

Critical Tool Gives You an Edge

By Alexander Cianfrocco

The most effective and efficient means to persuasively convey your message.

Visual Communication for Trial Success

Let's face it. When it comes to taking a case to trial, we're all looking for an edge over our opponent. In a defense case, this is even more important because the plaintiff has the benefit of presenting his or her case first.

What if I told you there is a proven way of presenting your case that will make it more persuasive, more easily understood, and more memorable for your jury, giving you that extra edge over your opponent? The use of visual communication, often called trial graphics in the litigation world, can provide this edge. Effective visuals grab an audience's attention, simplify complex issues and relationships, and aid retention of your key points. Visual communication helps you to tell the story of the case in a persuasive manner, giving the audience a reason to care and to listen more carefully to what you have to say.

This article will explore the shortcomings of a verbal presentation, how visuals can benefit your case, and how effective visual communication can be created. We will address some common misconceptions about the use of visual communication in a litigation context. Although reference throughout the article will often be made to a jury as an audience, visual communication is beneficial in all litiga-

tion settings, including bench trials, arbitrations, mediations, motions, and even expert reports.

Words Alone Are Not Enough

Historically, lawyers have primarily presented their cases to judges and juries in a verbal fashion. As we have gained a better understanding of human nature and the brain, we have learned that verbal presentation isn't always the best way to convey information. In fact, human factors research has shown that the majority of people are actually visual, as opposed to auditory learners. We process visual information more efficiently. New ideas, information and concepts are associated with images in our minds or through what we see. Since the majority of us think visually, and most attorneys present their cases verbally, a significant communication gap can develop between you and your audience. Visual communication can bridge that gap and assure that the fact finder hears and sees your case in the way that you intend



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the information to be received. In addition, since today's jurors tend to be very media savvy, sound-bite trained and, therefore, easily bored, words alone are not enough.

We've all heard the saying, "A picture is worth a thousand words." Although a cliché, it is still very true, especially in the courtroom. Here is an example I often use during seminars. I tell my audience, "It's a nice sunny day. A family is basking in the sun next to the water. Their skin is pale and freckled. They look over at the camera..." and then I stop talking. Based on these words everyone creates an image in their mind's eye—the visual for this story. We do it automatically, without even realizing it. At this point, I project a photograph onto a projection screen. It is a picture of three seals basking in the sun on a log near the water. Is this what you were visualizing? If I painted a family picture for a roomful of people, would any of them share the same visualization? Now imagine what it must be like for the jury in a complex case. Each person may visualize a different scenario when the facts are presented verbally. Difficulties will naturally arise during deliberations, when jurors discuss and defend different perceptions of the case.

Words can create ambiguity in the mind of the listener, since words have different meanings to different people. Further, when we receive new information, we interpret and filter it based on our own life experiences and perceptions. If an audience is left to fill in the images for itself, it can obviously lead to vastly different understandings of the information. When presenting a case, then, we have two choices: to make sure we painstakingly verbalize our story with detail and accuracy, so that nothing is left to the imagination; or to reinforce our main points with visual communication that puts everyone on the same page.

Imagine what would happen if I had shown an audience the picture of the three seals first, and second, verbally described the sunny day by the water. The ambiguity of the words is removed, and we avoid the perception filter. The communication is more concise and more interesting. And when the jurors deliberate, they will be able to communicate more clearly because they all received the exact same information presented and organized in the same manner.

Figure 1

Month	S9 Series			6 Series			Total S9 and 6		
	Total Units	Total Sales	Avg. Unit Price	Total Units	Total Sales	Avg. Unit Price	Total Units	Total Sales	Avg. Unit Price
May-01	154,980	\$39,386.40	\$0.25	838,943	\$214,454.79	\$0.26	993,923	\$253,841.19	\$0.26
Jun-01	192,026	50,354.05	0.26	1,820,504	458,127.66	0.25	2,012,530	508,481.71	0.25
Jul-01	135,771	34,094.54	0.25	2,258,957	547,510.69	0.24	2,394,728	581,605.23	0.24
Aug-01	130,986	33,427.30	0.26	1,393,368	334,996.22	0.24	1,524,354	368,423.52	0.24
Sep-01	224,853	56,566.51	0.25	2,432,876	568,936.30	0.23	2,657,729	625,502.81	0.24
Oct-01	520,077	122,940.79	0.24	2,782,738	695,147.36	0.25	3,302,815	818,088.15	0.25
Nov-01	570,298	129,702.47	0.23 [1]	2,337,845	561,426.50	0.24	2,908,143	691,128.97	0.24
Dec-01	411,175	90,506.96	0.22	2,091,823	531,887.60	0.25	2,502,998	622,394.56	0.25
Subtotal 2001	2,340,166	\$556,979.02	\$0.24	15,957,054	\$3,912,487.12	\$0.25	18,297,220	\$4,469,466.14	\$0.24
Jan-02	648,518	\$143,405.63	\$0.22	3,320,198	\$768,828.40	\$0.23	3,968,716	\$912,234.03	\$0.23
Feb-02	327,199	72,000.57	0.22	2,613,050	603,248.20	0.23	2,940,249	675,248.77	0.23
Mar-02	385,550	82,118.60	0.21	3,257,755	742,576.56	0.23	3,643,305	824,695.16	0.23
Apr-02	497,800	107,342.20	0.22	2,843,040	686,602.18	0.24	3,340,840	793,944.38	0.24
May-02	542,800	118,768.00	0.22	3,530,126	810,159.63	0.23	4,072,926	928,927.63	0.23
Subtotal 2002	2,401,867	\$23,635	\$0.22	15,564,169	\$3,611,414.97	\$0.23	17,966,036	\$4,135,049.97	\$0.23
Total	4,742,033	\$1,080,614.02	\$0.23	31,521,223	\$7,523,902.09	\$0.24	36,263,256	\$8,604,516.11	\$0.24

Notes:

[1] The per unit cost detail was not provided for UST-S9 (part number not provided), therefore the \$600.00 sale of the 2,000 units is excluded from our calculations.

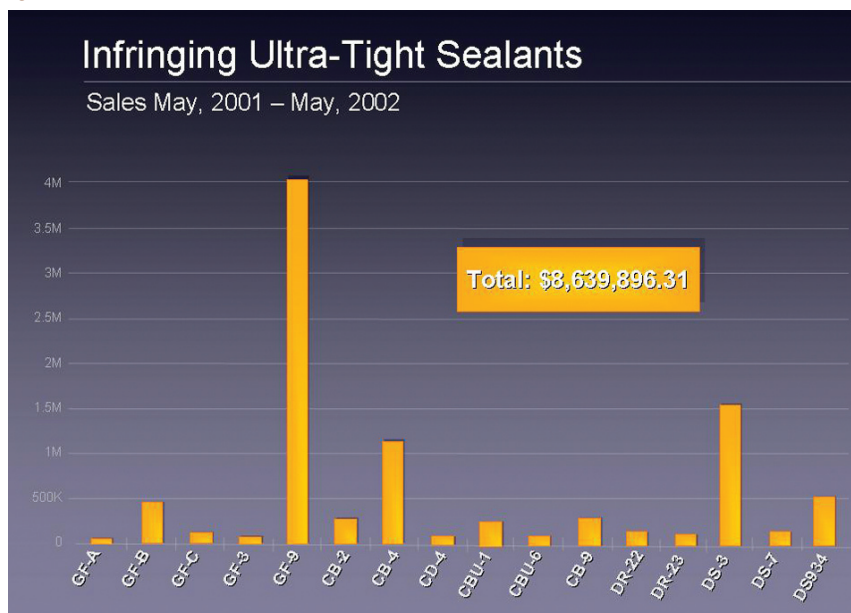
[2] The average unit price calculation excludes those units associated with a unit price of \$0.00 as well as all intercompany sales.

Sources:

[a] Intercompany Sales and Sales of Products Priced at \$0.00 [Attachment D]

[b] S9 and 6 Series Sales Database [Attachment E]

Figure 2



Using Visual Communication to Win Cases

Understanding that verbal presentation is not usually the most effective way to convey information, we can now discuss the main benefits of a visual presentation.

Transform Data into Communication

It is important to understand that merely providing your audience with data visually does not necessarily effectively communicate anything. Data consists of raw

facts and figures that make little sense until given context and presented in a meaningful way. Figure 1 is a table of damages in a patent case. We've probably all seen similar tables presented in cases before. This is an example of data. Without being organized, translated and presented in a meaningful way, data is of little value. It tells the jury nothing on its own—it must work for the information. Data can be overwhelming, and when your audience is overwhelmed, it will stop listening.

In Figure 2, look at that same data transformed in a way that communicates the damages claimed. In this graphic, we use bar comparisons to effectively show the level of damages caused by each infringement. Notice how easy it is to see the unit with the most infringing sales. Further, the communication is crystal clear: There were over \$8 million in damages.

Control the Message

Your case isn't just made of up of facts, figures and documents. There is a story about what happened, and how we got here. The jury wants to hear that story. When people receive new information, roughly 95 percent of listeners organize the new information into a story, the elements of which include an assessment of what *really* happened, a determination of motive, and characterizations of the players as generally "good" or "bad." When the case is presented in an unorganized fashion, each juror will make up their own story to make sense of it all. This puts all of the work on the jury, while creating the risk that its final, collectively constructed story may not align with your desired outcome. A visual presentation provides the perfect framework to organize and present your case information in a way that tells a story and allows you to control each element, including the message. If you outline your story visually during the opening statement, it gives the jury a road map for making sense of new information learned throughout the case. The visual presentation used during closing argument reminds the jury of the key points it has seen and heard, and confirms that your story—your interpretation of the facts—is the most credible one.

Teach Complex Facts or Issues

Visual exhibits are excellent tools for teaching the jury about complex relationships, processes or issues. We can avoid the tendency to dumb down complex issues, as visuals provide the ability to "teach up." Part of the attorney's role is to teach the jury. The jury wants and needs to learn about the facts and important issues in the case. It needs to have enough knowledge to make an educated decision when it deliberates. It is important to remember that if the jury can't understand an important part of the case, the jurors are not at fault. A jury's

understanding depends on how the information is communicated to it.

Effective organization and presentation can clarify complex information for the jury. The goal isn't to make it simpler but to provide clarity—by focusing on one message at a time rather than attempting to provide too much information at once. For example, using motion, "builds," and consistent graphic icons and color coding, information can be communicated in a way that allows the jury to digest the individual pieces before taking on the whole. This, in turn, allows it to see the interrelationship of different facts and bits of testimony so that it can draw the right conclusions when all of the evidence is in.

Reinforce Important Points

As already noted, we know that people process information more effectively with visual input. They also remember information more effectively when reinforced with visuals. It is often said, for example, that although jurors only retain 15 percent of what they hear alone, they retain 85 percent of what they both hear and see (Frederic I. Lederer, *An Introduction to Technologically Augmented Litigation*, December 8, 1997). With visual communication, you can cut through the noise of extraneous information to focus on what is most important for your audience to remember. Linking important concepts with icons or images allows the audience to create a lasting association that will aid in recall later. You can reinforce key points by leaving them on the screen for a period of time or by using common images consistently throughout the presentation.

Creating Effective Visuals for Trial

So now that we understand the shortcomings of a verbal presentation and the benefits of a visual presentation can we start to make graphics? Not so fast. First, we need to focus on *what* needs to be communicated before we can make smart decisions on *how* it will be communicated. Great graphics are driven by content, not design. By first defining the content, we solidify the goal of each visual aid, which maximizes its effectiveness. The process includes identifying the best case story and themes, culling our data and preparing a storyboard.

Themes

First, we identify our main case themes. What is the case about? What is the story we want to tell? What is our client's role? Themes personalize the story for the jurors to make them care. You should use themes to which the jurors can relate and which will draw them into your story. Try to sum up your case in a few words or a short sentence, to distill the case to its very essence; this distillation becomes the main theme of your presentation. If you started your opening by saying, "This is a case about a reinsurance treaty," the jury would lose interest in minutes. However, the statement "This is a case about broken promises," grabs attention, and your audience is much more likely to pay attention to your next words. A broken promise is something to which everyone can relate and it evokes curiosity.

How does theme development dovetail with visual presentation? One valuable use of visual presentation in an opening statement is to prime the listening of the jurors. In other words, prepare them to listen for, and be alert to, the best evidence in your case. For example, the phrases "broken promises," joined together with a visual image of the reinsurance treaty in question and a callout—or bordered inset—of the signature line, immediately impresses upon the jury that the broken promises were contained in that document, and were promised by a particular person or company. The jury now has a natural interest: Who is this person? What is this document? What were the promises? When your visual communication has a strategic fit with your case themes, you have the jurors right where you want them—following your every word and seeing the story through your eyes.

Data Culling

After delineating the key case themes, we can cull from the data, focusing on the specific facts which need to be communicated visually to support our story. What do we need to prove? What do the jurors need to remember? What do we need to teach? Once we outline what needs to be communicated, we can target our visuals to those specific issues. Each graphic should support one idea or communicate one point. Add only the details and content that is absolutely necessary to make that point. No doubt, you have accumulated years of important information

about your case. However, to create an effective visual aid, we don't work in reverse, by including the mass of information we have, and whittling it down. We start with only the main point, and add only the relevant details, one-by-one, to support that message. Irrelevant information can confuse the jurors and distract from your main point or theme in the visual communication. For example, if we create a time line and the visual is intended to show a course of conduct, avoid listing dates that don't support the message about particular conduct. The other dates may be important, but listing them will only dilute your main message.

Storyboarding and Information Design

The next step is to storyboard your case. Storyboarding is a key organizing tool to plan, present and propose ideas. Storyboarding is where we marry our words to pictures: we develop visual concepts to best present key themes, facts, and issues at each step. To understand visual storyboarding, think about storyboarding in movies. Before filming, a storyboard is created of the movie. The completed board covers the whole story or framework for the story. It is used to pre-visualize the story before actual filming begins, to save time and film during the film shoot. From the storyboard, the director can see the big picture, as well as the individual scenes from which the entire film will be pieced together, which allows him or her to find inconsistencies and communication gaps before shooting. Creating visuals for litigation is the same.

Creating a storyboard does not have to be expensive or burdensome. It can be accomplished by simply sitting down with your case outline and a few pieces of paper. The goal is to lay out the story of your case visually to refine your ideas and arguments *before* you create graphics. Once we finalize the storyboard, an experienced designer can create the right visual images quickly and with accuracy.

To develop effective visual concepts, apply the principles of information design, which is distinct from graphic design. Graphic design is concerned with the elements of visual expression and style, such as typography, color and layout. Information design addresses the organization,

presentation and transformation of data into valuable, meaningful communication. Information design does not replace graphic design, but is the structure through which visual elements are best expressed. An information designer determines how the information can be best organized and presented, accounting for the knowledge, experience and circumstances of the intended audience.

A sample storyboard sketch for a case is shown in Figure 3.

In this asbestos defense case storyboarded in Figure 3, a key message was that our customers received numerous pieces of information from several sources about the hazards of asbestos. In the storyboarding session, we generated a visual concept to show the client surrounded by information. The visual presentation in court involved a slide series in which the actual case documents appeared as callouts, as the attorney made his way around the circle (see Figure 4). This exhibit series became known during the course of the trial as *the circle of knowledge*, effectively reinforcing a key defense theme.

Common Misconceptions about Visual Communication

Sometimes attorneys hold misconceptions about visual communication. Below, we discuss the most important common misconceptions.

Misconception 1: It Is Very Costly and Should Be the Last Task before Trial

Visuals are a very cost effective way of giving your case an extra edge. At first, attorneys and in-house clients may think of visuals as just an extra case cost. However, once we understand the shortcomings of a verbal-only presentation and the importance of visuals in communicating, learning and persuading, it is easy to see that visual communication should be an integral part of every case presentation strategy. The costs are truly a worthwhile case investment.

In addition, a visual presentation does not have to be elaborate or lengthy. The storyboard process is designed to keep costs down. By taking the time to lay out what is really visually necessary, we minimize the number of exhibits, total production time, and the expenses of costly rework. In many

cases we find that just a few "board" graphics can be very effective. Keep in mind that different situations require different types of visuals. A summary judgment argument may only require one or two boards to clarify your key points. However, a complex commercial case involving multiple parties and bank transactions will probably require a more thorough visual presentation.

Misconception 2: Visuals Aren't Appropriate for This Type of Case

I've heard the following: "This is just a contract case. There are other cases where visuals would be more appropriate." There is no "right" case for visual communication. If the goal is to win the case, visual communication is appropriate. This misconception stems from thinking of the graphics first or how would graphics fit into this case instead of first considering the content that needs to be communicated. Whether the case is a contract case, a slip and fall or patent infringement, the goal is always to communicate your message effectively, persuasively and in a manner that can be easily retained. Few corporate representatives would go into a high stakes sales pitch of any kind without a strong visual presentation; selling your case to a jury is no different.

Misconception 3: The Jury or Judge Will Think It's Too Much or Too "Slick"

We are surrounded by visual information. Every day we are exposed to billboards, magazines, TV and the internet, all providing bite-sized, easily digestible chunks of visual information. Marketers have long known the importance of visual messages and we have all become accustomed to viewing and consuming information in this manner. Audiences of any kind today expect it. Further, jury research has found that jurors appreciate the efforts to aid in comprehension and retention.

Similarly, to today's audiences, the use of presentation technology in the courtroom is really nothing new or unexpected. Just as we are surrounded by visual stimuli, we are also surrounded by technology. Most people now have more advanced graphics on their cell phones and PDA's, and more technology in their living rooms than you will ever use in the courtroom. Technology has become such an integral part of our lives

Figure 3

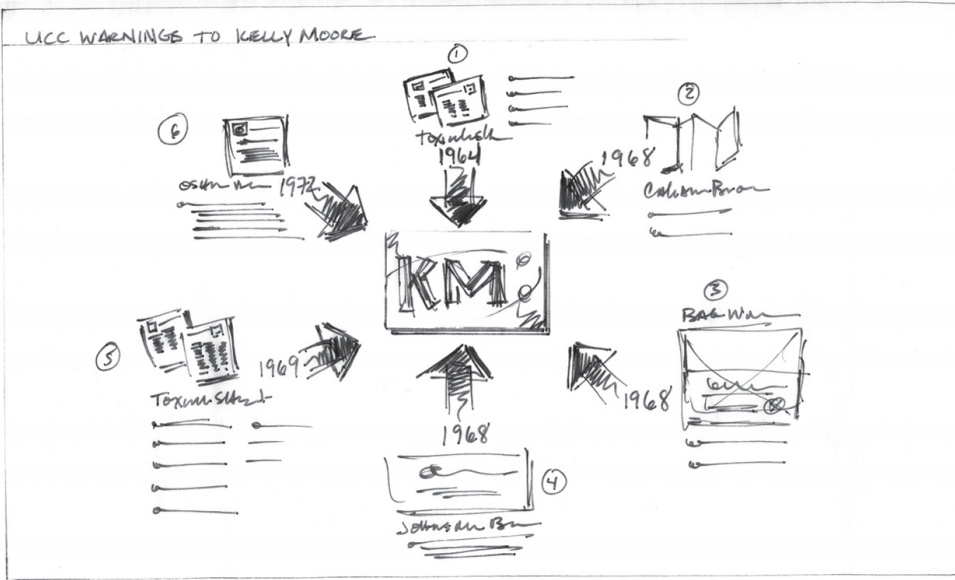
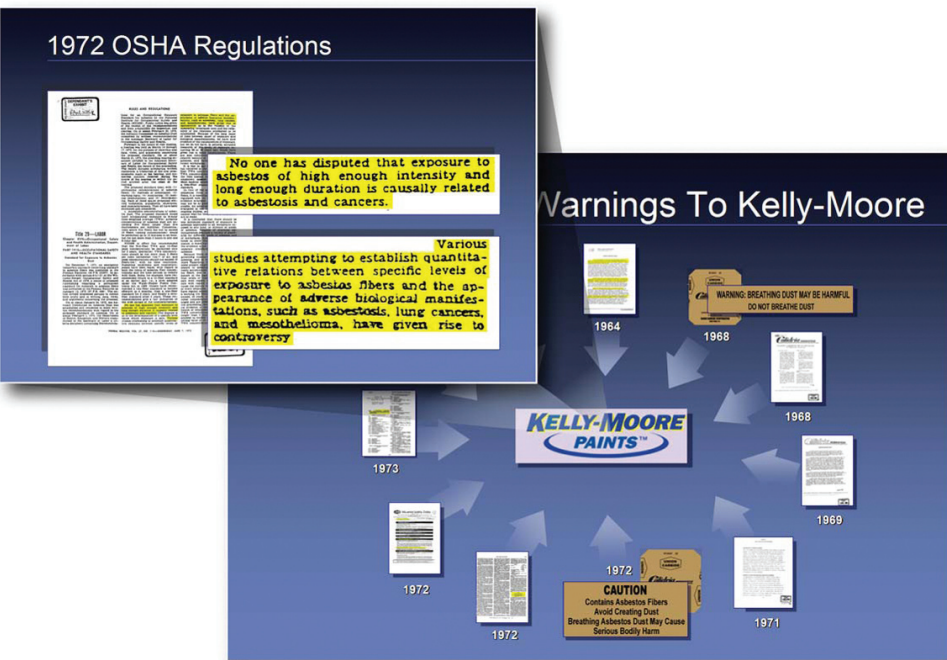


Figure 4



that having it in the courtroom is nothing new or exciting.

Misconception 4: Visuals Aren't Necessary for Bench Trials or Arbitrations

Judges and arbitrators should not be thought of any differently from jurors or any other audience when it comes to the benefits of visual presentation. It may not be necessary to teach as much to a sophisticated audience, but a sophisticated audience is still human. Judges and arbitrators

still tend to be visual learners, organize information into a story and think visually. Retention is still just as important as in a jury trial, and creating a memorable visual that effectively and persuasively communicates your message will still benefit your case no matter who sees it.

Further, just as with juries, we don't want to make judges and arbitrators work for the information. Most cases usually involve an overabundance of data. Just as jurors appreciate the use of visual commu-

nication, a judge or arbitration panel will appreciate a case that is presented in a concise, organized fashion and, therefore, is easier to grasp and understand. Use visuals to remove all of the "noise" and get down to the essential elements of the case.

Hiring a Professional

A professional visual communication consultant specializes in effectively communicating complex information. He or she has knowledge of information design principles and an understanding of how people process information. With this knowledge, the consultant can transform complex and often tedious information into a visual presentation that is more interesting, easier to understand and memorable.

After living with a case for many years, an attorney can become burdened by and caught up in all of the facts. A visual communication consultant can help to quickly sort through all of the data to help you determine what is truly necessary to tell the case story effectively, as well as provide guidance on how best to convey your message in terms of presentation type and medium.

When at all possible, get the consultant involved early so he or she can learn about the case and the messages you want to convey. The more time you have to refine your storyboard, the better thought out the visual concepts will be, resulting in a more cohesive story and a more cost-effective work product. If up-front costs in the face of a possible settlement are a concern, a first phase storyboard can be prepared, and kept until needed. The cost for final design and production of the graphics does not have to be incurred until closer to trial. Also, as we have witnessed many times, an effective visual presentation shown during settlement negotiations can quickly bring your opponents to a more reasonable position.

Summary: Points to Remember

Keep it simple. Just because we can create intricate animations or eye-catching slides doesn't mean we should. We don't want the audience focusing on our graphic abilities; we want them to focus on the communication. Each slide should contain only what is necessary to convey your point. It is important to avoid filling slides with chart junk or

information that isn't needed. Focus on the communication first and the right graphic design will follow.

While a few bullet points or text phrases can add to a graphic, using too much text or full sentences can severely detract from it. You will quickly lose any audience if it is required to read text slides. The other danger of text slides is giving too much information at once. You should only provide an audience with as much information as it can reasonably absorb at each given point. Keep in mind that humans are not capable of true multitasking. While we may be able to go back and forth between two things quickly, we can only do one thing at a time. So, if the jury is busy reading your text slides, it is not paying attention to you.

Whether faced with a mediation, arbi-

tration or trial, the goal is always the same: to effectively and persuasively communicate your message in a manner that can be easily understood and retained. A visual presentation based on information design principles is the most effective and efficient means to attain your goal. Presenting a case only verbally can create a communication gap between the attorney and jury. Words alone can be ambiguous and lead to an unintended perception of the case. A visual presentation takes advantage of the knowledge that most people are visual learners and organize information into a coherent story. With visuals, the message can be controlled and presented in a manner in which all jurors will come to the same understanding of the evidence—your understanding.

Although the visual aids are the end result, the most important part is the process. Using the principles of information design, case data can be transformed into information and communicated in an effective manner. Storyboarding should be used to layout and refine the case story before any graphic is created.

Being constantly surrounded by visual stimuli and technology, juries today expect and appreciate the use of visual presentation in the courtroom. Effective visual communication should be a part of any trial strategy whether the case is before a judge, jury or arbitrator. Whether the case is a simple contract case or a complex product liability matter, the use of visual communication is a critical tool that can give you an edge over your opponent. 