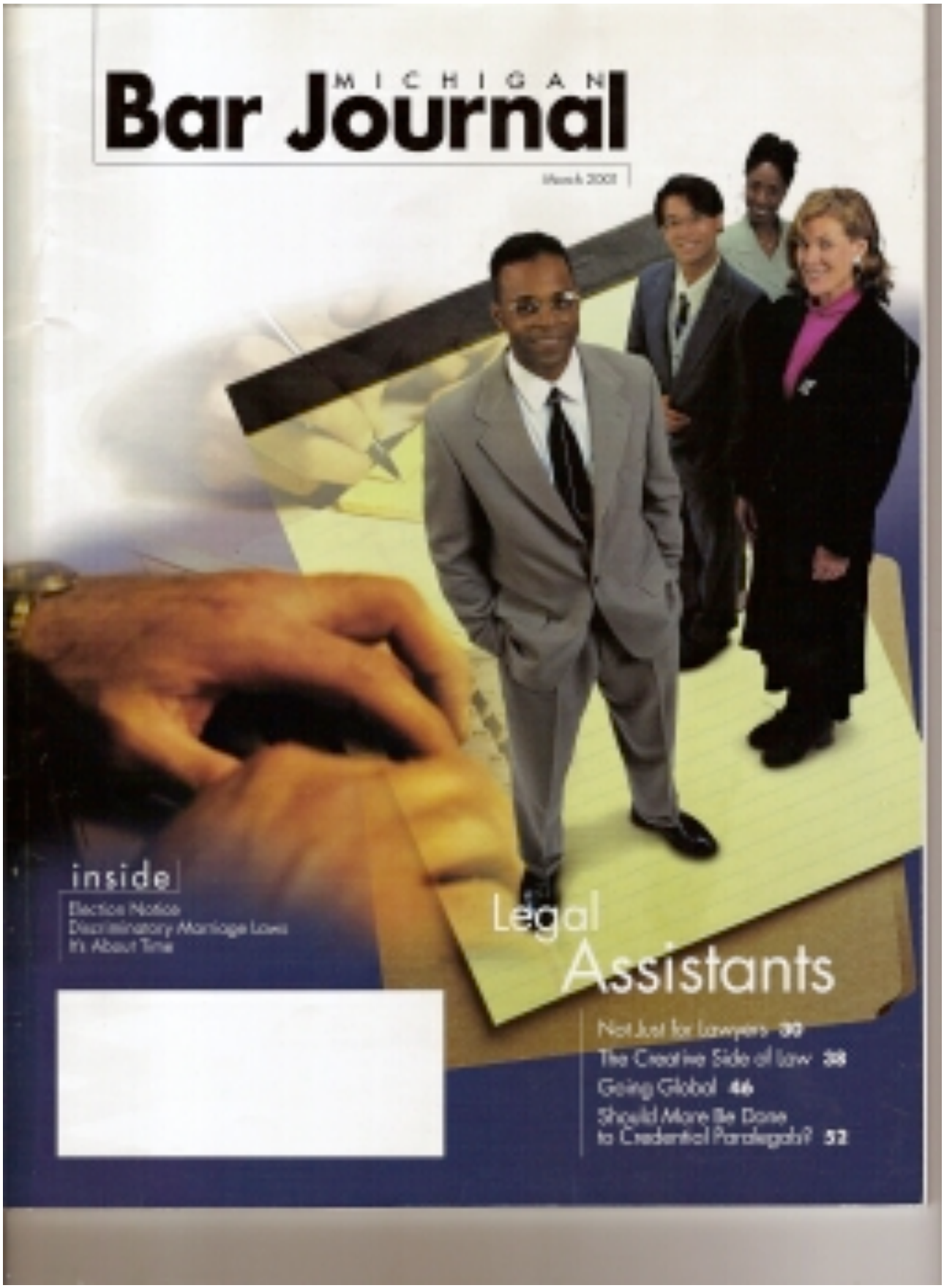
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The Creative Side of Law: Visual Techniques and Advice For Creating Effective Trial Graphics

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INTRODUCTION

Your legal team had been working on a case for 18 months. You know every fact, every document and every issue. You know what opposing counsel will bring to the jury and you are convinced without a doubt that your case is stronger. But is it really, or are you so engulfed in the case that you have blinders on?

The one thing I have learned after working for several months or years on a case is that you begin to form a bias. It is natural. You cannot help it. In fact, it is mostly a good thing. You must be aware, however, that the jury did not follow you around for 2 years during the investigation and discovery phase. The jury is hearing this for the first time. They do not see the case the same as you. As a result, your trial graphics must not focus upon *your* current view of the case, because it will likely be irrelevant to the information and learning needs of the jurors. Never assume the jury perceives your case the way you do. You may be thinking "blue" while they are thinking "periwinkle."

HOW PEOPLE LEARN

It is a proven fact that jurors are better able to retain information when it is presented with visual support from pictures, diagrams or other graphics[1]. Moreover, in this highly technical age, jurors expect visual aides. People are more likely to remember what they are told if the presentation includes graphics. It is also evident that visual displays have a greater psychological impact on juries than purely verbal presentations[2]. Jurors retain about 20% of the content of evidence presented from oral testimony alone. But when oral testimony is combined with illustrative demonstrative evidence, such as graphs, pictures or blow-ups of documents, jurors can retain up to 80% of the evidence being offered.[3] Jurors must be able to remember the information days later in order to use it during deliberations. Jury research shows the average person holds a 17-minute attention span. The attorney has the first four minutes of those 17 minutes to obtain the jury's attention. Knowing how to structure your trial presentation to achieve the widest level of jury acceptance can mean the difference between courtroom victory and defeat.

HOW TO PERSUADE THE JURY

The art of successfully persuading a jury requires more than thorough preparation and research. It depends upon many other subtle, less obvious but equally important components.

Most people assume the prosecution was defeated in the O.J. Simpson murder case because the defense used the "race card." Others thought it was a matter of mostly a minority jury not wanting to convict their hero. Not true. The real reason was because the jury heard *something different*. What they heard, combined with their value beliefs and life experiences was to distrust the evidence collected by the police. Jurors' value beliefs brought them collectively to the ultimate conclusion that there was reasonable doubt that the police could have planted evidence. Far too many attorneys base their jury selections on demographics when they should focus on juror "value beliefs." Value beliefs are a core part of who people are and what they believe in[4]. The attorney can find out about value beliefs during voir dire and if necessary get that jury member removed for cause if their value beliefs conflict with the main theme or pivotal point of the case.

WHY ARE WE HERE?

How do we find out what we want the jury to agree to? Forget the facts of the case. Put them aside for now. It is more important as you prepare your visuals to understand the pivotal point of your case-the primary element of a case which a jury's decision is likely to rest. That critical issue is what you want your demonstrative evidence to focus on. It is your job to decrease the jury's anxiety by visually illustrating to them what you want them to understand and remember. This primary element can then be repeated visually throughout your presentation. It is important to discuss the "heart of the case" with your trial team early. The case's theme facilitates the understanding of evidence and allows the jury to reach a verdict with a minimum amount of deliberation. Trial themes personalize a case and help jurors form impressions. The best themes sum up a case in one word. This ongoing theme should surface subtly and outwardly throughout the trial.

LESS IS MORE IN PRESENTATION GRAPHICS

Talk of trial preparation conjures up mental images of attorneys and legal assistants sifting through piles of legal paperwork late into the evening. I've been there. I've done it. Unfortunately, at that point it's too late to think about your visual strategy. You just want to find those twenty-five file documents you want to enlarge. You are not thinking about the reasons you are doing it, or if there is another way to visualize the

evidence. Do not leave your visual presentations to the last minute. Be selective about what you show the jury. They will appreciate it.

I cannot stress enough how important it is with graphic presentations to keep it simple. Be careful not to bury your jury with too much information. Try not to go overboard on document enlargements. Attorneys and legal assistants are trained to focus on grammatical details. The same rules do not apply with graphic presentations. It is okay to leave out punctuation and have incomplete sentences when you present information in graphic form.

Lawyers are taught in law school to tell them once, tell them again, and then tell them what you've told them. Jurors hate this. Certainly, if you repeat information it has a higher retention rate, but don't repeat it verbally, repeat it visually. There are many ways to visually repeat something without words. You can use colors or pictures to form associations so jurors won't have to think. As an example, if the viewer sees a red cross they know it is supposed to symbolize an ambulance. If you repeat this symbol throughout your presentation, it will be understood and the jury will remember.

GOOD GRAPHICS CANNOT BE DEVELOPED IN AN INSTANT

Do not treat your visual strategy and planning of graphics as an afterthought.
Last minute consideration of demonstrative evidence is a critical error. You need to work smart. Ideally every exhibit you come up with should have twenty hours of thinking behind it. I suggest to attorneys that they set up an idea folder for demonstrative evidence from the start of the case. You can add to it as you go along and file those crucial documents or testimony. This way, when you are preparing for mediation and focusing on your case for trial you won't be up all night sifting through fifteen red ropes.

I have heard many arguments for *not* developing graphics early. Cost is always a factor. It seems to be the general consensus that it is cheaper to wait until the last minute before calling in a graphic specialist. The reasoning behind this is, if the case settles then all that money spent on trial exhibits will be wasted. This logic is flawed. First of all, I believe that convincing graphics can persuade opposing counsel to settle. If at the time of mediation, you attach a supportive graphic that gets the other side's attention, they will know you are serious. Further, beginning graphic development relatively early in the trial preparation process leads to better visuals, which is a saving of both time and dollars. Getting an early start on defining graphic content and design ideas generates little of the expense associated with visuals. Most of the cost of visuals (the expense of final

design and output) can wait until the trial is just around the corner. Trying to pull graphics together at the last minute often misuses the attorney's critical time, days before the trial. Visuals are just too important to be left to last. While graphics can be developed overnight, effective graphics cannot.

CATEGORIES OF DEMONSTRATIVE EVIDENCE

There are two basic types of demonstrative evidence--educational graphics and analytical graphics. Educational graphics depict uncontested facts and show how things work. Analytical graphics support the implied argument. Used in combination throughout the trial can be extremely effective. There are several ways to graphically display information. Here are some examples.

Bulleted Lists: This is a simple way to illustrate the logic of your presentation. It illustrates how one point is related to the other points and makes the listener feel comfortable because the structure of the presentation is apparent. Virtually every opening statement and closing argument can benefit by coordination with a bullet point list. A good bulleted list has a short title at the top and four to six evenly spaced one-line statements underneath the title. All the points are directly related to the title. Each statement conveys one thought. The text is stripped of extraneous words. All that remains are the minimum words necessary to make a point.

Labeled Photo Exhibits: Photographs are often important exhibits, but using them effectively in the courtroom presents challenges. Adding a title, annotation or directional arrows to make the persuasive impact much greater can enhance a photograph. Be aware that photographs can appeal to the juror's attention, manipulate emotions, and create mood.

Relationship Charts: A relationship chart shows the connection between one fact and another. It can also depict how a process works. The connection does not have to be causal. It can be a logical progression, a time progression, or steps in a process. The relationship chart can be used effectively while you are explaining to the jury the logic of your position. Relationship charts by nature are argumentative. If used in closing arguments there are fewer restrictions on the wording in the chart. When used for opening or for witness testimony, be careful to make the wording as non-argumentative as possible.

There are three types of relationship charts:

1. *Progression with Arrows:* Four or five steps that lead to the end conclusion you want the jury to know. The idea is to extract key facts and show how they lead to the conclusion.

The layout is primarily done with boxes and arrows from one thing to the next showing a progression.

2. *A Central Conclusion:* In the center is your conclusion in favor of your client and outside the circle are arrows; with information or principal facts of the case leading to that conclusion.
3. *Timelines:* A good timeline can portray chronological links between crucial case events.[5] The events support the argument that because they occurred in this order a particular conclusion should be reached. This diagram clearly depicts the length of time between events, which can be visually effective when something took longer than it should have.

Focus Documents: Nearly every text document that is an exhibit can benefit from a treatment that extracts its significant portions[6]. Long text documents if enlarged as exhibits are difficult for the jury to read. In fact, juries are often angry if left to read poorly duplicated crooked black text on a white background, too tiny even at 20/20 vision. I find that the most efficient way to get around this is to scan in the document and place it on the page. Add a call-out box coming from the area in the document that you want to highlight. Typeset that text very large on the board. That way, the only thing the jury sees is the text they can easily read. Another advantage is that the jury will be able to recognize the original document and know that this language came from a valid source without having them read language on the entire document you prefer they not see.

Annotated Diagrams: Annotations help the jurors understand a graphic display like a diagram, medical illustration, drawing, map, chart or graph. Annotations can place people, mark routes, and measure distances. The most important aspect of using annotations with underlying diagrams is to create a design that does not overwhelm the diagram. Not everything on a diagram or map needs a separate label. Some diagrams need a title as well as labels. Others, such as maps and statistical charts, benefit from a legend that identifies the source of the information. Please understand you only need to label items that are important for the jury to comprehend. Leave out extraneous items.

Decision Trees: You may have seen these types of diagrams. Most of the time it begins with a question. If the answer to that question is yes, you follow the tree one way. If it's no, it takes you another direction, and so on. These charts are very effective for cases where a right or wrong choice was made, resulting in consequences from the decision, thus showing the end result. The juror can also see the correct path that should have been taken.

GRAPHIC DESIGN TECHNIQUES TO ADD VISUAL APPEAL TO YOUR PRESENTATIONS

There are many ways to be visually expressive. You can express yourself with words, but remember to choose them carefully. Limit points to those that are most important to the jury and only illustrate items that you want the jury to understand. Divide lines into logical components. It is also important to understand the use of type. A serif font (serifs are the small finishing strokes at the ends of the main character stems) is primarily chosen for body text to be read in large quantities like in a newspaper. Most serif typefaces (like Times New Roman) combine thick vertical strokes with thin horizontals[7]. This contrast enhances readability and appearance on a printed page but is generally not legible for large format output or poster size printing. I suggest using a sans-serif (without a serif) font like Arial or Helvetica for trial exhibits or electronic visual presentations because when the text is enlarged, the delicate serifs and horizontal strokes tend to drop out, giving the letter an odd, disjointed look. Less is always more in visual presentations. Always avoid clutter and overkill of graphical elements because it can hinder legibility and offend the viewer. Aim for titles and headings, which describe the subject of the exhibit. Keep headings all the same font size and color to add consistency to your entire presentation. It is okay to leave out punctuation and minimize the use of parentheses, capital letters and underlining. I choose title case for most of the text and use color, bolding, boxes, rules or screens to focus attention.

Remember that your job is to make it easy on the person reading the display. Know what you want to focus on. If a person reads left-to-right they will view the page in a "Z" pattern. If you have an important object, place it selectively knowing the way it will be viewed. Flush left, ragged right is the most natural to read, therefore that is why I place all captions and text flush left.

You can also use color to enhance your message but be careful. Color is often used to add emphasis, but do not use on small or thin type because it will reduce readability. Color often increases impact and focus however, be careful about color associations. Don't underestimate the power of color. It can invoke positive or negative feelings and emotions. The color of red is an exciting, energetic color and it is used to command attention. Be aware of that when you use red in an exhibit. Green is often related to growth and it is wise to use it in a damage chart where dollar amounts are shown. Blue is the most popular color worldwide, but you must be sensitive to cultural bias. In the Middle East, blue is used to ward off evil spirits. For more information about color, visit www.pantone.com[8].

Be cognizant of white space on a page. Make sure you leave enough visual space to give the viewer a break from text or graphics. Another tip is to make sure you frame all document blow-ups in black. That will keep your eye on the document and not off the page.

Good graphic design is invisible; it serves to simply convey the message without distractions. It calls attention to the focal point, not to itself [7]. Bad graphic design calls attention to it and is very distracting.

PRESENTATION METHODS FOR DEMONSTRATIVE EVIDENCE

Any type of demonstrative evidence ought to be considered if it effectively communicates information that will be understood, retained and will influence decision making. No method is superior to another and each must be evaluated based upon the size of the courtroom, the resources available and the effectiveness of one method over another. A wisely calculated media mix allows the jury to readily integrate information resulting in a better understanding of your case. (See Checklist Handout)

Demonstration: A demonstration can range from an elaborate series of events presented on videotape, or it can involve a witness demonstrating how a product works. The demonstration must be tactful, informative, and memorable. Most importantly, it must work 100% of the time. (Remember the glove demonstration in the OJ Simpson case?)

On-the-Spot Illustration: This is information written on a chalkboard, dry erase board or flip chart "on-the-spot." The evidence is illustrative only and unfortunately will not go into the jury room. If you wish to preserve the evidence, a flipchart works the best. The benefit of this type of presentation is that on occasion, the witness will be permitted to leave the box and walk in front of the jury. That personalizes that witness and provides an opportunity for the jury to view their mannerisms and style. This of course can benefit or detract from your case.

Foam Core Enlargements (Blow-ups): This method is probably the most popular of all. Every trial lawyer blows up important documents for the jury. This may or may not be effective. Most of the time this is overdone. Be selective. The process can be expensive and cumbersome. The most effective result is to scan the document into your computer, touch up the document by removing extraneous blotches and darkening and straightening the text. Then print it out or save it to a disk and send it off to a reprographic company for enlarging. Make sure you blow up documents large enough for the room size. A standard 8 ½ x 11" document can be enlarged to 30" x 40" minimum. For a different effect, a larger size is a benefit depending upon what you

are enlarging. Timelines often need to be split in half and folded, thus doubling the size. One thing to always consider is the method used to transport these enlargements. Obviously you need a large enough vehicle to accommodate the boards. The advantage of using enlargements is that they can be seen throughout the trial even during opposing counsel's argument. You can just leave them propped up on an easel or in view of the jury at off times, which is definitely a subliminal advantage. If admitted into evidence, these boards can also be taken into the jury room.

Magnetic Boards: These are large, sturdy boards, which have a magnetic paper affixed to them. They are often used for accident scenes or for revealing information slowly. If used for an accident scene the diagram is first mounted over the magnetic paper. Cars or objects are then cut out of foam core and magnetic paper is attached to the back. It is then possible to move the objects around the board like a board game without them falling off because of the magnetic surfaces. It is very effective for the jury and others in the courtroom. Another way to use magnetic paper is to block off portions of the board to be revealed at separate times. This is a great tool used to add drama to closing arguments.

Computer Slides: Presentation programs are very simple to use and create professional looking slides that can be projected onto a screen. PowerPoint®, a registered trademark of Microsoft Corporation, is a popular presentation software. It allows trial lawyers to outline opening statements and closing arguments, present documents and photos for direct and cross-examination. Documents or photographs can be scanned in, bar-coded, and stored on a CD-ROM. Imaging and coding can also include video and sound clips. Mixed media presentations command the full attention of the jury and as a result, are remembered. Digital media such as PowerPoint® presentations use technology to teach fine detail. The attorney has more control, revealing the facts slowly or systematically on the screen. Jurors can also view a blank screen, which also adds curiosity. Computer-generated presentations are interactive and spontaneous. The attorney should be aware that PowerPoint® has limitations. That is why a plug-in software product used in conjunction with PowerPoint® is an option. The plug-in is called ANIX™, a trademark of Modern Persuasion, LLC. ANIX™ allows highlighting directly on the document, dims irrelevant portions of the document, creates direct call-out quickly, stamps displays with pre-defined icons, changes shapes, uses multi-page TIFF images, and adds 3-D to objects with animation[6]. The disadvantage to using digital slides is that once it's off the screen, it's gone. Most of the time the jury will not see it again unless there are hard copies or blow-ups of the information that was presented on

the slides. The other disadvantage is that you have to make sure the Courtroom is equipped with a projector, a screen or a TV monitor and it is in clear view for the jury, judge, opposing counsel, and witness. If not, you have to ask permission from the judge and then bring in your own equipment. Another disadvantage is the possibility that the computer system or equipment will fail. It's best to hire a company to be available throughout the entire trial to troubleshoot and be able to reassure that the equipment is working properly. Some courtrooms are purchasing presentation systems, discussed briefly below.

There are several display software packages on the market. ANIX™ is used by the National Institute of Trial Advocacy for teaching courtroom technology because it is inexpensive and operates as a plug-in to PowerPoint®. For more comprehensive information, see an excellent book published by the National Institute for Trial Advocacy.[6]

Computer Animations and Recreations: There are two types of computer animations. In the first, a series of still images are created so that they are linked together to form an animation. The second is a type of animation that is really a *simulation* created from the input of raw data, which is then manipulated by a series of mathematical models to simulate an occurrence[9]. A recreation simply uses the facts of the case to tell the story. When a lot of money is at stake, the case involves technical complexity or the subject matter is dry, animations are worth the expense. You should be aware that there might be problems with admissibility with animations. If animation is used to demonstrate, and you try to treat it as substantive evidence, it may not be allowed[9]. It is extremely important that you are accurate and that you give the other side enough time to view and approve it. Most of the reasons for getting animation eliminated is when you did not give the other side 30-90 days notice[9]. Most courts hold you to 30 days. Also be aware that animations may be excluded based upon the Federal Rules of Evidence. Rule 403 states: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or presentation of cumulative evidence." If the animation is more prejudicial than probative, i.e., inflammatory, then the judge most likely will not allow it. Animations are expensive and time consuming to produce. A two-dimensional (without depth) animation is cheaper than a three-dimensional (with depth) animation. An approximate cost for 2-D is $15,000 and 3-D is $25,000. Some more realistic animation costs $75,000 - $150,000 to produce with 3-6 months of production time. For more information on animation design, go to www.animators.com.

3-D Models: This form of demonstration evidence is very effective when you want the jury to see the real view of all dimensions. This is used for models of buildings, rooms, products, etc. It is very costly and time consuming to produce. You will need to hire an architect or scale model-maker that will need several months to finalize the job. Another issue to consider is whether or not the model will fit into the courtroom and if the jury will be able to see it. All this should be discussed ahead of time to avoid disappointment at the time of trial.

Video: Use of videotape in the courtroom is very familiar to most jurors. There are several ways to use video. You can play raw footage of a location or a process. You can also play digitized testimony so the jury can see and hear the voice inflections and watch the deponent's demeanor as they testify. This is much more effective than having someone read the testimony into the records from the deposition transcript. You can also use video clips to integrate into a presentation. This can be used during the opening statement or at another time during the trial. Day-in-the-Life videos depict the post-accident condition of the severely injured in documentary form.[10] Although a wonderful tool used to add emotional impact and to personalize the case, some jury members may find them disturbing to watch.

High-Tech Courtroom Visual Presentation System: Some Federal Courts have their own visual presenters. A most notable example of the successful implementation of these advanced technologies is in the U.S. District Court-Northern District of Ohio. This Cleveland courthouse represents the successful marriage of technology and the American justice system[11]. A typical system includes an evidence or document camera for physical material, a connection to the attorney (and judge's and witness's) computers, an illustration device or pen and the ability to create a hard copy of whatever is being displayed to the jury. Different playback devices are included such as a VCR and audio cassette deck. There are companies who do nothing but set up and design courtrooms to support a full range of media and viewing options. Although it is definitely a wave for the future, Michigan is not there yet. Infrastructure design for new and existing facilities has been a major challenge over the years. There is also an issue with the actual physical space and furniture in the courtroom. Certain rooms may have to be re-designed in order to accommodate this new technology. The effectiveness of high tech courtrooms is being proven every day in courtrooms across the country. Eventually, implementation of these ideas will reduce litigation time and provide an environment that meets the needs of today's media, savvy participants. (See Handout of Article on Doar System.)

CONCLUSION

Now that you are aware of the necessity of being organized and graphically prepared, you can begin to review your present caseload, your case expenses and discover a way to support your case with appropriate graphics. You can hire an animator, graphic specialist, juror psychologists, and/or trial consultants to get started. There are many companies with years of experience who can help you focus on your graphic presentation. You can also produce inexpensive design software in-house. Regardless of which tools you choose, you must recognize your duty as a member of the trial team is not to primarily transfer vital information to the jury, but to keep the jury alert, interested and entertained.

Footnotes

[1] Walsh, A., *Demonstrative Evidence: A Picture Paints a Thousand Words,* 6 Computers and Law 28 (1995)

[2] Borelli, M., *The Computer as Advocate: An Approach to Computer-Generated Displays in the Courtroom*, 71 Indian Law Journal (1996)

[3] Hunt, Use of Videotape in Opening Statement, Litigation News (May 1997)

[4] Maloney, P., Singer, Amy, *Trial and Deliberations: Inside the Jury Room*, Lawyers Cooperative Publishing, West Group (1999)

[5] Bernstein, *Presenting Timelines*, Lawyers Alert (June 1992)

[6] Siemer, Deanne, C., Frank D. Rothschild, Edward R. Stein, Samuel H. Solomon, *PowerPoint for Litigators,* National Institute for Trial Advocacy (2000)

[7] Rabb, Margaret Y., *The Presentation Design Book*, Ventura Press (1993)

[8] Eiseman, Leatrice, *Color Information and Trends*, www.pantone.com (2000)

[9] K.L. Thompson, *Using Computer Generated Evidence,*' www.seamless.com/evidence (1996)

[10] Joseph, Gregory, P., *Modern Visual Evidence*, Law Journal Press (2000)

[11] Solomon, Samuel H., *The High Tech Courtroom*, Doar Communications (2000), www.doar.com

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