

from
LAWYERS
to
LAYMEN:

communication strategies for trial success

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INTRODUCTION

This is a big case. You are confident about your legal positions, but wonder if a jury will really understand them. By now, you are well aware that visual communication greatly enhances the ability to absorb, comprehend and retain new information. However, developing a visual presentation takes time and money. Is it worth it?

If you apply the basic strategies of information design, the answer is yes. Using information design you can clarify complex case issues while harnessing the power of visual communication to effectively generate your message in the minds of your audience.

Information design is distinct from graphic design. Graphic design is concerned specifically with elements of visual expression and style, such as illustration, typography, layout and color, while information design addresses the effective organization, structure and presentation of data. Information design does not replace graphic design, but is the structure through which graphic elements are best expressed.

Information design starts with the essential view that the vast amount of input inundating us every day is merely data. In litigation the process of discovery, research and expert investigation yields reams of case facts, dates and documents. This is not adequate communication in and of itself. To have informational value, it must be organized, transformed, and presented in a meaningful way within the context of your case themes.

Unfortunately, much of what is presented in courtrooms today is merely data. Data is fairly easy to distinguish. It is often boring, incomplete, or inconsequential. We often deluge our audience with data instead of information, leaving them to make sense of it and being perplexed when they don't.

Data is not meant for "laymen." For example, it is all too common to see jurors presented with an x-ray (Fig. 1), followed by a treating physician or expert's lengthy discussion as to what that piece of data shows. A more effective communication would be to prepare a medical illustration clearly conveying the details based on the expert's testimony (Fig. 2), taking the guesswork out of it for the jury while leaving them with a memorable image.

Other examples of data masquerading as communication are timelines that do not effectively show timing; organizational charts that visually do more to confuse than clarify; and slides of bulleted text that put an audience to sleep faster than a Brahms lullaby.

Successful presenters provide context and build meaning throughout their visual presentation. As information designers, we must constantly ask ourselves: What does my audience need to hear at this point in the story? Why should they care?

TRANSLATING DATA INTO COMMUNICATION: PRACTICAL APPLICATION

The basic approach is intuitive—transforming data into communication is accomplished by organizing it into a meaningful form, presenting it in direct and appropriate ways, and communicating the context around it. However, this is often easier said than done, especially in light of complicated case facts and testimony involving subject matter with which your audience may have little or no familiarity.

There are many resources for an in-depth discussion of the fundamental principles of information design. In the context of litigation, there are three general strategies for translating your facts and data into powerful communication.

DEFINE CONTENT & STORYLINE FIRST

Many attorneys are impatient and want to begin designing demonstrative exhibits right away, before a clear vision of their use is put forth. However, good visual exhibits are driven by content, not graphic design.

Defining content solidifies the goal of each visual—maximizing the exhibit's effectiveness while minimizing the cost and time drain of multiple revisions. Much like building a house, it is easier, cheaper and faster to make changes to the blueprint than it is to move walls once the house has been built. For visual communication, your "blueprint" is a planning format called a storyboard.

Storyboarding is simply the process of structuring your case facts and issues into a comprehensive storyline that communicates your case themes with just the right amount of detail. The resulting storyboard is a visual mock-up of every "frame" that will be contained in your case presentation from beginning to end. The storyboard lays out everything you plan to tell and show the jury about the issues they are being asked to decide. The story board should also show the jury why your client should prevail.

This process can consist of you at your desk with an outline of your case and a few sheets of paper; brainstorming with the trial team; working directly with a visual consultant who is trained in effective information design; or all of the above. Storyboarding does not have to be expensive or onerous, and the product of this step does not have to be a nicely resolved document—pencil sketches on a napkin will do in a pinch. The key element is the thought process involved in laying out your case from a visual perspective. A sample storyboard sketch is shown in figure 3.

In this asbestos defense case, a key message was that our customers received numerous pieces of information from several sources about the hazards of asbestos. In the storyboarding session the visual concept generated was to show a client surrounded by information. The visual was developed as a slide series (Fig. 4) with the actual documents called out as the attorney made his way around the circle. This exhibit series became known during trial as "the circle of knowledge," effectively reinforcing a key defense theme.

No matter how you decide to proceed, the storyboarding process is an important cornerstone of your case strategy. Ideas and arguments are solidified and refined through this process before any "graphics" are built. This will allow you to identify and stay true to the themes that your case facts support.

DESIGN FOR SUBSTANCE OVER STYLE

The courtroom is a different environment: you want your audience to think about substance rather than the graphic design or technology being used. Don't waste the jury's time showing them graphics that are more focused on the "wow" factor than on the "how" factor. For example, a detailed timeline may show all of the events leading up to the failure; but the timeline should be designed in a way that emphasizes key relationships and timeframes visually without requiring jurors to read each little entry.

The best way to avoid the "flash" perception is to minimize your graphic design elements so that the intended communication stands out. Clutter and confusion are failures of design, not failures of information.

Do not give your audience more information than they can realistically absorb and retain at any given point. If you're using an outside visual consultant, choose someone with experience in litigation and information design. Attractive graphics do not necessarily tell good stories.



Fig. 1 >



Fig. 2 >

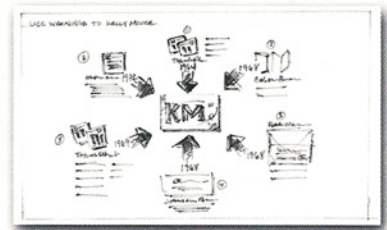


Fig. 3 >



Fig. 4 >

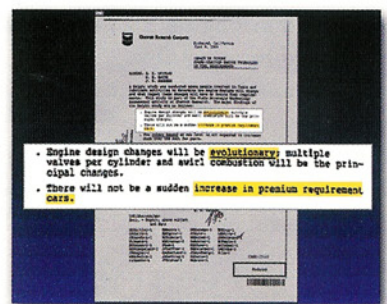


Fig. 5 >

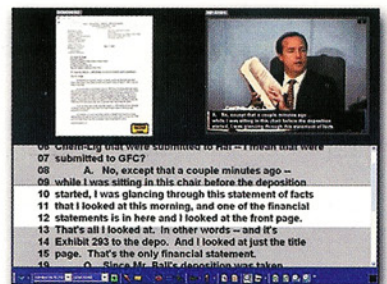


Fig. 6 >

With litigation communication it is important to minimize irrelevant detail and content. Ensure that your story is a cohesive one and that the visuals presented lead to a logical conclusion.

PROMOTE CLARITY VS. SIMPLICITY

The most important goal of effective communication is clarity. Clarity is not the same as simplicity. Simple things are clear only if the message is intended to be brief. Often in legal cases, the message involves a complex relationship that can only be presented with a necessarily large amount of data. The temptation to reduce data into "sound bite" chunks can render the message meaningless. Simplicity is often responsible for the "dumbing down" of information rather than the illumination of it.

Clarity requires focusing on one message at a time rather than attempting to accomplish too much at once. Complex issues can be made clear through effective organization and presentation. To ensure that your presentation promotes clarity, it needs to be:

- **Relevant:** immediately valuable and appropriate. What does your audience want and need to hear to return a verdict in your client's favor?
- **Clear:** easily integrated and understood. You must teach before you persuade, eliminating as many barriers to understanding as possible.
- **Memorable:** make an impact and leave a lasting impression. Your jury will hear too much information in too short a time, so the information you present needs to stand out and facilitate recall.

THE CASE FOR TRIAL TECHNOLOGY

Courtroom technology can further aid attorneys in effectively communicating their message. Today's computer hardware and software allows attorneys to present evidence in ways that couldn't be done in the past. With the touch of a

button or the wave of a bar code reader, it is possible to project documents, photos, video deposition clips (Fig. 5) and other evidence onto a big screen or multiple computer monitors for everyone in the courtroom to see.

It is no longer necessary to rummage through boxes of exhibits to find that crucial piece of evidence. Using trial technology, evidence can be organized and at your fingertips for instant access, allowing cases to be presented quickly and efficiently.

Once projected on the screen, evidence can be magnified, annotated or otherwise manipulated (Fig. 6). Witnesses are able to interact with exhibits using touch screens. All annotations can then be saved and printed for later reference.

Trial technology benefits attorneys, judges and jurors. Attorneys find that the use of technology helps them present evidence in a timely manner, control the information and win cases. Judges appreciate the use of technology because it can reduce the length of a trial by up to 50%. Jurors appreciate technology because it reduces time in court, aids in information comprehension and retention and helps them focus on the most important evidence.

Jurors are drawn into visual presentations. Jurors have adapted to processing visual information quickly because it surrounds them in everyday life. Jurors of today expect to see technology in the courtroom. Surveys have shown that jurors appreciate the use of technology by attorneys.

Technology in the courtroom should not replace classic visual aids. Easels and blow up boards are still very important in the courtroom. Blow up boards make excellent "anchor" exhibits. For example, a "cast of characters" board can list the case's important parties and witnesses. Another example of an anchor exhibit is a timeline board that aids the jury in keeping track of when important events in the case occurred.

Other types of exhibits are most effective if they are given to the jurors to hold or feel. Attorneys shouldn't abandon these old ways just because of new technology. Technology merely supplements tried and true presentation methods and strategies.

Although technology can greatly help your case, it should not hinder communication with the jury. Attorneys should avoid using technology to the point of distracting the jury by showing too many annotations or exhibits.

It is important to keep it simple. It is not necessary to use all available technology just because you can. Attorneys should determine what technology best suits the case's needs and use no more than is necessary. Used correctly and in conjunction with old fashioned methods, trial technology can gain an attorney the appreciation of the judge and jury and greatly increase the effectiveness of the presentation.

SUMMARY

Juries today are technically savvy and less patient. In order to prevail you must cut through the noise of the extraneous—the best results come in presenting information that does not require your audience to work for it.

You may incorporate some of these steps and procedures already in your preparation thought process. Stay focused on what is important and remain mindful that data is not information. It is a challenge to create visual communication that successfully accomplishes its goals with definite relevance, clarity and memorability. Incorporating these strategies and effectively using current technology makes it far more likely that you will achieve success.

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