

Demonstrative Exhibits on a Budget

by Alan B. Parker

The crash reconstruction expert was responding to the question "What is a crash test?" He surprised counsel by asking whether he could move from the witness stand to explain the answer. Instead of walking in front of the jury box as expected, however, he ran without warning directly into a wall. The sound of the impact jolted the jurors and stunned counsel. Everyone in the courtroom gaped at the spectacle of the formerly staid expert witness now sprawled on the floor. He had just demonstrated a crash test, without the car. Memorable demonstrative evidence? Absolutely. Cost of exhibit? Nothing.

Jurors often complain that trials are boring. Not that one. Certainly, trials are overwhelmingly oral. Lawyers question, argue, and object; judges instruct and charge; and witnesses testify. Jurors listen. Most even try to stay awake. Even though psychologists and educators have said for years that people learn best by watching, touching, and interacting, trial practice stubbornly remains aural. Understanding complex information is vital in the courtroom, but without conscious effort by the lawyer, it is easy to ignore the jurors' visual and tactile senses.

Good demonstrative exhibits break through these problems. They focus attention and invite comprehension. By communicating efficiently, they shorten testimony and reduce boredom. But good demonstrative exhibits require investment. How can that investment be made within an appropriate case budget?

The perfect exhibit is memorable, persuasive, and educational. Then why are so many distracting, trite, or unclear? Money spent on ineffective demonstrative evidence is worse than wasted. Poor exhibits diminish effectiveness, reputation, and credibility (with the court as well as the jury). They squander your client's money. And they can cost you a verdict.

One lawyer's attempt to economize on demonstrative evidence was as memorable as the crash test expert but less suc-

cessful in persuading a jury to accept its message. In an attempt to show how a simple switch could have fixed a dangerous product, the lawyer patched together a conglomeration of standard wall-mounted light switches, coils of wire, and a 75-watt light bulb. The assembly could not have cost more than \$10, although it looked like it was probably scrapped together for free in a basement workshop. By the time the expert managed to get the contraption to work, the witness stand was a tangle of wires and the jury was suppressing its laughter. The witness looked more like Uncle Fester—who entertained the Addams family by lighting bulbs in his mouth—than like a mechanical engineer. The jurors did not like the expert. They were unimpressed by the lawyer who cobbled together the exhibit. The supposedly simple fix for the product looked complicated and anything but fail-safe. The case was doomed.

This unfortunate lawyer believed that professionally produced trial exhibits were too expensive. Indeed, sophisticated models, huge multipanel time lines, detailed technical drawings, medical illustrations, diagrams, flow charts, and computer-operated interactive time lines can tie up thousands of dollars. Custom animation can easily run to tens of thousands of dollars. When cases warrant this investment, good demonstrative exhibits help counsel focus, educate, and persuade. Most cases, however, cannot justify an open-checkbook approach to creating exhibits.

It is therefore necessary to allocate an appropriate portion of the litigation budget to exhibits that will help you prove your case. An exhibit that fails to make its point is a waste of money at any price. On the other hand, when words alone will not prove the case, skimping on exhibits is foolhardy. An exhibit budget is dictated by the value of the case, the message that needs to be sent, how that message will be best delivered, and the demonstrative aids and tools that are available and suitable to the task.

When a case really needs a particular type of exhibit to

Alan B. Parker is a partner at Reminger & Reminger Co., LPA, in Cleveland, Ohio.

prove a point, the Federal Rules of Civil Procedure, as well as many state rules, offer a potent tool in the form of requests for admission. If a request for admission is improperly denied, the court may order the payment of reasonable expenses under Rule 37(c)(1) to prove that issue, which of course can include reasonable exhibit costs.

Which exhibits you need depend on the message you need to communicate. The first step in preparing your message is confronting the question of what the jury must understand to find for your client. Ideally, that question is posed and answered early during the case workup, and the answer will guide all future evidentiary decisions.

Locating Sources

Think about the case. Think hard. Each case is unique, so resist the temptation to create exhibits just because “that’s the way it’s done.” The lawyer who reflexively believes every truck accident case requires a detailed accident scene illustration or model, or who believes that every medical case needs a multipanel timeline, is wasting money. Instead, think about the particular things the jury must understand to find in your favor.

If finding for your client requires understanding the accident scene, you have no choice but to invest in bringing that scene to life. Consider diagrams, models, photographs, or movies. The failure to make the needed investment to convey the information will lose the case. Spend some money. But if finding for your client is not dependent upon the accident scene, illustrating it is probably unnecessary. Cut the expense entirely, or use only the most economical illustration available. Often the hand-drawn diagram in the police report will suffice.

Conventional wisdom dictates that medical malpractice cases demand anatomical illustrations and time lines. But, depending upon the particular issues of a case, those exhibits may be wasteful or even counterproductive. For instance, imagine a medical malpractice case alleging that a bleed into the liver was caused by improper technique during abdominal surgery. The defense is that the bleed is a known risk and a potential complication of well-performed surgery. Professionally created time lines tend to be expensive and demand large investments of attorney time to be effective. For this case, such an investment is probably wasted because the case is about a singular and discrete event—an event that requires a demonstration of the anatomy and the surgery.

Without careful thought, counsel can inadvertently harm their own case. How detailed and complex should the illustrations be? The plaintiff probably wants the procedure to look simple, with the alleged error appearing gross. The defense likely wants the anatomy to be subtle and complex, the surgery to appear detailed and technical. So if the plaintiff oversimplifies, he is subject to attack. If the defendant makes things overly complicated, she risks confusing the jury or being accused of obfuscation. How large should the illustration be? The defendant—who needs a large diagram to label all that complex anatomy—may have a dilemma. After all, the large blowup can make the distances appear great and can magnify the appearance of the claimed error. What colors should be selected to portray the anatomy? Should some degree of normal operative bleeding be represented in the illustration? These issues can be significant on both sides of this kind of case, so proceed carefully and think about these matters. That is why forensic medical illustrators are in business. Eliminating such specialists can

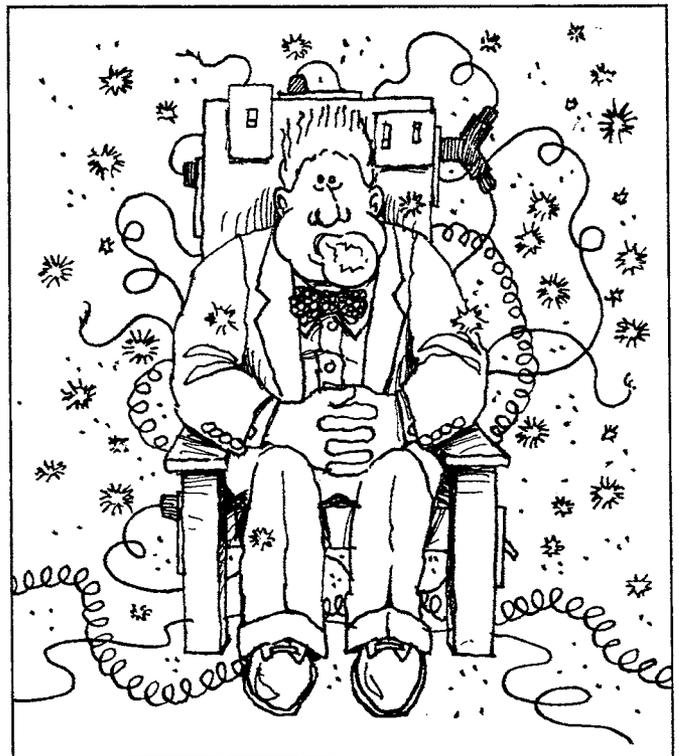
save on expenses but cost on the verdict. This case would benefit from a litigation-savvy artist.

When are exhibits too expensive? They are obviously too expensive when the probable value of the case is not sufficient to generate a meaningful recovery to the client after paying fees, expenses, and costs. They are also too expensive when their point can be made just as effectively but more economically. The question is incomplete, however, if it is not coupled with its counterpart—when is forgoing an exhibit foolhardy?

There is usually a middle ground. Many trial aids are inexpensive and overlooked. The list that follows is based primarily on the author’s experience. Other sources are limited only by your imagination. If you are alert to possibilities, you can find inexpensive sources of trial exhibits all around you.

For example, there’s the toy box. Now that my children are adults, they may wonder why their father is a trial lawyer, but as young children they thought they knew the answer: Dad got to play with toys. An obliging son has a trove of accident reconstruction exhibits. Some dolls are appropriate for some issues in some cases. Just because the Matchbox or Hot Wheels cars are small does not mean they are unsuitable for court—the size can be an advantage. Draw the accident scene on a piece of poster board and place it on a table (size it to scale if that is important to the case). Get the witness right up next to the jury box so the small toys can be seen and the witness can interact up close with the jury. Or place the cars and the diagram on a visual presenter for display throughout the courtroom. There is an added benefit to using your child’s toys: Other kids will think it is *so cool* that your child’s toys were in a real case.

Toys can also be inappropriate. Exhibits often carry subtle secondary messages. One attorney placed a plastic toy soldier—a little green army man—on his trial model of an allegedly defective personnel lift that had caused a serious



injury. The intent was simply to demonstrate where a user stood on the product, and the toy soldier was simply available and to scale. But it looked silly. It backfired by trivializing the injury and the case. The model would have been more effective without any human figure. Similarly, there are litigation artists who use generic figures to portray people so they are race, age, and gender neutral. When the illustrations look like cartoons, they should usually be rejected because they demean the parties and trivialize the issues. Then again, in the right case, that might be precisely the goal.

Another resource is an underground economy that is huge, legal, and largely unknown to lawyers. It thrives in basements, attics, spare rooms, garages, and backyard woodsheds. These are the workshops of hobbyists, whose models range from entire neighborhoods and towns to specific makes of automobiles or scale representations of steel production lines. These folks generally are amateurs and can be hard to find. Some have significant expertise: engineers and conductors who model railroads, architects who build scaled-down cities, retirees who reconstruct their places of employment, and prodigious unpaid researchers who pride themselves on including every possible historically accurate detail. Others are craftsmen, remarkably skilled with hands, tools, and materials.

These resources can be mined through hobby shops—brick-and-mortar ones stuffed to the ceiling with balsa wood, styrene, model kits, and radio-controlled servos, as well as those on the Internet. Both types of shops have bulletin boards where you can meet the people who craft the models.

Do you remember building models? The Visible Man and the Visible Woman are still available and cost less than \$20. So are models of the skeleton, the brain, and the eye. Model automobiles, boats, and aircraft are available. Most automobile manufacturers carry collector-quality models of their products that usually are available through the dealers' parts department. They are generally more expensive than a hobby kit. Also, they are often available already assembled.

If models of buildings, trees, landscapes, or structures are needed, hobby shops that cater to model railroad hobbyists are brimming with materials to craft these items. The store owner may provide leads on people with the skill to craft the model. Be sure that the person you retain is suitable to testify to the accuracy of the model, if the exhibit needs to be faithfully accurate. Pick up hobby magazines—this is where you

will find collectible-quality models and discover people of surprising substantive expertise and artistic skill.

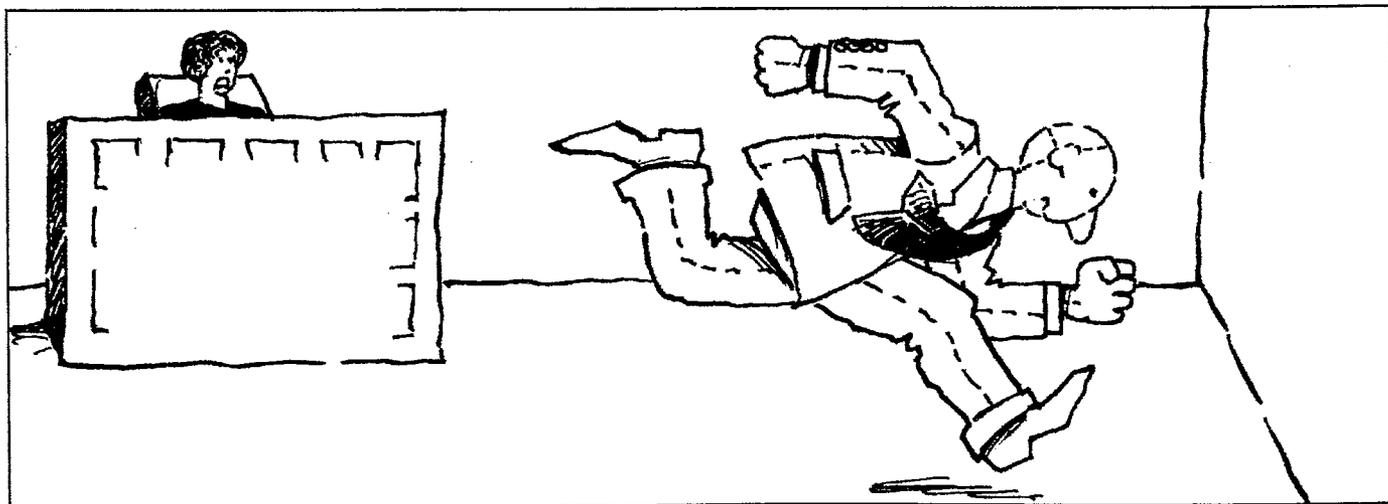
Some production machinery can be simplified and modeled in wood. For example, calendars and mills are machines used in manufacturing rubber. They resemble the wringers on old-time wringer washing machines, enlarged to the size of minivans. A series of rotating cylinders, they are intended to create nip points to capture and squeeze rubber. Occasionally they capture and squeeze employees. When that happens they become the focus of intense courthouse scrutiny. A woodworker with a lathe and a reasonably equipped home workshop can create a representative model of these machines in a few hours. They can be made to operate by hand crank or by small electric motor.

Carpenters can also fashion inexpensive displays and housings to dress up an exhibit that would otherwise have loose wires, exposed connections, or unsightly or distracting features. The earlier example of Uncle Fester with the switch and the light bulb could have been avoided by enlisting a carpenter's help. Not incidentally, carpenters are less expensive per hour than trial consultants and forensic model makers.

Your expert witness might be one of those underground hobbyists leading a secret life. Frequently experts have dedicated years to a specialized field. They have accumulated photographs, diagrams, manuals, specifications, and teaching aids. They have conducted new-employee orientations and taught vocational classes or certification courses. If you ask them how to teach, illustrate, and demonstrate the important points of their testimony, they can probably help you do so effectively and inexpensively.

Medical witnesses may be another source of effective, low-cost exhibits. When physicians testify in court, they are usually dealing with two principal subjects: What they did, and why they did it. Not so coincidentally, in their everyday dealings with patients, physicians also deal with two primary issues: What they are going to do, and why they are going to do it.

Exploit the similarities. The doctor probably knows how to describe these issues to a patient, using the charts and models and sketch pads available in her office. A staple of most physicians' offices and hospitals is a rack of patient information brochures describing diseases, syndromes, and treatments. These are written and illustrated for patients. (Patients, remember, are people just like your jurors.) As a witness, the



doctor will be very comfortable using the same kinds of materials in court. If you use these materials, you and your client save money, the doctor is a more effective and comfortable witness, and the jury understands the testimony.

Businesses like the Anatomical Chart Company sell detailed models and diagrams, but often at a price that does not make sense for a single case. Pharmaceutical, medical, and surgical supply companies often provide materials that are indistinguishable, except for the company logo or product name they're promoting. When you visit doctors' offices, clinics, and hospitals, observe the models and wall charts and note who provides them. These medical companies are very reluctant to provide their models to lawyers. The physicians

Many attorneys are unaware of the powerful features in the business software already on their computers.

you work with in your case, however, may be able to obtain the materials from the supplier representatives.

Company- and product-marketing material is another rich source of technical diagrams, illustrations of products and processes, and charts of how companies are organized. Consider using these illustrations to avoid the expense of developing original artwork and displays. Similarly, there are national or regional organizations for nearly every syndrome, disease, and condition imaginable. These organizations are sources of illustrations and straightforward explanations that will make medicine make sense to jurors.

Public libraries are another source of cheap exhibits. Have you ever discovered, just at the last minute, that the local library had all kinds of great books that would have made it easy to learn about the key issues in a tough case? There is only one thing worse than learning it just before trial—finding that all those books are checked out to your adversary.

Check the library early. Look for picture books, how-things-work books, and general encyclopedias, not just big reference materials. Let your opponent experience that awful feeling of seeing all the good stuff he wanted from the library sitting on your trial table.

Your own computer can provide material for effective demonstrative exhibits. The PC on your desk can access and display information that was largely inaccessible only a few years ago. The Internet permits you to locate experts, find graphics and illustrations, and seek reference materials. Sometimes the materials are suitable for downloading and using as demonstrative aids. They can be displayed electronically from the computer through a multimedia projector, or they can be printed and enlarged through conventional means. Similar materials sometimes are not suitable for use, either because the resolution is inadequate for enlargement or because of copyright restrictions. Even then, the information may be a helpful starting point for developing exhibits particular to your case.

Many attorneys are unaware of the powerful features that

are included in the business software already on their computers. Microsoft Office, Corel WordPerfect Office, and similar products include powerful tools for creating and presenting information. Most word processors have drawing tools, text-box features, customizable fonts and bullet icons, the ability to import and edit photographs and drawings, and other features that can produce time lines, flow charts, and other sophisticated graphics. Enlarge them at a copy center for nominal cost, or avoid printing entirely and use them with presentation software in the courtroom.

Spreadsheet programs in office software suites such as Excel and Quattro Pro can instantly turn numbers into vivid graphs. For instance, if the jury needs to know what percentage of a business's income comes from the sale of a particular product, simply type the list of products in the first column and the corresponding sales figures in the second column. Tell the program to generate a pie chart, and it will do so instantly. The chart can then be customized, printed, enlarged, or projected in the courtroom. Similarly, if the jury would benefit from knowing the patient's vital signs during the course of treatment, type the dates and data into a simple spreadsheet. Ask the program to graph the results on a line chart. An inexpensive, easy-to-read, customizable graphic will be ready to use any way you choose.

Finally, office suites generally include presentation software such as PowerPoint or Presentations that makes your computer the equivalent of a slide tray. By using a multimedia projector or television monitors with appropriate cables, the images and graphics can be displayed in the courtroom without the expense of producing enlargements and mounting the enlargements to foam board.

In all kinds of cases, jurors and witnesses find it helpful to have a calendar available to help establish the context and dates involved in the case. Most word processors have a tool or wizard that creates calendars for any month of any year. Create, print, enlarge, and mount the relevant calendars and place them in the courtroom so that jurors and witnesses can get their bearings at any time. Use the calendars to create a time line as the trial progresses. The technique is inexpensive and helpful, and a blank calendar is objective and trustworthy. That objectivity helps build the exhibit's persuasiveness.

Use a scanner to transfer hard copy photographs and illustrations into your computer. The images can be printed or projected, and photographs can be easily enlarged or cropped as needed. If specialty services are required, for 35-millimeter slides or high-quality enlargements, for example, the image files can be sent as e-mail attachments to the photo finisher. As with every other kind of service, significant discounts can be found on the Internet, and scanned images can be sent anywhere for conversion to hard exhibits.

Keep It Simple

Once you decide on the exhibits you want, consider alternate ways to present them. Around these parts, the 30 x 40-inch blowup mounted to quarter-inch foam board somehow became the standard way to display a graphic. News flash: There are other ways to show things to a jury. Some are high-tech, some are not. Some presentation techniques are inexpensive and low-tech but very effective. Do not forget to include these in your visual arsenal.

Flip charts are inexpensive and adaptable. They require no power cords and minimal technological sophistication. Even

though they are simple, they can be misused. Do not let the flip chart turn into an indecipherable mess. Plan its use as carefully as you would plan an expensive graphic board. Make sure you or your witness can draw the diagram, spell the words, and illustrate the point. If you have doubt about this, draw the diagram in advance and ask the appropriate foundation questions as you turn the page and reveal it.

Now that technology lets us enlarge documents with video presenters or presentation software, it is tempting to consider conventional blowups as outdated and wasteful. But conventional enlargements have some advantages over their high-tech versions. They are tangible and have a real presence in the courtroom. They can remain on display for repeated reference, to establish a backdrop, or to provide a continuing context for other subsidiary documents or testimony. They can be highlighted or drawn on. They are readily available whether or not the screen is up, when the projector is off, or when the computer is being temperamental.

Slide photographs are reasonably priced. You enlarge the picture by moving the projector away from the screen. Simple. The witness is hidden in darkness, but sometimes that is a good thing.

Overheads are cheap, low tech, flexible, and credible. A standard office copier will make black-and-white overhead transparencies for about 25 cents per page. They can be highlighted and drawn on with either permanent or erasable markers. An entire customer file, medical record, or specification manual can be duplicated on overhead transparencies at very modest cost. If a particular page becomes the subject of testimony, it can be displayed quickly and clearly. Overhead transparencies tend to be credible. They are the tools of teachers, and jurors trust teachers. Computer presentations, in contrast, are the tools of salespeople. That difference may be worth considering.

Spend to Save

Some high-tech solutions require you to spend money to save costs. Technology is revolutionizing our options for presenting information in court. The following discussion of high-tech presentation tools might appear misplaced in an article discussing ways to save money. Indeed, each of these tools is expensive as a one-time expenditure. But the cost is low when prorated over many cases.

The earlier discussion of computer software could be included here. However, because almost all law practices now use computers with basic office-suite software, using the software more creatively is unlikely to require additional expense. As of early 2004, Microsoft Office software is available at under \$400, and the comparable Corel suite at under \$150 to most users.

If, however, you choose to present but not print computer-generated graphics, you will need a way to display the image in a courtroom. You have two options. One, project the images to a screen or blank wall using a multimedia projector. These devices cost between \$800 and \$3,000. Depending upon the model, it may be capable of projecting video as well as still images. Some also have speaker systems for audio.

Alternatively, computer images can be displayed on video monitors. You may have to provide the video equipment, or the court may own video equipment for you to use. Beware: Make sure appropriate cables and converters are available to connect the computer's video output to the monitor's input.

Test the system in advance. Monitors and televisions look similar, but they are not identical. Even if you can hook up a standard television to display the computer image, the results may be very disappointing.

Poster printers are large-format inkjet printers that print enlargements in widths from 17 inches to 36 inches. Although full-color, high-quality printers cost tens of thousands of dollars, many law firms obtain basic versions for \$3,000 to

High-tech tools are expensive, but the cost is low when prorated over many cases.

\$7,000. These are suitable for enlarging black-and-white documents such as medical records, police reports, line drawings, deposition testimony, and correspondence. A practice that frequently uses basic enlargements of documents may find this a worthwhile purchase. The printouts can be mounted onto a reusable backing, permanently mounted onto foam boards, or—most economically—clipped to a tripod and used like a pre-printed flip chart of enlarged exhibits.

Visual presenters look like overhead transparency projectors. Lawyers most often know them by their trade names, Elmo or Doar. Because they resemble projectors, first-time users often expect them to transmit an image directly to a screen. In reality the presenter is a small television camera mounted to shoot items placed on the machine's display surface. The image is sent electronically to monitors or to a multimedia projector.

A visual presenter is superb for small objects and photographs. Items can be magnified enormously with the camera's zoom lens. Visual presenters are adequate, but not excellent, for displaying documents, books, and texts. Their limitations result from the less-than-ideal resolution of type-written text on television. Compensate for this limitation by enlarging important text on a copier or retyping it in a large, simple Arial font. It will be much more legible on a television screen and far less expensive than a blowup.

The display surface generally has a back light that is perfect for displaying X-ray films and photographic slides. Many contain input ports so that images from VCRs, computers, DVDs, and other sources can be fed to the monitor or the projector. Visual presenters generally cost between \$2,000 and \$5,000.

Judges and court administrators have been making visual presenters the centerpiece of many so-called technology courtrooms. The presenters' versatility in handling various kinds of documents and objects makes it easy for jurors to view exhibits even when the litigants cannot afford to have them enlarged.

Over the years chalkboards evolved to whiteboards that use erasable markers. Now the whiteboard has evolved to the electronic whiteboard. These products, typically priced from \$2,000 to \$4,000, look like a traditional whiteboard; the twist is that anything written on the board can be printed at the touch of a button. With some versions, the whiteboard com-

municates with a conventional computer so that whiteboard images can be saved and displayed as graphic files. A related, less expensive version uses sensors attached to a non-electronic whiteboard or even a conventional flipchart. The sensors transmit to a computer an image of whatever was written or drawn with special pens. That image can be printed from the computer or shared electronically.

There is another way to preserve demonstrative evidence created on a whiteboard: Take a Polaroid or digital photograph, and slap an exhibit sticker on it. Cheap and effective.

Even electronic whiteboards have evolved. Rear-projection interactive whiteboards are available for roughly double the price of an electronic whiteboard. These technological marvels combine a large, flat-screen monitor with the interactivity of a whiteboard. It looks like a whiteboard. Draw on it with erasable markers. If you choose, print what was drawn. But what looks like a whiteboard surface is really a rear-projection flat screen that can simultaneously display video or stills from videotape, DVDs, a visual presenter, or a computer. The witness or attorney can mark or highlight the images, and the altered images can be saved or printed.

Courtrooms increasingly provide presentation devices to assist litigants. At one time we were lucky if the court had an easel for a flip chart or if the judge actually permitted witnesses to write on a chalkboard. Now some courtrooms are equipped with a visual presenter for counsel, a document camera at the witness stand, and video monitors permanently installed for jurors, counsel, and the court. Network cables at counsel tables allow computers to send presentations and documents directly to the courtroom monitors. These high-technology courtrooms can help level the playing field for litigants who lack the financial resources to create dazzling litigation displays. If your jurisdiction offers such a courtroom, learn to use it, and request it for appropriate cases. You can save a great deal of money.

Although these wired courtrooms are economical to use, they do not necessarily provide the best way to display your exhibits. The fact that you can use a visual presenter does not mean that you *should* use a visual presenter.

In most cases cost is only one factor in deciding how to display demonstrative exhibits. Just as important are other factors including how important the item is to the case, how poised and effective the witnesses are who will use the item, and how the display method enhances or diminishes the witnesses' strengths and weaknesses.

Each method carries its own particular persuasive and credibility baggage. For instance, television screens have a rather peculiar advantage—familiarity. We receive most of our news and information through television. Therefore, professionally produced, seemingly objective pictures on a TV screen can be persuasive and highly credible. Shaky and poorly focused video images, however, are not usually seen on television and can be perceived as amateurish and non-credible. Computer presentations, although convenient and economical, can carry significant negative baggage. Many jurors have been exposed to presentation programs through high-pressure sales presentations. This association may have unintended negative consequences for lawyers and witnesses who use presentation software.

Images projected in a darkened room, such as slide presentations, shift focus off the witness and onto the exhibit. That can be an advantage if the witness is weak and the exhibit is strong. Otherwise, the dark room is a significant disadvantage

to using this type of presentation.

A likable, believable witness displaying small objects directly in front of the jury can make a very dynamic presentation. Once, an expert arrived at trial carrying an actual artificial heart valve in his pocket. Although the case was about valve-replacement surgery, such valves were difficult to obtain, and having one available in court was surprising. Nothing was going to illustrate better the miracle, the difficulty, and the intricacy of heart valve replacement. This delicate, tiny, gleaming device—gently cradled in the physician's hand—carried powerful messages about the skills of surgeons and the limits of medicine's ability to cure. With good witnesses, consider using flip charts, small enlargements, or models to exploit their teaching ability. On the other hand, the intense spotlight and intimacy of that kind of presentation can be dangerous if the witness is not credible or presents poorly.

Flip charts, whiteboards, enlargements, and trial boards can be manipulated by counsel during a presentation, or they can be used by the witness off the stand. Each method sends subtle but real messages to the jury: Who is exercising power and control in the courtroom? Who appears most knowledgeable? Does the lawyer trust the witness?

Most points can be illustrated various ways. This article presents more than 20 types and sources of exhibits, from raiding the kids' toy chest to hiring a professional medical or forensic illustrator. When you need help from a litigation artist, the thought you have given to the exhibit options is going to save, not waste, your client's money.

Most cases do not require a forensic evidence artist. Almost all cases, however, would benefit from having such a person help with the visual part of the trial presentation. Can you get

The fact that you can use a visual presenter does not mean that you *should* use a visual presenter.

the benefit of a litigation artist without blowing your exhibit budget? You bet.

Be upfront with the artist about budget constraints. The artist does not want to waste time on an uncollectible account, and he or she may have suggestions for saving money. Many artists create boards and illustrations on computer. Simply printing the high-resolution, oversized graphics is a significant percentage of the cost of the exhibit. Can you get by with a smaller printout? Will a slide or a computer graphic suffice? If so, you can reap the benefit of the visual message at a fraction of the cost of a large, foam board-mounted version.

The artist, like all good entrepreneurs, knows that client relationships are important. For once, the lawyer is the client. This case may have a tight budget, but the next matter may offer greater profit. Most litigation evidence firms will work with you to develop an ongoing relationship and repeat business.

Know the story you want to tell, and compile the key facts before the artist begins work. Almost all boards need some degree of revision. When the message of the case has not been

thought through or the content of the boards has not been collected, there will be more drafts, more revisions, greater investment of artist time, and greatly increased costs.

Having said that, however, do not merely dictate to the artist the picture you need or detail the specific graphic board or time line. Tell the story of the case and let the artist respond to the message. This is important for two reasons. First, the artist is likely to have a better idea of how to make a visual impact than will the lawyer. That, after all, is why the artist pursued art.

Second and more importantly, the artist will perceive issues differently than will the lawyers, experts, and others with vested interests and long histories of involvement with the conflict. This new insight is extremely beneficial. First, the artist is perceiving the case through the lawyer's verbal storytelling. If she is confused or dubious, it is likely because the verbal message is not clear or is ineffective. Second, she is providing a first impression. A jury will perceive the case more like the newly involved artist than like the lawyer and others who have had time to rationalize and justify their viewpoints. Finally—and at the risk of overgeneralizing—the artist is more likely to process the case emotionally rather than analytically. That is especially valuable because many jurors will do the same.

Think about every visual theme, document, photograph, chart, or illustration that is important to understanding the client's position. Brainstorm with the artist about other visuals and demonstrations that might help. Then determine how each item can be presented. Which materials will benefit most from being professionally prepared? Will a witness's key admission be most effective if handwritten on a flipchart or projected on a transparency instead of simply enlarged? Will a stock medical illustration be just as helpful as one that is custom drawn? Can a commercially available model show the product as well as a custom version? If not, can the illustration or model be modified instead of having to create an entirely new exhibit? The answers to these questions tell you which materials need to be professionally prepared. You will have saved your client's money by spending it carefully, purposefully, and wisely.

Whether the choice of a demonstrative exhibit is dictated by budget or by careful consideration, it still needs to be used effectively. Trial graphics and exhibits have many purposes. They establish themes, provide focus, improve recollection, provide context, buttress credibility, break up monotony, evoke emotion, establish subliminal themes, save time, and convey an image of control and competence. To understand the point, think about graphic presentation in a more familiar setting—the media.

Television executives know that talking heads are boring. So we almost never see just a news anchor speaking to the camera. Labels and graphics are displayed under the anchor's face, photographs and icons are shown over the speaker's shoulder, and after only one or two sentences of introduction, the television screen cuts to a live feed or prerecorded video. On the rare occasions that an anchor speaks for more than three or four seconds without additional graphics, the camera will slowly pan through different angles or bear in to a tighter frame. Some of the graphics are integral to the news story. But most are employed for other reasons: to provoke an emotional or visceral reaction, to establish a context for the story, or just to provide visual variety and interest.

Similarly, newspapers and magazines use graphic devices extensively. Some photographs, charts, and illustrations explain a story. But others serve primarily to punctuate a specific point or even to break up the article visually. White space, graphic elements, charts, and photographs make communication more effective for lots of reasons. They help organize the page. They break up the information into easily digestible packets. They engage different methods of learning and understanding.

Effective lawyers use visuals for the same reasons: context, background, variety, emotion, and education. These are the building blocks of persuasion. The media have built a vocabulary of visual communication. Most of us are passive consumers of these images, not paying attention to their subtle and pervasive influence on how we perceive a message. As trial lawyers we need to become more aware, so that our communication speaks the vocabulary of our audience. And our audience's vocabulary is increasingly visual.

Paying attention to media's use of graphics will pay dividends in court. *USA Today* excels at packing information into clear, easy-to-understand charts, graphs, maps, and pictures. *Newsweek* artists illustrate confusing accounts of military campaigns, hostage rescues, and criminal schemes in a way that brings order and simplicity to complex events. When *Time* magazine illustrators tackle a medical condition, save the picture. It will be dramatic, educational, and understandable. Learn from their examples and build from their style.

The lawyer who fails to develop some awareness of visual and graphic imagery will waste money and lose cases. Ineffective exhibits or overdependence on consultants and experts to develop trial strategies and evidence can end up wasting money. Cases can be lost because other lawyers more effectively present their clients' message. Effective use of visual exhibits, however, can win cases and save money at the same time. □

