

“BOY I WISH I COULD HAVE SEEN THAT” *Effective Use of Technology in the Courtroom*

Saturday, October 1, 1932. Ridgley Field, Chicago, Illinois. 3rd game of the World Series. Top of the 5th inning with the Yankees up to bat. The score is tied 4-4. Babe Ruth -- the Bambino, the Sultan of Swat, saunters up to the plate in front of 50,000 screaming Cubs fans. Across the country, baseball enthusiasts of all ages are gathered around the radio listening to this historic game. Starting pitcher, Charlie Root is on the mound. Radio announcer, Graham McNamee, creates the scene over the airwaves. Two called strikes. The Babe scratches the dirt with his cleats, squints out toward the pitcher, takes a wide stance, clenches the bat tightly and points to the center field bleachers. The crowd holds its collective breath in anticipation as Charlie Root winds up the pitch and hurls the ball toward home plate. The Bambino takes a mighty swing. The crack of the bat echoes through the stands as the ball, heading deep into center field, screams out past the flagpole, soaring over the crowd and into the street. One young Yankees fan sitting at home by the radio, leaps to his feet with excitement and says, “Boy I wish I could have seen that!”

It was the Golden Age of radio. “A magical era,” as broadcast legend Walter Cronkite once said. A time when people used their imaginations to create a story. The Green Hornet, The Shadow, Superman – all came to life through words carried over the crackle of the radio airwaves. A well-told story is evocative in any era. Yet, in our current fast-paced, technology-saturated world the power of words is often overshadowed by the impact of the image. A picture paints a thousand words, as the cliché goes. At no time in modern history, does that statement ring more true.

The advent of television -- and the computer -- has permanently altered the way in which people process information. Verbal eloquence in the courtroom, while important, is no longer sufficient on its own. Jurors expect immediacy. They want to see your case in living color, right then and there: the

documents, pictures, diagrams, maps and evidence. Despite the constant barrage of media messaging and a seemingly endless supply of entertainment options, the public maintains its insatiable appetite for all-things visual. People have come to expect -- and require constant stimulation -- whether in the living room or in the courtroom. You must both inform and entertain, or you will lose their interest -- and ultimately, your case. In short, a bored juror -- is a bad juror.

An experienced attorney enters the courtroom prepared to describe the complexities of the case to the jury: the horrific accident scene; the path of the vehicle; the negligence of the defendant driver; the damages to the vehicle and the injuries to the client. He or she outlines the victim's hospitalization and the resulting physical impairment. Perhaps the jury is moved by the details of how the victim's life has been affected. The words alone are impactful. But are they enough? In today's courtroom environment, strategic use of visuals via technology is critical for presenting your case -- and winning it. As Albert Einstein once said, "If I don't see it, I don't understand it."

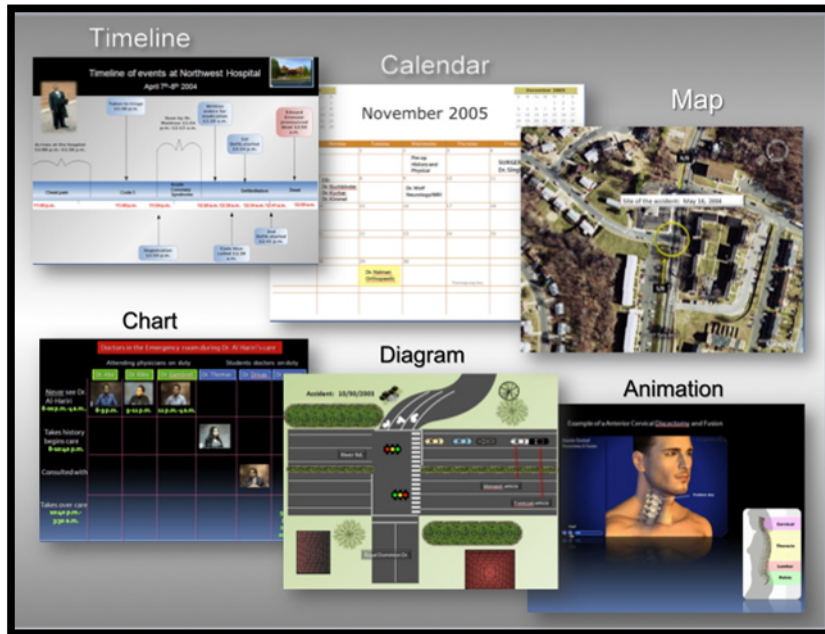
Yet, while technology must be integrated into your trial, it does not, in and of itself, win the case. Rather, it gives the savvy trial attorney a distinct advantage, provided he or she uses that technology judiciously. The question then becomes, what type of technology is most effective and how much is too much?

Multi-media for Litigators: The Use of Technology in the Courtroom

While the general populous gulps down new technologies with an unquenchable thirst, the legal community seems trapped in a techno-phobic time warp. Typically, attorneys use hand-held pictures and the occasional flip chart or mounted graphic during trial and testimony. Not surprisingly, jurors will look at such unsophisticated courtroom graphics and become impatient, lose interest and disconnect from both the information and the attorney.

Using timelines, calendars, maps, charts, diagrams, animation

PowerPoint slides



As a trial attorney with more than 25 years experience in putting together over one hundred presentations for both criminal and civil trials, mediations, arbitrations and seminars, I have found that using technology in opening statement for trial is most important and can have a favorable impact on the outcome of your trial. Studies have shown that 85-90% of jurors have a strong opinion of the case by the end of opening statement. The opening is your first impression and the first opportunity they have to understand your case. The jurors must be able to follow the story, regardless of its complexities. Vivid descriptions will draw your jurors, in, but a logical and organized story progression using graphics and timelines will guide them through each chapter and lead them to a definitive conclusion.

Timelines keep both you and the jurors focused on the story and allow you to present your case in a logical and sequential fashion. As each important event appears on the timeline, others visuals can

then be incorporated and followed with a discussion. Let's create a fictional medical malpractice case to illustrate the use of graphics and multimedia:

Slide One: The timeline creates the beginning of the story: the arrival of your client to the emergency room. She is in her third trimester of pregnancy with fetal distress.

Slide Two: The second slide in your presentation takes a page from the emergency room records with a "callout" of the portion of the record reflecting the recorded signs and symptoms of the distress, as noted by the triage nurse.

Slides Three and Four: As the story continues, Slide Three returns to the timeline and notes the time of examination by the emergency room doctor. Slide Four shows the doctor's notes indicating "suspected abruption."

Slides Five, Six and Seven: At this point in the presentation you incorporate several slides with graphics reflecting the stages of pregnancy, a diagram of the uterus and a visual definition of a medical "abruption." This will help educate the jurors as to the medicine and anatomy involved in the case.

Slide Eight: Continuing the story, return to the timeline as the important events unfold, interspersing other slides with visuals, as needed. You maintain that the patient should have been placed on continuous monitoring.

Slide Nine: This slide illustrates what the fetus should look like and explains the process of continuous monitoring. Your case alleges that an emergency c-section should have been done.

Slide Ten: An animation of an emergency c-section will be effective in reinforcing your point.

As you continue the opening statement, each additional slide, if carefully selected, will methodically guide your jurors through a step-by-step process that ultimately leads them to your final conclusion.

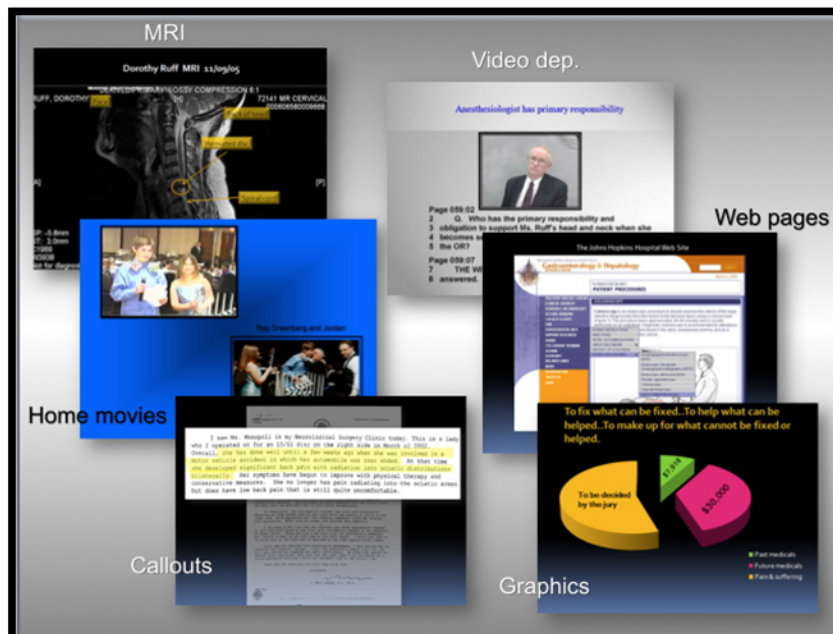
Internet and Software Assistance

The Internet provides a treasure trove of information and visuals, which can be used in your case. Software such as “*Easy Street Draw*” or “*Smart Draw*” are available for creating your own visuals that can be imported into a *PowerPoint* or *Keynote* presentation. *LexisNexis* “*Time Map*” can be used for creating polished and professional looking timelines for use in *PowerPoint*. “*Bee Docs Timeline*” a 3-D animated timeline add-in can be used in *Apple’s Keynote* software. Very simple timelines can also be created using nothing more than *PowerPoint* or *Keynote*.

For creating map slides, “*Visual Earth*” or “*Google Earth*” gives you a good bird’s eye view of an accident scene. The free software download also provides street views and many other features. To capture screen images, use the inexpensive “*Snag It*” software. Also inexpensive, *Camtasia Studio* is effective at capturing video. There is a wide selection of software available for both a PC and a Mac, which can help you, create your own visuals for trial. And, although not as abundant, there are companies, which now provide assistance in creating visuals for electronic presentations in the courtroom.

Callouts, Video, Medical Illustrations, Web Pages and other Graphics

PowerPoint Slides



While timelines are instrumental in organizing your presentation, slides are useful in creating documents that support your case, as well as callouts, which help to illustrate your story. Using these documents electronically in your opening or closing argument is less expensive, less cumbersome, and far more effective than using blowups on a board. Additionally, large callouts allow everyone in the courtroom, including the judge, to see your information. The advantage of *PowerPoint/Keynote* is that slides can be created using video, text, captured web pages, sound, medical illustrations, scanned x-rays and any other types of graphics that are useful in telling your story. Once the presentation has been created, it can then run seamlessly in the courtroom on a large screen, with an LCD projector.

Getting Started:

Step One: Storyboards - Now that you have decided to use a *PowerPoint/Keynote* presentation for opening or closing, the first step to take is to develop a storyboard. Storyboards were first developed and used at the Walt Disney Studio during the early 1930s to lay out the story sequentially and visualize what they wanted to say. The same technique can be applied to your case, visualizing how you tell the story and in what order.

Step Two: Slides - This is the necessary evil of the process and can be a complicated one. Unless you are familiar with Microsoft's *PowerPoint* or Apple's *Keynote* software I suggest you elicit assistance from someone familiar with these programs or seek technical expertise from a professional who is adept at using the software. Their technical prowess, combined with your knowledge about the case, will create an effective presentation using slides, timelines, charts and diagrams. Once the presentation is complete, it is imperative you become familiar with how the presentation will be displayed in the courtroom and how it will look to the jurors. To be effective, all jurors must be able to see it.

Step Three: Rehearsals - There is no substitute for practicing your presentation, familiarizing yourself with the tempo and understanding the sequence of the slides. Follow your slides and your

storyboard and trust your instincts. Your goal is to deliver a smooth and powerful presentation without sounding as if is rehearsed.

Equipment and the Theatre:

The Courtroom is your theatre and you should be familiar with the layout, which includes, not just the physical layout but also the minutiae: the location of the electrical outlets and light switches and whether the lights have dimming capabilities. You will likely get the permission from the judge to dim or turn off the lights if this will be instrumental in adding dramatic effect or because it allows the jurors to better see the images on the screen. Court personnel can also be very helpful in guiding you with your equipment setup. Several of the courthouses in Maryland require permission of the trial judge or the administrative judge to bring electronic equipment into the courthouse. I suggest calling prior to trial if you are unfamiliar with the Court's policy on using electronic equipment.

Once you are familiar with the layout, be sure to have all necessary equipment. In using a *PowerPoint* or *Keynote* presentation in the courtroom, you will need the following:

(1) An LCD projector with sufficient lumens (the amount of brightness coming from the projector) to allow everyone in the courtroom to see the presentation, where there is overhead electrical or ambient light. You may not be able to dim the courtroom lights and if you can't see the presentation, it is useless.

(2) A laptop computer, which will connect to the projector. Either a PC with PowerPoint loaded or a MacBook with *Keynote* loaded, depending on what software you use.

(3.) Electrical cables, which include a VGA cable for connection from the laptop to the projector, extension cords and a power strip. Never assume that the court can provide an extension cord.

(4.) A small portable table that can accommodate both the laptop and the projector. Again, never assume that the courtroom has a suitable table.

(5.) A screen, which is large enough and can be set up in a position so that all can see it clearly. I suggest a portable, lightweight screen that can easily be pulled out of a tube. Unless you are using a professional service, set up all the equipment in your office the day before and rehearse. If possible, have an assistant or paralegal in the courtroom who is familiar with the equipment. This frees you up to concentrate on the case and the presentation. In the unlikely event that the equipment malfunctions, I recommend that you print the slides and have a hard copy on hand. With good preparation, your presentation can be extremely powerful and effective.

10 PRACTICAL TIPS: Remember - - The jurors are your audience

1. Keep it simple. Don't overload your slides with too much information. If a slide does not serve a purpose, don't use it. Too many slides can become tiresome and distracting to the jury. Presentations that attempt to include every fact and detail will drown the jury in information that is unnecessary and can obscure the message.
2. Let the graphics or pictures tell the story, with you as the narrator.
3. Use transition slides. Sometimes a one-word slide is simple and will transition you to the next topic, i.e. "DAMAGES."
4. Rather than text-heavy slides, create slides using a few key words to trigger your discussion. These slides can act as your cue.
5. An eye-catching graphic is nice, but if it does not help to make the topic easier to understand or isn't useful in getting your message across, don't use it. Remember, your goal is to make it easier for the jury to understand your point.
6. Everything you use on a slide MUST be easy to see, or easy to read. Contrast without overuse of color is important. White on a black background, black on a white background can often

times be most effective. Both *PowerPoint* and *Keynote* have pre-designed backgrounds and templates, which are easy to use and effective. These templates can give your presentation a professional, polished look.

7. Make sure the font is a standard font and large enough for everyone in the courtroom to read. Refrain from using multiple fonts, which can distract the jurors from your message.
8. Resist the temptation to showboat your work using all of the “bells and whistles” that *PowerPoint* and *Keynote* can provide. Transitions from slide-to-slide should be smooth and consistent, such as a simple fade in/fade out technique.
9. Bullet points, while useful, are the most abused tools in *PowerPoint* presentations. When used effectively (preferably, one bullet point at a time on the screen) they can trigger your discussion, act as your cue, serve as your visual notes and add emphasis where and when needed. Used incorrectly, they can irritate your audience and sabotage your case. Arguably, the biggest (and most common) mistake made by attorneys who use *PowerPoint*, is their perceived need to cram every slide with text and bullets points, which are then read verbatim to the jury. You can literally watch as jurors, one-by-one, turn off and tune out. You have lost them, and unfortunately, risk losing your case in the process.
10. As in any good story, there is a clear beginning, middle and end. The slides you create will guide your jurors through the story using a deliberate cadence that you control. This will help to modulate the way in which you deliver your information, emphasize the points you want to make and eliminate the temptation to rush through the slides. Remember, you are the centerpiece of the presentation and not the slides. *PowerPoint* and *Keynote* are important tools but will never replace the skills and knowledge possessed by an experienced trial attorney.

Final Thoughts on Seeing...and Believing:

A trial exemplifies the process of communicating and conveying ideas to a judge or jury. A successful litigator understands that jurors learn, not only by what they hear, but also by what they see. As Russian writer, Ivan Turgenev aptly wrote in Fathers and Sons in 1862, “A picture shows me at a glance what it takes dozens of pages of a book to expound.” When applied strategically, a single image can convey a complex thought or situation succinctly and effectively. Much has evolved in the legal arena in the last century. Jurors, once subjected to poring over cumbersome documents and static images, are now liberated from such arduous tasks, thanks to the sweep of a mouse or the push of a button. Lawyers reluctant to embrace technology in the courtroom need to step up to the plate. Don’t just give your jurors a play-by-play. Instead, put them in the stands and let them see you hit one out of the ballpark – just like the Bambino.