

# Managing the Message: Visual Case Presentation

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*"We are never prepared for what we expect."*

James Mitchner

While bordering on the whimsical, James Mitchner's comment on human behavior is particularly relevant when it comes to those who make their living and their reputations in the legal arena. There is little doubt that our world is changing, and changing rapidly. So why are we so slow to adapt to the changing world around us?

The legal profession is steeped in tradition, and because it is governed by well-established procedure and protocol, it is increasingly important for attorneys who prepare for and litigate cases to be aware of the changes that are taking place not only within the legal profession, but in the world beyond the courtroom as well.

We live in a highly technical and fast-paced world where we are constantly assaulted by mountains of information during every waking moment. This information comes to us in many forms, much of which—aside from the legal profession where information is most often exchanged in black and white, line-numbered pages—is visual. How human beings process information and how we make judgments, choices and decisions goes well beyond document review. Remember, humans have been visual animals much longer than we have been literate animals.

Another thing to consider is the wide range of cultural and language diversity that exists in this country. In Los Angeles, for example, there are over 2,000 different languages and dialects spoken. Most cities, even in King County and other areas of the Northwest, are beginning to experience the same phenomenon. Virtually every jury is made up of people who, while they may communicate differently in their homes and social circles, may be more uniformly attuned to a single "visual" language. What we see, individually and collectively, leaves less room for interpretation.

Any case that may eventually go to trial must be viewed from the perspective of lay people, those who do not deal in page and line numbers. One must consider how they perceive and interpret complex information. As in any adversarial engagement, the side that is best equipped to meet and exceed the information processing needs and expectations of those who must choose between opposing views will be more likely to prevail.

Since the vast majority of information jurors deal with on a day-to-day level is predominantly visual, it is essential to translate the cold, hard words of the complaints, answers, depositions and key facts of a case into a presentation format that jurors are more familiar with and responsive to. It is also useful in demonstrating to opposing counsel in the alternative dispute resolution process why a jury might find a given

courtroom argument more compelling.

As in many highly technical fields of expertise or disciplines, attorneys often have a "trained incapacity" which could impede their ability to communicate in ways which are more compatible with the information processing preferences of triers of fact.

While understanding the facts and the relevant law are essential elements of winning trial practice, the bottom line is that the successful trial lawyer's most valuable asset is his or her ability to communicate, within the framework of the legal process, a clear and simple picture of the evidence and to illustrate a story that triers of fact can understand, believe, and ultimately act on.

Experience has taught us that the actual evidence is sometimes less important in the decision making process than the pictures and impressions that are formed in the minds of jurors about what the evidence represents. In other words, help them to understand the evidence clearly and in a meaningful way.

In law schools, the methodologies of 50 years ago still dominate and, as a result, we often see weak cases prevail and strong ones fail because of the lack of understanding and/or application of some of the most basic rules of visual communication. It may be worth assessing how much time is spent "thinking visually," or spent exploring the many conceptual and technological advantages available to attorneys. Perhaps too little time is spent creating a presentation design strategy that tell as compelling story visually. A good visual story may incorporate both conventional and innovative elements that, blended thoughtfully together, can provide a significant advantage.

While some attorneys want to avoid a "slick" approach, today's jurors operate under a very different set of expectations than jurors of ten, or even five years ago. The world we live in is highly visual, colorful, electronic and interactive. We are accustomed to a world where a multitude of ideas and images are competing to grab and hold our attention. Hi-tech and highly visual information production and delivery is an increasingly important dynamic of our culture.

Today's jurors often see what was once considered to be conservative and straightforward as mechanical and boring. Jurors today are seldom offended if an attorney uses a laptop or PowerPoint presentation as long as it helps them more clearly understand the issues they will be asked to judge. Furthermore, judges and jurors alike appreciate the efforts of attorneys who use effective tools to get to the bottom line quickly and clearly, thus reducing the number of hours they have to sit captive in the courtroom.

Even in small cases that may not demand or support more sophisticated, hi-tech presentations, careful consideration of what visual concepts to use and how to most effectively and economically encourage involvement and mold juror understanding is a must. In the

world of litigation, no case is too small to lose. A favorable verdict or outcome, being the ultimate objective of all good trial work, demands adopting new attitudes about how information can be presented, both in trial as well as before trial. Employing the basics of information design, even on simple exhibit boards, that are consistent with jurors' perceptions of the world they live in, provides an advantage that is often forfeited by attorneys who don't take the time to consider the impact such images can have.

Here are a few suggestions on how to make case presentations more interesting and powerful, for both settlement and the courtroom:

- Plan early
- Think visually, or work with someone who does
- Familiarize yourself with new tools and presentation strategies
- Think "tailor-made" instead of "off-the-rack" in designing your case
- Concentrate on managing the "impressions" formed, not just the facts
- Simplify, simplify, simplify the message
- Think beyond black and white and plain text
- Don't be afraid to ask about new ideas, tools and methods
- Avoid the rush and "rush charges" by allowing enough time to complete work that may require more time (such as video, animations and models)

Research suggests that approximately 87% of information presented visually is retained. But, even at that, simply putting up a picture, one that is not carefully selected and prepared to support a specifically designed trial objective, may not produce the benefits desired if it does not contribute directly to the clear understanding of the intended message.

The use of carefully crafted, high-impact visuals produces in jurors what psychologist and philosopher Eugene T. Gendlin called "felt meaning" which, he suggests, precedes logic and may be more comprehensive than thought. Getting a jury involved, or letting opposing counsel know, before trial, what the jury will see, produces indelible impressions that will weigh heavily in the decision making process, whether in settlement proceedings or in trial.

In assessing why attorneys often fail to take advantage of increasingly powerful tools and technologies, it is evident that what attorneys probably fear most are the costs, such as consulting, presentation design, and testing. Traditionally, as attorneys consider what exhibits and visual tools they will use in settlement or in trial, the costs associated with such exhibits are placed in the "expense" column. Since neither attorneys nor clients like to think about the costs of litigation, getting the best visual tools usually ends up near the bottom of the list of things to do, and generally comes into play only at the last minute, without the kind of thought and plan-

ning it takes to get the most out of visual enhancements. Additionally, attorneys often don't seem to have the time to consider the visual message among all of the other tasks of preparing for trial. However, by involving people who are skilled and experienced in visual communication, a great deal of the burden can be lifted and a more compelling story developed. Remember, a good investment, both in time and competent support, may yield a very welcome return.

When one considers the elements of success, no matter what the context or contest, it is the small "increments of advantage" that can make the difference between triumph and disappointment. In the Olympic Games, the difference between the Gold Medal and the also-rans is often less than one hundredth of a second or a fraction of an inch. In trial, the smallest nuance can mean the difference between creating an indelible impression or leaving an important increment of advantage on the table. In today's trial work, one reality is that exhibits and presentation technologies cost money. The parallel reality is that good exhibits work.

Winning presentations can be cost effective. Choosing an experienced support provider and applying a few simple principles of good communication and good planning can help solve time and expense problems, and perhaps maximize the return on investment. Every attorney's client deserves, at the very least, to be made aware of the best tools and resources available. When the client understands the potential benefits of such tools and resources, he or she can participate in making the financial decisions that will best suit the case, and will appreciate the added value of the attorney's willingness to explore all of the options.

Remember the saying, "A picture is worth a thousand words"? While there is no question that visual exhibits can persuade and reinforce important theories and themes, the real questions become, "What makes a winning picture?" and "How much is a winning picture worth?"

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