

## The 3 Cs in Using Visual Aids to Tell Legal Stories: Communication, Credibility and the Central Image

by Amy Pardieck

Many attorneys are masters of verbal presentation; however, in most litigation, words are no longer enough. Jurors are reluctant to take anyone's words at face value.<sup>1</sup> When only listening to oral presentations, jurors develop unanswerable questions, suspicions or alternative explanations, of which neither they nor attorneys in the case may be aware. When words are supported by visual aids, jurors experience consistent communication in two channels: auditory and visual. Consistency builds credibility and comprehension.

The trial of a case is, in its simplest form, telling a story jurors can understand.<sup>2</sup> Some attorneys believe good storytellers don't need visual aids, as in the days of radio, when we used our imaginations to conjure pictures to go with the stories.<sup>3</sup> Today's audiences, however, are accustomed to spoon fed images. When we communicate with one another, the communication is multi-dimensional. We see, hear and feel in many contexts and on multiple levels, but visual communication has become more prevalent and powerful. Visuals are delivered via screens: computer screens, TV screens, movie screens, even cell phone screens stream rich colors and images.

Visual images are now a key component in decision making. Advertising companies capitalize on this decision making process in creating commercials: heavy on images, sparse on words. Product decisions are influenced when stored images from advertisements or televisions commercials are retrieved at the opportune buying moment. In the same way, when jurors reach the deliberation room, imagery determines what is recalled and the meaning those recollections have. The goal is to create strong images with corresponding verbal messages that are easily stored and retrieved.

Constant inundation of visual stimuli means that when appropriate visual images do not accompany the verbal story being told about the case, jurors' memories will fill in with available images retrieved from personal archives. These random images are unlikely to be constructed from the words heard about the case, as in the radio era, but stem from images on the most recently viewed screens. There is a high risk that jurors will link the case to images from American Idol, personal texting, Iraq, the election or whatever is current. If lawyers don't want jurors filling in the blanks in their mind's eye with the most immediate images provided by the media, they need to adapt.

Using technology effectively in the courtroom provides a method of visual communication to accommodate the needs of today's jurors. A high-tech presentation, however, is not synonymous with strong visual communication. Technology can clash with the human touch when used to display disparate facts, or when the presenter is clumsy with the hardware, or when PowerPoint slides are too wordy or full of bullet points. Written words are not processed visually like images, but rather auditorily, as if heard. Technology can also turn off those less technically inclined when used without consistent meaning or context. Technology is an effective communication tool when used to show and tell a story consistently.



## COMMUNICATION

The first question: What story does your side want to communicate? Start by showing jurors images on demonstrative aids illustrating the big picture and use exhibits as supporting details.<sup>4</sup> The demonstratives portray the story and give meaning to the facts in the exhibits. Exhibits without demonstratives are facts without meaning.

Many attorneys show jurors facts on the exhibits first and the story points on the demonstratives second, if ever, without appreciating that only lawyers think that way, i.e. facts first, story second. Jurors base their decisions on the story first, and “filter” the facts they see and hear based on the story they have constructed in their heads about the case.<sup>5</sup> “Filtering” is commonly called “selective listening.” Selective listening is much less dangerous when jurors are not dependent on only “listening” to learn the story.

A visual story shows the major characters and minor characters, major actions and minor actions, time and place. It is not advisable to include all the facts, details or information in visual aids as too many visuals can confuse or overwhelm jurors. One image for every major story point in the case is ideal. The major story points vary case by case, but may include: the rules or standard of care, risks, locus of control, relationships, time frames, the right way compared to the wrong way, wrongdoing, causation and consequences. A minimum of three demonstrative aids is advisable: one each for the beginning, middle and end of the story about the case. Demonstratives should not be, but too often are, composed of material that is easily available -- for example company manuals, websites, accident reports or medical records. The best starting place for constructing effective visual aids is learning the story that your side wants to communicate.

By showing jurors visuals, the trial team controls the visual stimuli to which juror attention is directed. Each demonstrative should ideally have approximately the same number of exhibits supporting it; balancing the number of exhibits per demonstrative helps decision makers weigh the corresponding significance of the story's points.

The second question: Do the visual aids provide an overview of the story? Visual aids are not a substitute for live storytelling. They should assist jurors' understanding of the story and serve as a lens through which the jurors can view the evidence. The visual aids should be self-explanatory. If the images require explanation, they are not doing their job. The audience should be able to grasp the essential story by reading only the titles.

The last question: Do the visual aids hold the audience's attention? Attention spans are prolonged by use of effective visual aids, by offering variety to the conscious mind. As our conscious minds are open to only one channel at a time, we can stay engaged by moving between the visual and auditory channels. Our unconscious minds leave all channels open all the time and can compute more information at each moment than our conscious minds.<sup>6</sup> In terms of quantity, aim for five visual aids per 15 minute segment.

## CREDIBILITY

While jurors believe what they can clearly visualize, this visualization is dependent on the relationship between attorney and juror. When attorneys develop rapport with jurors, they enhance jurors' receptivity to seeing, hearing and feeling communication. This is the first step in building credibility and opening their eyes and ears to the story. Without rapport, a wonderful story falls on deaf ears and blind eyes. After establishing good rapport, the attorney must be ready to deliver a story worth seeing and hearing.

Check the opening statement, and the key witness testimony for language and images that appeal to the senses. These are elements such as color, light, climate, heat/cold, sizes, proportions, movements, speed, volume, sound, pressure, touch, taste. What does pain look like? What color and temperature is it? Bring critical anecdotes to jurors through at least two of their senses: visual and auditory. The critical moments are the ones jurors must remember in order for your side to prevail.

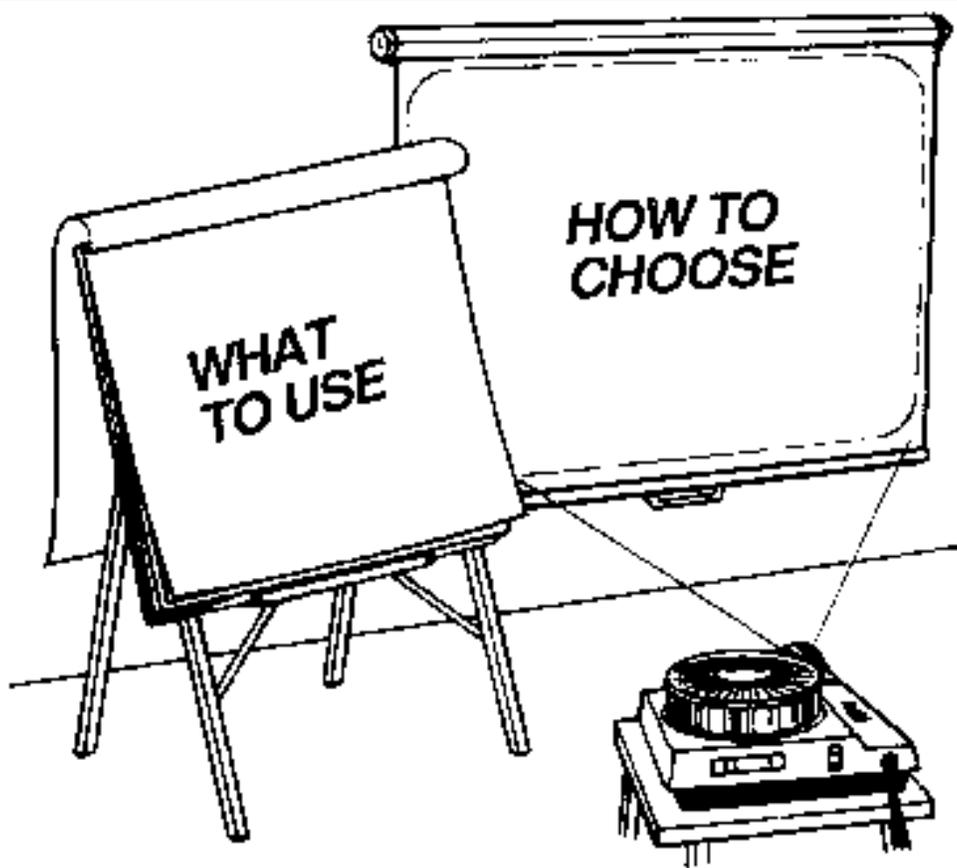
Through technology, visuals can be delivered in the opening, and reinforced on direct and cross examination of witnesses as well as closing arguments. Include input from experts and laywitnesses on the content; their credibility is reinforced when they testify on the stand that they participated in the development of the visual aids. Credibility is lost when visual aids are only used in opening and/or closing, by indirectly suggesting that the witnesses do not support them.

Credibility is enhanced by a united visual front. All visual aids of the story can be united by using the same background color and style for each, as well as using the same size, font and location for the titles. The titles do their job best when jurors can grasp the focus of the story by reading only the titles.<sup>7</sup> Against this consistent background, the content of each slide should be varied enough to hold audience interest.

Credibility is diminished when attorneys try to substitute easily available photographs, manuals, CVs, documents or even clip art for images that have been created to capture the real essence of the story. These items are helpful factual exhibits, but are often meaningless in the absence of images that summarize the overarching importance of the individual items. Use of factual exhibits alone invites jurors to focus on details alone and miss the larger significance of the story.

## CENTRAL IMAGE

At the heart of every case is a Central Image.<sup>8</sup> This is an image that the whole story presented in the case supports. The central image is a carefully selected visual portrayal of the theme, the primary image, based on the facts, that we want the jurors to imagine and that reinforces our case theme. Research demonstrates that pictures are remembered better than words.<sup>9</sup> However, memory is also dependent on the message accompanying a picture, the



message that gives the image meaning. Therefore, the theme and central image go hand in hand. Only demonstrative aids and exhibits that support the theme belong in trial, otherwise they are distractions.

In a recent plaintiff's case, the central image was an x-ray of two pedicle screws, visually underscoring the key elements of the case: the correctly placed screw that met the standard of care appeared next to the incorrectly placed screw crushing a nerve, and the image showed the total number of opportunities the defendant doctor had to see and correct the problem. The theme was: "Medical Responsibility: to Help, not Hurt". This theme and image injected control, awareness and the responsibility of the defendant doctor as key elements early in the presentation.

Another example is a defense case in which the injured plaintiff sued a cement company alleging failure to maintain one of their trucks. The central image was a map comparing the shortcut the plaintiff driver took with the safer route the defendant company recommended to the plaintiff driver. The shortcut used a hazardous road leading to the accident scene, and simultaneously exemplified the plaintiff's many poor choices that jeopardized his own safety, without having to directly point fingers at the injured party. The theme was: "*Where* are the facts?" At the accident scene. With the primary setting, action and main character miles from the company or its recommended practices, any facts about company responsibility that could possibly support the plaintiff's claims were hard to find.

The most persuasive central image comes from the most pivotal action, place or circumstance in the story. That might involve a comparison between right and wrong practices, between reasonable and unreasonable actions, or between the mechanism of injury and alternatives. The locus of control is usually directly or indirectly defined in the central image, as well as the setting in which our story takes place. The central image is usually one which many witnesses can support, whereas only one witness may be able to testify to other images on the demonstrative aids.

Without visual aids, a juror cannot see the dangers in the driver's shortcut or feel the pedicle screw crushing the nerve. Words alone minimize these experiences. Visual aids bring jurors one sense closer to the topic. Engaging the senses invites jurors to experience the shortcut leading to the accident or endure the pain from the screw. This can affect jurors in one of two ways: a juror has a micro-experience of the event him/herself, or a juror remembers the event more clearly. Both are desirable outcomes compared to the alternatives of this event blending in with others without standing out, or this event being distorted by associations with personal experiences.

Having selected an effective central image, fully present it in the opening statement. In the example with the two pedicle screws above, fully presenting means jurors see, hear and feel what is the same and what is different about the two screws. Pictures, sounds and feelings are engaged to give jurors the full sensory effect.

Avoid telling the audience the significance of the central image. Instead, allow them to attach their own personal significance to it. If lawyers try to tell jurors the importance of the central image, there is a tendency to reject the lawyer's meaning. Many advertising campaigns employ this approach. They provide potential customers samples and a good experience without the sales pitch. Focus groups and mock trials facilitate testing central images to make sure they are noticed and have the desired persuasive qualities on the audience.

## CONCLUSION

There are numerous advantages in using visual aids to show jurors the story, including but not limited to: increased retention by the audience, streamlined presentations and expedited proceedings. More importantly, "show-and-tell" is always better than just "tell," regardless of the audience. Telling a visual story increases the chances of a

favorable outcome, and is best viewed as an essential part of the strategy for presenting the story about a case to any jury panel, mediator or judge.

### Notes and References

<sup>1</sup> This article refers to jurors as the primary audience; however, these concepts and strategies apply to all legal decision makers: judges, opposing counsel, opposing party, insurance adjustor, mediator, arbitrators, etc.

<sup>2</sup> Gerry Spence, Defrauding our Nation's Lawyer's, <http://gerryspence.wordpress.com/2008/07/28/defrauding-the-nation's-lawyers/> (last visited August 5, 2008).

<sup>3</sup> Jim Perdue, Winning with stories 6 (2006).

<sup>4</sup> Eric Oliver, Facts Can't Speak for Themselves 372 (2005).

<sup>5</sup> For further discussion on filtering see Amy Pardieck, I Can See What You Are Saying, 29 Verdict (3) 51 (2007).

<sup>6</sup> Genie Laborde, Influencing with Integrity 51 (1994).

<sup>7</sup> Cliff Atkinson, Beyond Bullet Points 5 – 8 (2005).

<sup>8</sup> Eric Oliver, Inside and Outside the Courtroom: Effective Trial Strategies, ILICLE Chapter 3, 1- 35 (2006).

<sup>9</sup> Weldon, M.S., & Roediger, H.L., III. Altering retrieval demands reverses the picture superiority effect. Memory & Cognition 15, 269-280 (1987).

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The September edition of *The Jury Expert* unveils several firsts: our first reader-requested feature (on preparation of narcissistic witnesses); our first law student author (Jason Miller on buffer statutes); our first author from the Netherlands (Fredrike Bannink on solution focused mediation); our first article on training law students (the DePaul program); and our first Favorite Things (we couldn't choose just one). Help us stay fresh--send in your wishes for upcoming issues--what would you like to see? Tell [me](#)...we'll see if we can make it happen.

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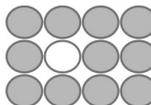
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