

# HEADNOTES

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## TRIAL TACTICS

# Visual Presentation Helps Juries See the Law

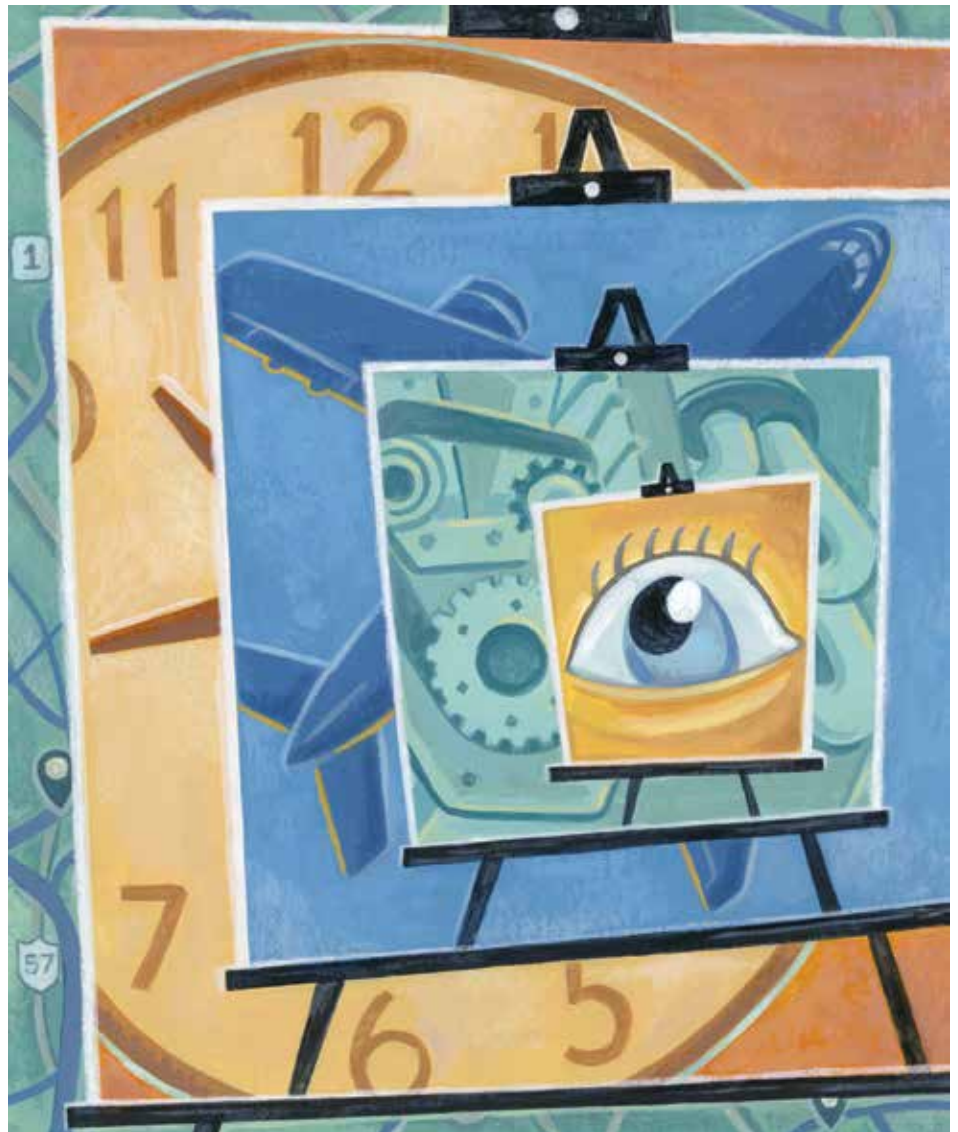
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The legal profession is known for a technical vocabulary, the overuse of archaic words, and a vagueness that seems intentional. Scholars such as David Mellinkoff and Peter Tiersma who have studied the development of the language of law have concluded that using convoluted and undecipherable language was once a



purposeful part of our profession, to ensure job security. Specifically, legal language produced a “conspiracy of legal gobbledygook” wherein “talking like a lawyer” allowed lawyers to mark themselves as educated members of a profession and helped them charge higher fees.

Thanks to the plain English movement of the 1960s and 1970s, itself attributable in part to the consumer protection movement in the United States, the measure of a “good lawyer” evolved. A good lawyer’s goal is no longer to mystify with legal gobbledygook; rather, it is to explain plainly obligations, problems, and solutions. This evolution continues.

Today there is a new preference unfolding for effective communication, and lawyers must once again evolve or get left behind. This communication evolution is a visual one, prompted by the way modern society functions outside the legal profession. When you unpack your IKEA furniture from the box, it no longer comes with a pamphlet of written instructions. Instead, a series of well-crafted graphics leads you through the laborious assembly process. Similarly, when you apply for a mortgage online, a series of arrows, pictures, and graphs guides you through the application. These represent a collective recognition that there are better ways

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to convey information than in tiny print and obtuse phrasing. Research indicates that between 65 and 80 percent of the world's population may be visual learners. Without regard to learning type, visual cues assist in processing speed. Indeed, a neuroscience study at the Massachusetts Institute of Technology found that the human brain can process images seen for only 13 milliseconds, while it takes 3.75 seconds to process a complete sentence. Mary C. Potter, Brad Wyble, Carl Erick Hagmann & Emily S. McCourt, *Detecting Meaning in RSVP at 13 ms per Picture*, 76 *ATTENTION, PERCEPTION & PSYCHOPHYSICS* 270–79 (Feb. 2014).

Trial lawyers need to be able to meet jurors where they are, to respect a dominant learning style and the practicalities of processing information. Doing so means that oral presentations and instructions must be supplemented and reinforced by what are known in plain speak as visual aids and in legal gobbledygook as demonstrative exhibits. We have four suggestions for using demonstratives effectively: (1) keep them simple, (2) use pictures, (3) show the inside, and (4) embrace animation.

Too many demonstrative exhibits overcomplicate the problem they are trying to simplify by attempting to communicate too many concepts at once. Instead, pick the one thing you are trying

to communicate visually and concentrate on that singular concept. For example, if the purpose of the demonstrative is to teach the jury about the baseline fetal heart rate, there is no need to illustrate anything related to contraction patterns on that demonstrative. The demonstrative should not jam all elements together.

A demonstrative also should use pictures. This may seem obvious, but too often a “demonstrative” exhibit has more words and numbers than pictures. While the use of minimal words may be necessary for context, words should not overwhelm a visual aid. When you create a demonstrative, remove and replace words with visual representations. For example, time can be represented by the hands of a clock. Increases and decreases in pressure can be represented by a gauge.

Be sure to leverage demonstratives when teaching the jury what happened on the inside. That is, often the most important concept lawyers are trying to explain is what occurred on the inside—of a car, of a plane, of an abdomen. It is imperative that the oral explanation of what occurred on the inside be supplemented by a visual aid. For example, if your case is about defects in the brake chambers of a semi-truck, by the time of trial you know everything there is to know about coil springs and brake clamps. However, if you never show the jury the inside of

the brake chamber with the components you say are defective, how can they ever visualize the defect—i.e., visualize the “wrong way”? Although you could attempt to describe in scientific detail every nook and cranny of the truck, those concepts are visual. Help the jurors.

We suspect that several of you are reading this while email notifications pop up on the lower, right-hand corner of your screen. Potential jurors, too, are attuned to and primed for multi-mode media. Embrace our modern reality. Make effective use of mixed-media demonstratives. Rather than expect jurors to rely solely on static illustrations, play to their interests by incorporating illustrations, animations, graphics, and charts. Instead of spending 10 minutes describing the intersection of a catastrophic trucking accident, illustrate the intersection with arrows.

The real power of visual presentation is that it allows us to speak the law in a more equitable and clear way. We have come a long way since the days of the ancient orators, but we continue to strive to communicate effectively. Today speaking the law involves allowing our jurors and clients to see the law. Judges should encourage the use of visual aids and presentations, and lawyers should not go to court without them. ■