

# Using Creative Demonstrative Exhibits

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After slogging through discovery productions to select key trial exhibits, do not forget to make time to create your own, unique demonstrative exhibits. Demonstratives allow your personality and thematic approach to the trial to shine and are a very important tool to help avoid a monotonous witness or jury presentation. And since today's jurors expect the "CSI factor," you will lose a key chance to keep the jury's attention—and persuade them—if you leave demonstratives out of your trial.

## Graphics and Images Help Convey Issues

Typically, a demonstrative exhibit serves solely as a visual aid to the fact finder for illustrating a point you are trying to make and does not have any probative value. A demonstrative can convey in one picture what 1,000 words cannot efficiently describe. You can use large, multicolor boards or, for small budget cases, PowerPoint graphics that can be displayed on video screens. If, for example, you want to show the rarity of a particular event, you might have a graphic depicting a large jar of jelly beans showing that only "one in a million" is different from all of the others. If you want to depict a negotiation, consider a graphic showing "the two sides" on opposite sides of a table, and perhaps an "excluded party" outside of the conference room trying to look in. The possibilities are endless. Courts have significant discretion to permit the use of demonstratives, and most look favorably upon them because they help convey simple or complex issues very efficiently.

The modern miracle of computer-aided graphic design can never completely replace traditional demonstrative exhibits such as an "old-fashioned" white board or a map. As impressive as that accident reconstruction computer animation you paid \$30,000 for is, it cannot sit on an easel in front of the jury for days at a time as multiple witnesses refer to it. Also, keep in mind that an expert sitting and talking about some esoteric point of science can bore the jury into a coma. Use demonstratives to help your expert be dynamic. Many experts are very comfortable working on their feet and are extremely good at explaining their points with illustra-

tions. Perhaps most important, if you plan to use a demonstrative with an expert or other witness, have him or her practice ahead of time to establish familiarity with the exhibit and the dynamics of the courtroom.

## Simplicity and Spontaneity Still Work

We always bring an easel and 40" by 60" pad of blank paper (sometimes called "butcher paper") to the courtroom. When making your opening, closing, or working with a witness, do not be afraid to sketch notes on the pad. If, for example, your case involves a special interrogatory on a fact issue, consider writing that interrogatory on the pad and ask the witness to check the Yes, No, or I don't know "box." (Hopefully you know the answer ahead of time!) If you are trying to weigh two sides of an equitable matter to a judge, consider dividing the paper in half and lining up the competing pros and cons. Preprinted demonstratives can work very well, but be wary of using too many of them. For example, if you want to establish a list of admissions from a witness, you might be tempted to use a preprinted board listing those admissions. On the stand, however, the witness may offer conflicting testimony. You may then be left with a confusing list that does not serve its purpose. A better approach may be to write the admissions down on the butcher paper, one at a time, as the witness makes the admissions.

For cases warranting a higher budget, you might consider conducting a mock trial and polling the jurors afterward to develop ideas for demonstratives that would have assisted them. Also test some demonstratives on the mock jury. For all cases, take time to create themes for the case and develop demonstrative exhibits that communicate those themes. Additionally, consult your clients as they are likely to be central witnesses and will have their own, very good ideas about the kinds of demonstratives to use.

Once proposed demonstratives are created, give them a practice run. Try your opening with the exhibits and make sure they fit within the flow of your presentation. When preparing a witness, show him or her the demonstrative to prevent surprise or confusion in court. Consider asking your assistants and other office staff to give you their impressions of the demonstratives. And lastly, if a particular exhibit is not working at trial, do not be afraid to take it down. If you have prepared, you will have your butcher paper and can improvise with something else! ❖

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