

The Top Ten Mistakes Made in Demonstrative Evidence

By Edward M. Josiah

Appearances and first impressions count in everything that we do. In trial work, first impressions are often influenced by the visual aids used to “sell” your case. Studies consistently show that visually reinforced information is easier to understand and remember. Demonstrative exhibits offer a unique and important way of influencing jurors, but unfortunately are not always designed or presented in ways that maximize their impact. There are two basic demonstrative groups or types of exhibits being used today; court boards and electronic exhibits. The mistakes made in the formulation and design of both are similar but yet distinctly different. Part I of this article will explore the top ten mistakes made with regard to court boards. Part II focusing on electronic exhibits and will be in the next newsletter.

1. **Confusing charts and graphs** –Charts and graphs must convey a clear and understandable message. Just as drivers do not back up on a highway to read a sign or billboard, jurors do not linger very long over a demonstrative exhibit. The message must be conveyed instantaneously, require little thought and should supply information in the form of themes and conclusions rather than pure data. The more data you add, the less affective the exhibit will become.
2. **Presenting too much information at one time** – A summarized CPM schedule with 60 to 70 activity lines is not uncommon for most construction litigations. A juror looking at that schedule will most certainly tune out – too much information to process at one time. The problem can be solved by using overlays to separate the activities and present the information in phases. This will keep the jurors interested and allow them to focus and retain the information presented.
3. **Using too many Document enlargements** – Is there a correct number? The answer is no, but there is a point of diminishing returns. Keep in mind that not every document needs to be enlarged. You should only be enlarging key documents; those documents that will make a difference in the case and/or prove a critical point. Depending on the size of the case, a general rule of thumb when using *court boards* is to keep the number of enlargements under 10.
4. **Last minute preparation of demonstrative exhibits** – an unfortunate but common practice that usually occurs because the case may settle. By waiting to the last minute, oftentimes there is a hysterical scurry to get prepared, steep premiums to pay the graphics company for a quick turnaround and the design of the demonstrative exhibits may get sacrificed for time.
5. **Wordiness in Timelines** – A very brief summary of a document or event along with the date and document number (Bates Stamp or exhibit number) is sufficient. This type of exhibit should not tell the story single-handedly. A chronology with too many words will overshadow the role of the attorney, causing the jurors to disassociate from that attorney and tune out.
6. **Dedicating too little time in planning the presentation of exhibits** - the result - time, energy and the expense of creating compelling demonstrative evidence is wasted if the presenter fails to make the exhibit come alive for the jury. The exhibits must be “owned” by the presenter and the message conveyed with conviction and enthusiasm. If not, the jury will not see the exhibit as part of the story and will not be swayed to the presenter’s vision of the case.
7. **Deceptive exhibits** – Exhibits are generally designed by artists, often with input from trial consultants to ensure that jurors understand better, retain more and are better persuaded by the information. A deception may be accidentally or intentionally created by the artist’s eagerness to design a creative image while not being aware of how the information is being distorted.
8. **Wrong use of fonts in charts and graphs** – What fonts are used and the mixing of font styles makes a difference and will affect how the jury views the exhibit.
9. **Wrong use of color in charts and graphs** - Color has subliminal meaning in most societies and the colors you use unintentionally tell part of the story and convey a message. Use the right colors.
10. **Using court boards when opposing counsel is utilizing a high tech presentation** –Being at such a logistical disadvantage compromises your overall message, as jurors will disassociate from the attorney whose presentation is unnecessarily prolonged and cumbersome.

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