsel should show an image that illustrates that line of sight.

Never, never, never rely solely on spoken or printed words for any important issue. In deliberations, good images are pivotal.

### **USE JUST A FEW**

On the other hand, do not use too many visual exhibits. Using too many reduces the effectiveness of each one, and will neutralize your most important ones. Use the "Pictures on the Wall" system: Decide on, say, seven images you wish could be on the jury room wall in deliberations. What would they be? The jurors will carry them in mentally if you show only those seven in trial. If you show twenty or thirty, few if any are likely to get into deliberations, and those that do may not be the important ones.

You may decide that ten are important, or a dozen or more -- but be certain each is truly important. The fewer you show, the greater the impact and memorability of each.

### **BALANCE DAMAGES**

In civil cases, use as many visuals for harm and damages as you do for liability. Otherwise you make your harm and damages case seem less important -- which is, of course, exactly what the defense wants the jurors to think.

### **SELECT FOR GOOD REASON**

The fact that a visual exhibit is easily available does not mean you should use it. And the fact that a visual exhibit is hard to find or create does not mean it is not needed. For example, it's easy to enlarge the medical record, but don't bother unless there's something persuasive about it. On the other hand, it's difficult to create a good perspective drawing of the intersection where the wreck took place, but that may be the only way for jurors to see that your client had no view of the oncoming truck.

### **DO IT RIGHT**

Most importantly, you must create and use visual exhibits properly. You can do that by following the principles in this article. If you don't, you will diminish, neutralize, and even reverse the effectiveness of your visual exhibits. They will neither educate nor persuade.

### **MONITOR THE PROFESSIONALS**

You cannot simply pay an exhibit company and leave it in their hands. At a recent conference for trial attorneys, five exhibit companies (including one that does a lot of work for North Carolina attorneys) displayed their wares. Almost every exhibit ignored two or more basic visual communication principles. Thus, whether you do your own

exhibits or hire a company, you must take charge yourself. This is because exhibit companies rarely watch trials, seek post-trial juror response to the visuals, or research the role of visual exhibits in small-group decision making. You need to be the one to make sure the basic principles are adhered to.

**Here are the principles:**

### **USE TEXT SPARINGLY**

When creating an exhibit to show an image, such as a photo, a diagram, or a chart, use the least amount of text possible. Courtroom exhibits usually use too much text. Text – even brief labels – diminishes the impact and memorability of the image.

Think about movies you have seen, or great paintings, or even television, including commercials. Note how rarely these image media use text. Other than *occasional* bullet-point emphasis, text is rare because it is not effective. From time to time, some TV commercials use more than a smattering of text, but this is always a temporary fad because advertisers invariably and quickly re-learn that it's ineffective. You want jurors to take a mental snapshot of each image you show. You want that image in their heads. It will get there only if the exhibit is simple enough that the juror can perceive and retain every important point within a few seconds. Using more than minimal text makes this impossible.

### **TEXT AS A VISUAL**

*Brief* text can be an image that jurors turn into a mental snapshot. A blow-up of the five or six important words in a document can become an image. Highway signs are snapshot images: "SLOW, CONSTRUCTION AHEAD." But not, "Attention, motorists of vehicles driving in this direction: Be advised that over the next few hundred feet of this

road you ought to slow down the vehicle you are driving because workmen are engaged here in activities alongside of and in the roadway you're on, so you may hurt one of these workmen if you do not slow down and be careful." That's not a snapshot image. That's a document. It's the kind of thing that is never visual either on the highway or in trial. It is neither perceived nor remembered.

In trial, a visual image is a shorthand way of expressing what is explained in testimony. Brief text can do that. If you have an expert testifying that it was cold enough for ice to have formed on the roadway, do not blow up and show the expert's entire report, or even a full page of it. Turn a very few words into a visual image: blow up the crucial words, "COLD ENOUGH FOR ICE." Emblazon those key words as a snapshot image on the jurors' minds. You cannot emblazon a wad of verbiage from the expert's report: "According to thermal principles, the slowing of molecular displacement at temperatures below..."

## **LABELS**

A medical drawing full of Latin (or even English) labels undermines itself because jurors think they have to know and remember what the words mean. Some jurors waste attention trying to read them. Others pay less attention to the picture because the words make it seem complex and difficult.

In a recent case, plaintiff's counsel showed an expensive drawing of a shattered knee. The drawing had labels: *femur*, *patella*, *medial meniscus*, *lateral meniscus*, *tibia*, *fibula*, and *epidermis*. None of these terms had anything to do with how or whether the knee got shattered, or with the resulting pain and impairments. Though the purpose of the exhibit was to show how much of the bone was broken, the labels undermined that

purpose. In brief: an image picture, diagram, or chart should make its point with little or no text.

## **DOCUMENT VISUALIZATION**

When a document must be shown, show it in a form that gives it a specific first-glance impact based not on content but on image. Do not rely on what the juror has to sit and read for half a minute. When you say, "Here's the letter the agency sent to John," *the visual impact is not the textual content of the letter*. It is the fact that we're looking at a picture of a letter, and -- when appropriate -- five highlighted or isolated words. Jurors will remember the image. The content is important as well, but it will be better remembered in context of the impact of the overall image.

For example, a medical record conveys a strong visual impression of being official and authentic. If something it says is in dispute, show the whole document to take advantage of that official and authentic nature of the record. Highlight the half dozen important words. The point is that this official-looking document supports your case. This is neither a content-based nor text-based point. It is a visual point.

In fact, the point of every visual is to make a visual impact, not a content-based or text-based impact.

## **DESIGN FOR SPEED**

A visual image exhibit must make its point within five seconds of first being viewed. If it takes longer, it is probably too complex to become a mental snapshot.

## **MAKE EXHIBITS LARGE**

A visual image must be large enough to make its point to the juror seated farthest away. That means that the smallest thing you want the jurors to see must be visible to a

near-sighted juror in the farthest seat. Don't judge by your own vision; not all jurors see that well.

Rule of thumb: whatever you can't see quickly and easily from 20 feet away will not be seen by at least some of the jurors.

Your local copy shop can make blow-ups inexpensively. For a jury of 12, 3' x 5' is a good visual size, if the exhibit's smallest details are big enough to be seen at a distance.

### **PRESENT ONLY ONE PRIMARY POINT PER VISUAL**

The more information you put in a visual exhibit, the *less* impact the exhibit has. A good visual is like one bullet point. It makes one point, not more. Multiple images can be combined to create a single point, but that sophisticated technique usually fails in all but the most skilled hands. It is safer to decide on the single bullet point you wish to make with a visual, and limit the content of the visual to that one point. Subordinate or get rid of everything that does not directly make that point.

Remove anything that tends to make a second point or that competes with the main point. Every word, line, dot, image, item, choice of color or color intensity, and choice of shading or texturing is in itself visual information. Remove all visual information that does not help make the main point. For example, you don't need to show skin texture to show the stitches. The lines and colors that show skin texture compete with and thus detract from the image of the stitches.

### **SUBORDINATE BY FADING**

Some visual information that is not part of the primary point may be necessary for context -- such as the anatomy around a shattered knee, to show jurors what they're looking at. *Such supporting visual information should be in pale colors, acting as a faded*

visual background. The break in the kneecap should be a bright color and the surrounding, uninjured bones should be pale. This contrast emphasizes the important point.

## **VELLUM**

A good way to make your main point primary while subordinating all the supporting information is to prepare a diagram or chart with all the information, and then overlay an aligned sheet of vellum (parchment paper) containing only the primary point. Since vellum is translucent, like smoked glass, the jurors will see everything beneath it -- but everything beneath will be pale, because the vellum overlay grays it down. Only the shattered kneecap on the vellum will stand out primary and clear, with the anatomical context on the paper beneath visually subordinated because it is pale, thus supporting but not competing with the exhibit's primary point.

## **CHOOSE COLORS FOR EMPHASIS**

Vellum overlay works because our eyes pay more attention to strong color rather than pale. That's why your important information should be in rich, bright, or dark colors and the subordinate information should be pale. When analyzing a drawing or diagram for its primary impact, note the intense colors, because that's where the viewer's eye, attention, and memory are likely to go.

## **COLOR DIFFERENCES**

The eye notices the difference between just two or three colors more readily than the differences amongst four or five or more colors. That's why medical book illustrations that use a myriad of colors to show the knee are confusing. Engrave just two or three colors on the jurors' minds, not a wide-spectrum palette.

## **COLOR BLINDNESS**

Rodney Jew, one of the nation's foremost experts on planning and executing visual exhibits for trial, points out that a significant proportion of the population has some color blindness, the most common being the inability to distinguish red from green. Don't use that particular set of colors to show important differences.

## **CROP PICTURES**

Photographs and other picture exhibits should be cropped (trimmed on one or more sides) to remove all but the important information. Jurors perceive and remember only so much of a picture, so by bringing in the edges, remove everything you can that competes with what you want the jurors to get.

## **USE FLAT FINISH, NOT GLOSSY**

Always use a flat (matte) finish. Never use a visual with a glossy surface finish. Trial exhibit companies often make this elementary error. It's so basic that jurors complain about it. Glossy finishes reflect courtroom lighting, preventing some of the jurors from seeing the exhibit clearly.

## **TEST YOUR EXHIBITS**

Because you know what the exhibit is supposed to accomplish, judging whether it actually does can be difficult. So before trial, test your exhibits on laypeople to find out what is conveyed. Show the exhibit for five seconds, then put it away and ask the layperson to describe what he saw. Then ask, "What's the most important thing about this exhibit?" and "What else is there?" (You want nothing but the primary point.)

A few days later, ask that layperson what he remembers about the exhibit.

Layperson testing is important because your exhibits are for laypeople (jurors). Last year in an attorney's office I looked at a large, complex, expensive, glossy-surfaced diagram for five minutes and finally had to say, "I have no idea what I am supposed to get out of this." A secretary turned and said, "Thank God! I thought it was just me. But it cost \$1,400 and I was afraid to say anything."

Ask for opinions.

Some trial consultants can provide useful input regarding whether and how to actually use each exhibit, what's good and bad about it, and how to fix it.

### **USE BOARDS, NOT PROJECTIONS**

Your most important visual pictures, diagrams, or charts should be mounted on foam core boards that you pick up and show, and that stay around the courtroom after you show them. PowerPoint and other computer slide systems are useful, but those images go away after you show them. You don't want your important images going away. Visuals on boards can have a follow-up effect even when stored against the wall and turned away from the jury. Moreover, they are readily available, so you are more likely to use them at opportune times, planned or not. This is less likely if you have to stop and hunt for them on a computer.

Where jurors are allowed to take exhibits into deliberations, it is even more important to have your key exhibits available rather than nebulized in your computer's memory.

### **STAY OUT OF THE DARK**

Never use a projection system that requires you to dim the lights for the screen to be seen. As of this writing, there are no affordable video projection systems bright or sharp enough for courtroom use.

Because trials are primarily a human event, anything that diminishes the human content – such as dimming the lights on you or your witness so that jurors can clearly see your projected images – hurts you.

The better method is to use two 36" flat-screen TVs. They provide large enough images to be easily seen and they are bright enough to be seen with all the lights on. (Flat screens pick up fewer glares from courtroom lights.)

### **BEWARE POWERPOINT POISONING**

PowerPoint can make special effects too easy. Zooms, cute or fancy fade-ins, transition wipes, neat animations, and other effects can be interesting, but because they are interesting they distract from your primary points. Simple is better. Further, the default of PowerPoint includes too much. Get rid of everything you don't need.

PowerPoint and other computer slide systems make it easy to create dozens of slides for trial. Avoid this trap. A trial with too many visuals is as bad as one with too few. As explained above, by subjecting jurors to visual after visual of non-crucial material (such as a textual outline of what you're saying), you diminish the impact of your important exhibits.

### **BEWARE VIDEO DEPOSITIONS**

The old wisdom has it that jurors who have been raised on TV are more receptive to video testimony than live. This is nonsense. The weakest possible witness is a talking

head video. Even most movie and TV stars make for boring video talking heads for more than a few moments.

Sometimes, of course, your witness may be dead or in Europe, or just refuses to show up, so a video deposition is your only choice. But often the choice is made on the basis not of strategy but convenience or economy. Don't fall into this trap. If visual exhibits are the dynamite of trial tools, video depositions are the scuds. They rarely hit their mark.

### **USE SUBTITLES**

Subtitling is less expensive now than a few years ago. When you must show a video deposition, you can increase juror listening by adding subtitles. Many jurors pay greater attention when reading the words they are also listening to.

Moreover, many jurors are slightly hearing impaired – sometimes without knowing it. This problem is becoming more common as my generation of baby boomers ages. Subtitles will make a big difference for such jurors.

Subtitles should be large and in a color that contrasts strongly with the color of the video image. The letters should stand out distinctly from the background picture.

Warning: if you do use subtitles, make certain they are 100% accurate. Court reporters are not always accurate, so check the subtitles against what the speaker is actually saying. You should also consider using subtitles for anything else you present on tape or video, such as 911 calls.

### **DON'T OVERUSE TECHNOLOGY**

Because trials are, above all, human events, there is no technological device as persuasive as the human voice and a human being (you or a witness) *doing* something. It

is more engaging for you to do something even as mundane as setting a picture on a tripod than it is for you to sit at your table and flick a computer button to stop a video or change a slide.

This is especially true in North Carolina, where the system thinks that justice is somehow enfeebled if you stand up. Since you normally must sit during testimony, find every possible reason to get up and move. Most technological aids – such as slide shows, remote control units, laser pointers, etc. – keep you in your seat. Don't use them. It's better to be up moving charts, turning VCRs off and on, setting up easels, etc. Don't let technology turn you into a courtroom couch potato.

### **DON'T RELY ON TOP VIEWS**

Many jurors, including some who are extremely intelligent, have trouble understanding a map or a top view of an area. A map or overhead view won't help such jurors understand which way the bus was coming when it ran into your client.

Top views and maps are useful, but always provide another exhibit (such as a side view) to orient jurors who have trouble with them.

### **PUT NORTH ON TOP**

Many jurors have trouble with maps or road diagrams that are not oriented with north at the top. You can explain a million times that north is on the left, but you cannot overcome a lifetime of conditioning. Orient all location maps, charts, and (when possible) photos so that north is directly up.

### **BEWARE REVERSE ANGLES**

Some jurors have trouble with reverse angles. A reverse angle is where the camera angle moves from photo to photo in such a way that what was on the right in picture #1 is on the left in picture #2. Try to maintain right-left consistency.

### **GET OUT OF THE WAY**

When showing visual exhibits, get into the habit of constantly checking your sightlines: look to see that you are not blocking the view of any jurors. This is important not only so jurors can see, but also so they do not feel you are ignoring them.

And don't let your witness block the exhibit. When necessary, move the witness.

### **USE WOODEN POINTERS**

Using your hand to point at something on an exhibit brings you so close to the exhibit that you are likely to block a juror's sightline. Instead of your hand, use a wooden pointer. Wooden pointers are more human-feeling than metal ones, and the pointing end is larger and more visible. Pointers allow you to stand off to the side of the exhibit and indicate with clarity and precision what you want to point out.

Just be sure to use the pointer accurately: be sure the point precisely touches the relevant spot. It also helps to be sure that the tip of the pointer is a different color than the spot you are pointing at.

### **DON'T USE LASER POINTERS**

Laser pointers are fun but leave them home. They are often hard to see, they jiggle because they magnify your hand movements, and they remove you from the process. More harmful, some jurors are afraid of them – with good reason. Laser pointers can injure eyes. Jurors worried about this will be distracted from whatever you're trying to point to.

## **LET THE JURORS LOOK BEFORE YOU TALK**

When you first display an exhibit, stand off to the side without speaking for five or ten seconds while the jurors look at it. Jurors do not listen while they are looking at something new. Once they have digested what they are looking at, move towards the exhibit and talk.

## **FACE THE JURY**

As you talk about an exhibit, *face the jury*. Talk to the jury, not to the exhibit. It's easy to talk to the jury if you stand next to the exhibit, not in front of it or closer to the jury than the exhibit is.

## **GRAPHS AND COMPARATIVE CHARTS**

Make these quick and easy to understand. A graph or chart (such as a pie chart) should be fully understandable within five seconds. If not, or if it needs explanation, there's something wrong with it.

## **MAKE CHARTS AND DIAGRAMS CONSISTENT**

Jurors must figure out how each chart works. Make them do that only once: use just one kind of chart throughout trial. Do not, for example, use a pie chart to show how profits were subdivided and a bar chart to show proportion of losses due to various causes. Using the same kind of chart allows jurors to focus on the substantive information rather than wasting time and attention puzzling out how to read each chart.

From chart to chart, try to use the same symbols, the same size and proportion scales, the same symbols, the same colors, and the same visual formatting. Except when absolutely necessary, don't change those elements.

For example, if blue is used on a chart to show something that helps your side, blue should also mean something good for your side on your other charts. If triangles in one chart show instances of harassment, don't use triangles to show something different in other diagrams.

When you want jurors to contrast what they see in one chart with what is in another, *the only visual thing that should change between charts is the specific item you want them to contrast*. Be especially careful with the coloring of medical diagrams; if red means a broken bone in one diagram, don't use red elsewhere for a ligament.

### **REPRESENT QUANTITIES CONSISTENTLY**

Be consistent in the way you represent quantities. For example, bar charts use vertical bars to show quantity: the higher the bar, the greater the quantity. Try to be consistent from chart to chart about whether high bars or low bars favor your side. Unfortunately, certain large quantities (high bars) can be good for your side (such as how many patients an emergency room's doctor examined in an hour), while certain small quantities (low bars) can also be good for you (such as the number of doctors on duty per day). This creates an inconsistent use of visuals. You want either high or low always on your side, so that jurors will say, "Those high chart lines showed me how bad the defendants were!" Thus, a high bar for the number of patients per hour helps you only if you also use a high bar to represent the number of doctors on duty.

To show a low number of doctors on duty by using a high bar, simply *invert* the low figure. Recast it into a large figure, so it can be represented with a high bar. Instead of showing the number of doctors on duty per day, invert by showing how many patients each doctor saw per day. This makes a high bar favor you, so it is consistent with the

other charts. (Alternatively, you can leave this figure alone and instead invert the number of patients per hour into the number of minutes each doctor spent with each patient. This makes both favorable figures low, so your chart bars can be consistent.)

### **INCLUDE A REFERENCE POINT**

In many kinds of visuals, use a visual orientation point that can be spotted instantly: "YOU ARE HERE," or "DRIVEWAY" or some other way the viewer can quickly orient herself.

### **INDICATE SOURCE**

Visual exhibits convey information you want the jury to believe. To boost the credibility of your exhibits, include the source of the information. These citations should be in the same place and in the same format on each exhibit -- such as well off in the lower corner, and in small black type. Keep them concise: "Fell's *Medical Cyclopedia*" or "*Rand McNally*," or "Dr. Hyde's deposition p. 32," etc.

### **BAN ADVERTISING**

Some courtroom exhibit companies want to advertise on the exhibits you commission. Unless the source of the exhibit's knowledge is the artist herself *and* that artist is going to be a witness or referred to by witnesses, do not allow the artist or company name on your exhibits. It is extraneous and as such detracts from the exhibit's primary point. It may be best not to allow such information even on the back.

Sometimes the company or the artist wants such identification to protect their proprietary rights. But think of the effect this has on the jurors: they wonder, if the exhibit is "true," why is someone copyrighting it? (If the artist or company insists, you should

demand that they use a color so pale that it cannot be seen from a distance – something like a watermark. And keep it tiny, 6-point type.)

### **WATCH YOURSELF**

*You* are a visual exhibit. Jurors see and notice everything visual, not just what you designate as an exhibit. That means what you wear, how you look, and how you act can set the tone for the way jurors perceive and react to your case. Even the car you drive to court can become a visual exhibit with great impact. And your \$300 haircut may make you popular in Charlotte nightclubs, but it works against you in court. So leave your expensive car at home, send your expensive fountain pens to me, and pay less attention to your coif.

### **CONCLUSION**

Visual images can be a powerful courtroom ally. But like all allies, you must treat them well or they will be ineffectual and may even turn against you. Don't waste their potential usefulness. Keep the basics in mind.

# CHECKLIST

## THINGS TO REMEMBER FOR COMMUNICATING IN THE COURTROOM:

- \_\_\_ USE JUST A FEW VISUAL EXHIBITS
- \_\_\_ BALANCE DAMAGES EXHIBITS WITH LIABILITY EXHIBITS
- \_\_\_ SELECT EXHIBITS FOR GOOD REASON
- \_\_\_ USE TEXT SPARINGLY
- \_\_\_ DESIGN EXHIBITS FOR SPEED AND MAKE THEM LARGE
- \_\_\_ MAKE EXHIBITS LARGE
- \_\_\_ PRESENT ONLY ONE PRIMARY POINT PER VISUAL
- \_\_\_ SUBORDINATE BY FADING
- \_\_\_ CHOOSE COLORS FOR EMPHASIS
- \_\_\_ CROP PICTURES
- \_\_\_ USE FLAT FINISH, NOT GLOSSY
- \_\_\_ TEST YOUR EXHIBITS
- \_\_\_ USE BOARDS, NOT PROJECTIONS
- \_\_\_ STAY OUT OF THE DARK
- \_\_\_ BEWARE POWERPOINT POISONING
- \_\_\_ BEWARE VIDEO DEPOSITIONS
- \_\_\_ USE SUBTITLES
- \_\_\_ DON'T OVERUSE TECHNOLOGY
- \_\_\_ DON'T RELY ON TOP VIEWS
- \_\_\_ PUT NORTH ON TOP

- \_\_\_ BEWARE REVERSE ANGLES
- \_\_\_ GET OUT OF THE WAY
- \_\_\_ USE WOODEN POINTERS
- \_\_\_ DON'T USE LASER POINTERS
- \_\_\_ LET THE JURORS LOOK BEFORE YOU TALK
- \_\_\_ FACE THE JURY
- \_\_\_ MAKE GRAPHS, CHARTS, AND DIAGRAMS QUICK AND EASY
- \_\_\_ MAKE GRAPHS, CHARTS, AND DIAGRAMS CONSISTENT
- \_\_\_ REPRESENT QUANTITIES CONSISTENTLY
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- \_\_\_ WATCH YOURSELF