A Picture Is Worth A Thousand Words—Maximizing The Impact Of Visual Presentations

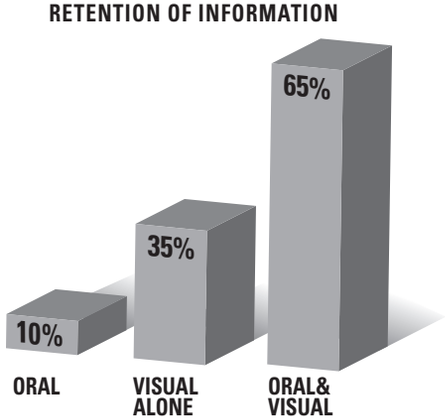
— by Melinda H. Barlow —



The phrase "a picture is worth a thousand words" has been identified as a Chinese proverb attributed to Confucius. However, its likely origin is a little closer to home, being an article in a 1920s trade journal by Fred R. Barnard, promoting the use of images in advertisements on streetcars.[1] It is more than a bit apt that the saying is the creation of an advertising salesman (although Barnard later stated he attributed the phrase to a Chinese proverb so that people would take it seriously).[2] Regardless, Mr. Barnard was not only correct, but he was at the forefront of society's (and, more particularly, advertisers') addiction to visual images through the media. Regardless of the phrase's origin, the message has long been understood by those who want to "sell" their story, whatever that story may be.

Lawyers, too, have recognized the value of demonstrative evidence.[3] Who will ever forget the visual of O.J. Simpson struggling to put on the too-small black gloves? Who does not recall the moment in *To Kill a Mockingbird* when Tom Robinson demonstrates his useless left arm before the jury? With today's electronically advanced courtrooms, a trial attorney must spend as much time on the visual presentation as the oral presentation. Further, with the rapid progression of technology, a lawyer is not limited to the existing physical evidence: he can now digitally create the visual aids needed to illustrate his case and tell his client's story. Gone are the days when only the deep-pocket clients or high-dollar cases utilized technology – from federal to state courts across the country, courtrooms are increasingly equipped with multiple screens, monitors, exhibit cameras and Internet capabilities. For the municipal lawyer, council chambers and other public forums are, likewise, increasingly equipped with a variety of electronic media.

Certainly, as advocates and communicators, attorneys recognize the story in the image and owe it to their clients to continue to bring the highest level of skill possible to conveying important messages. Not only are visual presentations more effective and convey more information than words alone, today's technologically aware audiences *expect* to be engaged visually. It should come as no surprise that, according to research, the use of visual aids in an oral presentation increases understanding and retention levels by as much as 65%, while information perceived through a variety of methods (auditory, visual, and written) is retained at a substantially higher level.[4] Other studies reveal interesting statistics that support these findings. Experimental psychologists and educators have found that, when information is presented at a meeting using visual and oral means, the retention of information three days after is six times greater than when the information was presented by the spoken word alone.[5] Studies by educational researchers suggest that approximately 83% of human learning occurs visually, while the remaining 17% occurs through the other senses – 11% through hearing, over three percent through smell, one percent through taste, and over one percent through touch.[6] Three days after an event, people retain 10% of what they heard from an oral presentation, 35% from a visual presentation, and 65% from a combined visual and oral presentation.[7]



Given audience expectations and the high impact on audience retention, the use of visual aids is essential to any presentation. As a municipal lawyer, visual aids should be employed to reinforce the message, clarify points, and create interest. Visual aids bolster the main points, thus reaching an audience far more effectively, and leave a lasting impression after the presentation ends. Understanding the importance of visual aids in a presentation is the first step in utilizing visual components to enhance the message. A simple and easy rule of thumb in making an effective presentation is: "Know your stuff. Know whom you are stuffing. Know when they are stuffed."[8]

Whom Are You Stuffing?

Creating a presentation that enhances receptivity through visual and auditory senses starts with identifying your audience. The first step in preparing any presentation is analyzing the audience. The target audience determines how much information to present and in what degree of detail, and the extent to which "high tech" graphics and animation are used. Further, the formality of the presentation is determined by the audience. The audience of a municipal lawyer varies from the city council and other municipal boards or commissions, citizens, and the courtroom judge or jury.

Audience analysis should also be considered in light of the purpose of the presentation. Is the presentation to inform, to create interest, to educate, to persuade, or to move to action? If the goal of the presentation is to persuade or motivate, consider what biases, concerns, or fears of the audience need to be addressed in order to achieve your goal.[9] While it is often impossible to completely dispel such audience concerns or apprehensions, you can, by recognizing these at the onset, position yourself strategically – in taking those concerns into account, you demonstrate awareness and sensitivity. Importantly, the biases, concerns, and fears of the audience oftentimes dictate the degree to which technology is used

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in the presentation. A senior citizens' group of concerned taxpayers is likely to be unimpressed by fancy digital graphics or computer animation, while a planning and zoning board will appreciate a computer model that creates a visual image of the end product. Similarly, if the goal of the presentation is to educate, the presentation should be geared to the level of knowledge of the audience. For example, some city councils have a sophisticated understanding of the legal issues that arise in local government; others, however, may have a more rudimentary knowledge. Keep that in mind, and in presenting possible legal outcomes, the visual aids should be direct, concise, and informative.

Juries have been perplexing lawyers since the beginning of the jury system and remain the most difficult audience to analyze. Mark Twain once described the system by which jurors are selected as putting "a ban upon intelligence and honesty, and a premium upon ignorance, stupidity, and perjury."[10] Although Twain's characterization might seem harsh, there is a bit of truth in it: most jury selection processes ensure that any panel member with any passion, knowledge, or personal interest in the subject matter will be struck or challenged for cause. Accordingly, always assume that the jury is a reluctant, if not completely disinterested, audience. As an advocate for your client, you must first and foremost give them a reason to care about or be interested in what you have to say. For example, visual aids can greatly diminish the minutiae that a jury is normally presented with by highlighting only the important text, photos, or video testimony. Further, visual aids that synthesize key information convey a message that recognizes the jury's time is important. Since many jurors are reluctant participants, and unfamiliar with legal formalities, anything that speeds up the presentation of evidence and promotes their understanding is likely to be viewed positively.

In summary, the "audience analysis" phase of presentation preparation is essential in determining how to organize information and the presentation method, including the use of visual aids and other technological media. The more information the presenter has about the audience, the more the presentation can be tailored to maximize the impact of visual components, and the more likely the presentation will be to meet the presenter's goals.

Know Your Stuff

Of course, the municipal lawyer knows the substantive material that is being presented. However, it is also important to understand the techniques available for presenting the material and the equipment to use. Examples of communication advances available for illustrative use include computer animation, interactive video, flat visual images, and three-dimensional models. Computer animation and videos can provide images that would otherwise be unavailable – for example, by "placing" audiences in locations that would be impossible or inconvenient to travel to.[11] Depending on the scope and importance of the message, computer animation models can be very affordable. They can demonstrate a proposed neighborhood development building by gradually adding to the current state of the area, culminating in the proposed final concept. Such animation can be so precise as to take the audience from aerial views to street-level views, giving them the ability to "walk" through the streets of a yet-to-be-constructed project. In cases involving police officers, vehicles are often equipped with on-board cameras. The video produced from these cameras will likely become a central piece of evidence in litigation. To maximize the effect of these videos, audio deposition testimony can be combined to stream with the camera video-recording. The power of the images from the camera, when combined with the audio explanation from an officer, creates a much more powerful demonstration than either piece of evidence standing alone.

Fortunately for the high-tech impaired, many programs can assist even the most computer-illiterate user in producing a visually pleasing presentation. Generally, programs such as PowerPoint make presentations simple to create and operate. However, regardless of the program, follow these basic tips to maximize a visual presentation:

- Familiarize yourself with the presentation, the equipment and how to operate the program prior to the presentation.
- Keep your audio-visual aids simple and uncluttered. Too many visual aids are distracting, and too much information at a time will not be absorbed. For example, an entire slide of text from a statute will not reinforce your message and will likely disengage your audience. If you must cite from an ordinance or statute, choose key words and phrases only.
- Demonstrate the whole before covering the parts. For example, present an overview of the entire proposed residential or commercial development before focusing on the individual features and attributes. For a jury or a judge, define the issue that you will be asking them to decide before demonstrating the conclusion you would like them to reach.
- With each visual change, pause one to two seconds so your audience has the opportunity to absorb the information.
- Finally, and most importantly, remember that visual aids are just aids and not the whole show. Aids increase the impact of the message but, in the end, people still respond best to other people – the confidence and demeanor of the presenter are also important visual images that impact the message and strengthen credibility.

Demonstrative Evidence – The Courtroom

The general techniques and applications for audio-visual presentations apply equally to visual aids in the courtroom; however, some evidentiary concerns can arise. It is estimated that illustrative aids currently comprise more than half of the items shown during a jury trial.[12] Because many state and federal courtrooms have become "electronic," evidentiary issues within the discretionary area of illustrative aids or demonstrative evidence have arisen.

Visual presentations in the courtroom will fall into one of two categories: demonstrative evidence or admitted evidence. Demonstrative evidence, prob-

ably one of the most powerful visual aids, is not offered or admitted into evidence, but is merely presented to assist the jury in understanding the evidence. Thus, the only foundation for demonstrative evidence is that it is fairly accurate and assists the fact-finder in understanding matters at issue. Any deficiencies in the demonstrative evidence must be identified for the fact-finder.[13] For example, a party seeking to introduce a computer-animated accident re-enactment must prove that the re-enactment is substantially similar to the conditions of the accident itself. If the re-enactment is a video demonstration, the demonstration must be substantially similar to the circumstances of the accident at issue.[14] Since the foundation requirement for demonstrative evidence is much less stringent than for admitted evidence, it can be a powerful tool in conveying a message that would not otherwise be presented to a jury through more traditional means.

Because computer reproductions or animations and edited video depositions can have a dramatic effect on juries, attorneys must guard against their inappropriate use by the opposing counsel. Altered video testimony and computer animations or reproductions should be reviewed outside the presence of the jury to determine issues of relevance and the potential for unfair prejudice.[15] Further, case law suggests that judges should review video or computer evidence outside the presence of the jury for evaluation as to proper foundation, relevance, and potential undue prejudice.[16]

Attorneys must also be mindful of and prepared for objections that can be made as to demonstrative evidence, whether they are offering the evidence or the evidence is being offered against them. Completeness objections are raised when one side believes that material other than that which is presented should be considered contemporaneously with the presented material.[17] Such objections often arise with regard to edited text graphics, cropped photographs, or carefully edited video testimony.[18] Objections as to the fairness of demonstrative evidence arise when the depiction offered has been so materially altered as to affect the message. Examples of this are playing video testimony at an altered speed, or using still frames of videos out of context. Further, some software re-enactments that add sound and graphics, which enlarge certain aspects while diminishing others, would arguably provide an unfair image. To exclude these types of images, the objecting party must demonstrate that the effect has a material impact.[19] Moreover, a computerized exhibit used in direct or cross-examination may be objectionable if it leads the witness, or is presented prior to laying a proper foundation.[20]

Jurors are unlikely to recognize the distinction between visual evidence that is admitted, as opposed to demonstrative, evidence; however, attorneys must recognize that the evidentiary basis of some admitted evidence must be provided before the visual aid is presented to the jury. Every evidentiary analysis begins with the Federal Rule of Evidence 402 and the question of relevancy.[21] Physical evidence may also have to clear hearsay and authentication hurdles.[22] Sometimes, an end run around the hearsay and authentication rules can be made if the physical evidence is presented through an expert witness and is the type of evidence relied upon by the expert in that particular field, provided that the evidence has probative value that outweighs the prejudicial effect.[23] Additionally, Federal Rule of Evidence 1006 (regarding summaries of voluminous writings, records or photographs) should and can be used liberally to support the admission of visual aids.

Another critical question is whether the demonstrative or physical evidence will be allowed in the jury room. Obviously, the impact of the illustrative aids is exponentially increased if the jury is allowed the discretion to review the evidence over again in the jury room. The issue of whether an illustrative aid is allowed in the jury room is at the judge's discretion.[24]

Know When They Are Stuffed

An American proverb cautions that "many speak much who cannot speak well." Lawyers often become so focused on delivery of a prepared message that they fail to interact with the audience and determine, through observation and communication, when the message has been received or rejected. An example of this comes from my own experience. As a young lawyer, I was allowed to handle the pre-trial motions in a fairly large case. I prepared (probably over-prepared) and anxiously anticipated my opportunity to speak. Each time the judge asked a question, I answered with zeal and gave him even more information than he requested. Part of the way through the motions and my rebuttal, the judge abruptly cut me off and ruled in my favor. It was a mixed celebration: I won, but I sensed the judge's irritation. The judge pulled me aside later and gave me a sound piece of advice: "Know when you have won the argument and stop talking." As a presenter, it is important to be aware of the cues that your audience provides, either through body language, their questions, or the lack of questions.

Lastly, then – know when to stop.

Notes

1. The phrase reportedly first appeared as "One look is worth a thousand words" in PRINTERS' INK, Dec. 08, 1921, p. 96; Fred R. Barnard changed it later in *One Picture is Worth Ten Thousand Words*, PRINTERS' INK, Mar. 10, 1927, pp. 114-15.
2. ROGERS, JAMES, THE DICTIONARY OF CLICHÉS (Ballantine Books, 1985).
3. Karen D. Butera, *Seeing is Believing: A Practitioner's Guide to the Admissibility of Demonstrative Computer Evidence*, 46 CLEV. ST. L. REV. 511, 514 (1998).
4. *Id.* at 513.
5. U.S. Department of Labor, OSHA Office of Training and Education, May 1996, *Presenting Effective Presentations with Visual Aids*, available at http://www.osha.gov/doc/outreachtraining/htmlfiles/traintec.html (last visited March 23, 2009).
6. *Id.*
7. *Id.*
8. Unknown Author cited by Boyd, Stephen D., Ph.D., CSP, July 17, 2004, *A Short Guide to Effective Public Speaking*, available at http://www.school-for-champions.com/speaking/boyd_short_guide.htm (last visited March 31, 2009).
9. *You Talkin' To Me? Know Your Audience… And What It Takes to Persuade, Inspire and Motivate Them*, THE TOTAL COMMUNICATOR, vol. 1, issue 4 (Fall

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Visual Presentations

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2003), available at http://totalcommunicator.com/vol1_4/audience_article_print.html (last visited March 25, 2009).
10. Mark Twain, Roughing It 257 (New American Library, ed. 1980) (1871).
11. Fred H. Cate & Newton N. Minow, *Communicating with Juries*, 68 Ind. L.J. 1101, 1112 (1993).
12. Federal Judicial Center 2001, *Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial*, 42 (Federal Judicial Center and National Institute for Trial Advocacy, eds., 2001).
13. United States. v. Williams, 657 F.2d 199, 203 (8th Cir. 1981).
14. Hinkle v. City of Clarksburg, 81 F.3d 416, 424 (4th Cir. 1996); Fusco v. General Motors Corp., 11 F.3d 259, 264 (1st Cir. 1993); Gilbert v. Cosco, Inc., 989 F.2d 399, 402 (10th Cir. 1993).
15. *Hinkle*, 81 F.3d at 425; Robinson v. Missouri Pac. R.R. Co., 16 F.3d 1083, 1088 (10th Cir. 1994).
16. *Hinkle*, 81 F.3d at 425.
17. Fed. R. Evid. 106.
18. Nicole J. DeSario, *Merging Technology with Justice: How Electronic Courtrooms Shape Evidentiary Concerns*, 50 Clev. St. L. Rev. 57, 66 (2003).
19. Federal Judicial Center 2001, *Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial*, 191-96 (Federal Judicial Center and National Institute for Trial Advocacy, eds., 2001).
20. Fed. R. Evid. 611(c) and 602.
21. Fed. R. Evid 402 provides, in part, that "[a]ll relevant evidence is admissible, except as otherwise provided. ... Evidence which is not relevant is not admissible."
22. Fed. R. Evid. 802, 803, 804, 901, and 902.
23. Fed. R. Evid 703.
24. United States v. Barefoot, 952 F.2d 397 (Table) (4th Cir. 1991) (per curiam); United States v. Diez, 515 F.2d 892, 905 (5th Cir. 1975), *cert.* denied, 423 U.S. 1052 (1976); United States v. Possick, 849 F.2d 332, 339 (8th Cir. 1988). ML

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instead of s. 90(1)(c) ("labour relations or other employee relations") to close the meeting, and whether the report was distributed "as soon as practicable and possible." However, because of the deference the court was required to give to the Board in relation to its own procedure, those defects alone were "not sufficient at this stage to warrant intervention." That was not the case with the remaining procedural issues – that the matter was raised without prior notice and an opportunity to investigate and respond. The fundamental problem with the CRD's approach to disciplining its member was that he was "never given any specifics of the complaints that might permit a reasoned and structured response," and never given "any opportunity to consult counsel or even any reasonable opportunity to study and respond to the vague allegations. ... In that light, it is difficult to see how the petitioner's right to be heard was respected in any sense." The fact that other Board members and Bell had spoken to Barnett about his conduct, and Bell had cautioned him that his conduct would be raised at the next Board meeting, did not constitute notice in law. "Notice" required that the recipient be capable of appreciating that some specific conduct would be discussed and sanctions sought, and be able to come to the meeting fully prepared to answer the charges. The report at issue "contained nothing specific" and "appear[ed] to merely bandy about words like 'harassment' and 'intimidation' without more." Further, the Chair's comments indicated "not only a clear bias against" Barnett, but "also a complete disregard for any fair process." Because Barnett was denied reasonable notice and denied procedural fairness, the resolution was set aside. As this mooted his claim for a copy of the report, the court advised that he apply, as suggested, under the *Freedom of Information and Protection of Privacy Act*. The case is *Barnett v. Cariboo Regional District*, 2009 BCSC 471 (B.C.S.C. Apr. 08, 2009). ML

Ordinances

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interest was substantial: banning new offsite billboards promoted traffic safety and reduced blight, even if all billboards were not eliminated; further, the State had a significant financial interest in allowing grandfathered billboards to stay, as otherwise it would have to pay just compensation to the billboard owners. In any event, Maldonado purchased the property in the 1990's, so he was not similarly situated to the grandfathered landowners.

The remainder of 2009 may provide equally active for billboard litigation in the Ninth Circuit. In March, a federal judge in California found that the City of Los Angeles had violated an injunction by refusing the opportunity for a billboard company to seek permits for new "supergraphic"[13] signs. As 2009 continues, there is no doubt that cities around the country will have to continue to do battle in sign wars.

Notes

1. Clear Channel Outdoor, Inc., Q4 2008 Earnings Report (2008), at http://www.clearchanneloutdoor.com/assets/downloads/pdfs_corp/CCO_Q4_2008_Release.pdf.
2. *Id.*
3. Patrick Mcgreevy, *Schwarzenegger Considers Selling Ads on Freeway Signs*, LATimes.com, Sept. 24, 2008 at http://articles.latimes.com/2008/sep/24/local/me-signs24.
4. 551 F.3d 898 (9th Cir. 2009).
5. Los Angeles, Calif. Municipal Code, § 91.6205.11 (2004).
6. Metro Lights, L.L.C. v. City of Los Angeles, 488 F. Supp.2d 927, 947 (C.D. Cal. 2006).
7. 551 F.3d at 910.
8. *Id.*
9. *Id.* at 914.
10. 556 F.3d 1037 (9th Cir. 2009).
11. *Id.* at 1045.
12. *Id.* at 1046.
13. Phil Willon, *Judge's ruling is a setback to L.A.'s efforts to combat supergraphics*. Los Angeles Times, Mar. 16, 2009 at http://www.latimes.com/news/local/la-me-supergraphics17-2009mar17,0,3230970.story. ML