Show, Don't Just Tell
The Persuasion Strategies Visual Persuasion Study

PERSUASION STRATEGIES™
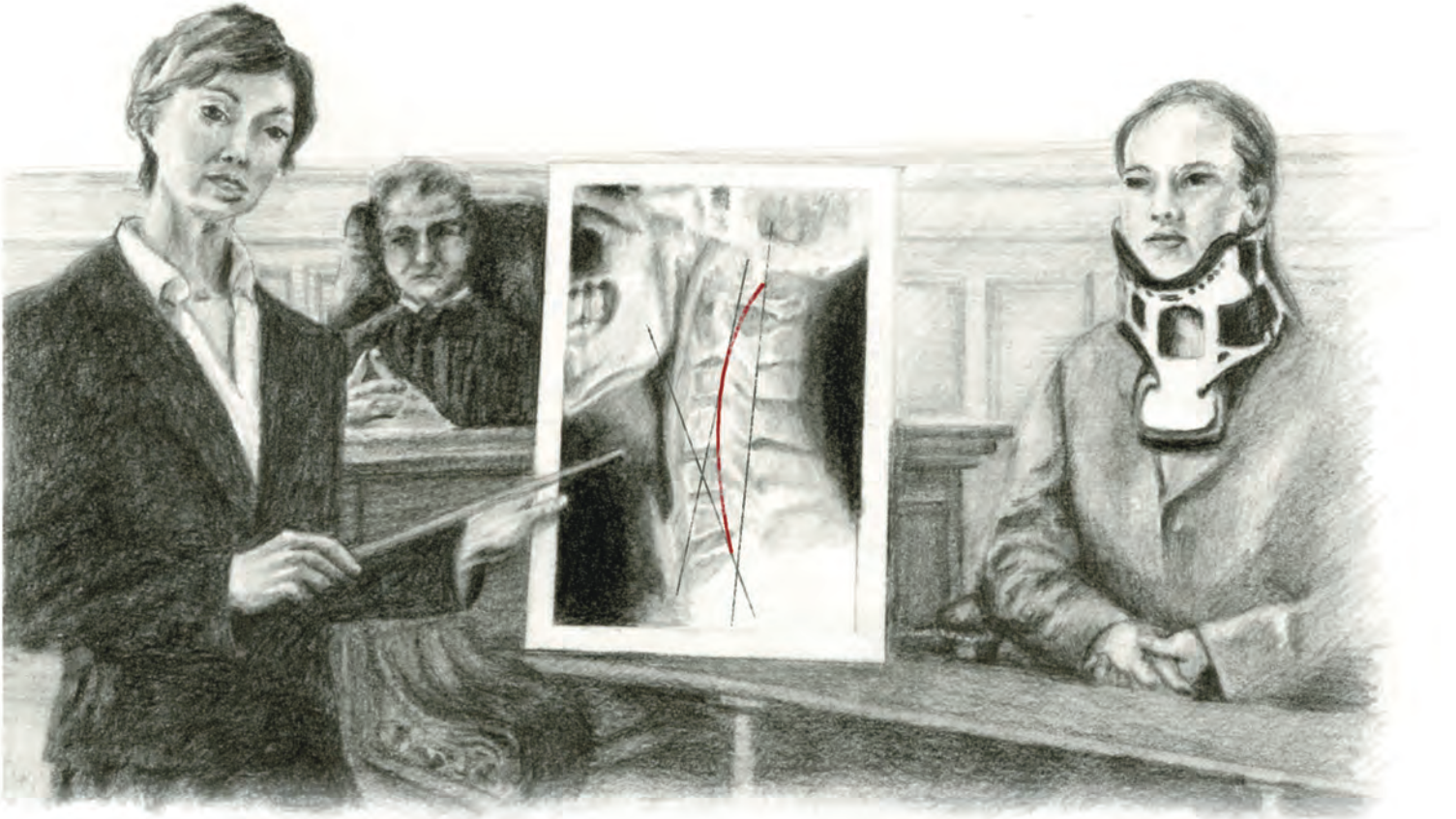
By Ken Broda-Bahm, Ph.D.

We all remember

"show and tell," and at least back then we understood intuitively that if we tried to just tell, without showing, we couldn't expect much attention from the class. The same applies in litigation, and in a way you might not expect. Persuasion Strategies has conducted a large scale research study (1,375 mock jurors) focusing on the effectiveness of visual persuasion in a litigation context. The conclusions I'll be sharing do not focus on the obvious point that it is helpful to use graphics when talking to juries (we all pretty much knew that already). Instead, my focus is on the best *ways to use graphics*, contrasting five different approaches, as well as on the *specific effects* that these approaches have on comprehension and the credibility assigned to different arguments.

An important part of the story is the path that we took in the research. Midway through the project, we learned something very important. The occasional use of graphics is not enough. We added a fifth condition to the study and found that to get the full benefits of visual persuasion, attorneys should be using a continuous approach, giving the jury something to look at (other than you) at all times. Instead of following the practice of most attorneys in only using the screen periodically to show a document or image when a particular need presents itself, effective attorneys use graphic immersion: an approach relying on continuous imagery to reinforce all parts of your message. This approach, reflected in the best uses of PowerPoint, turns out to be most effective of all the graphic modes we tested.

What was the study?

Participants: We randomly recruited 1,375 jury-qualified and demographically diverse participants to serve as mock jurors in an online experiment in late 2010 and early 2011. Screened participants completed the study at a secure website.

Stimulus: Working with Holland & Hart attorney Pia Dean and former Holland & Hart attorney Scott Mitchell, we created and video-recorded 40 minutes of summary arguments from the Plaintiff and Defense sides of a products liability suit. The case involved a 16-year-old boy who was brain injured after a baseball he pitched was hit back toward him by an aluminum alloy bat at an unexpectedly high rate of speed. The plaintiffs' claim that the bat was unreasonably dangerous because its design and manufacture made it possible to hit the ball at greater speeds than those associated with wood bats or other aluminum bats. The Defense claimed that the same injury could have been produced by a ball coming off any bat. The company also claimed that there were other causal factors (including a vulnerable pitching position and a banner behind home plate that reduced the visibility of the ball).

Conditions: Participants all saw the same version of the Plaintiffs' presentation, but were randomly assigned to one of five versions of the Defense presentation. Versions were created using the same source video (to keep delivery constant), while adding the different styles of visual persuasion via editing. The script only differed in short phrases (e.g., "as this chart shows…"), made necessary by the different visual approaches. The five versions were:

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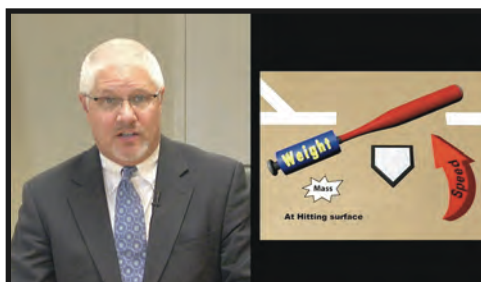STRATEGIES

1 No graphics;

2 Flip chart graphics, created live;
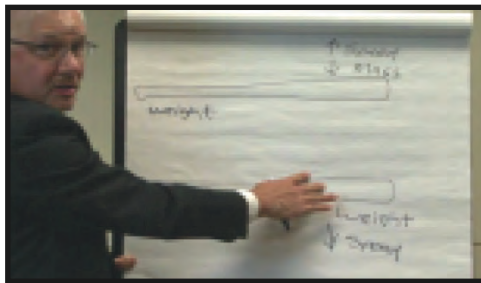
3 Static graphics, designed, but not animated;

4 Animated graphics;

5 Immersion: a mix of static and animated graphics used continuously so that imagery was shown throughout the presentation.

In conditions 2, 3, and 4 the same concept was represented using the different visual modes. We chose one contested issue for liability, one for causation, and one for damages.

Process: Our mock jurors completed an initial survey, then viewed the Plaintiff's summary argument and one of the five Defense versions of the summary arguments, then completed a final survey including a verdict form. We analyzed the data to look for significant and meaningful differences between the conditions using analysis of variance (ANOVA) and multiple analysis of variance (MANOVA) techniques.

Part I: Continuity

So how did the different versions perform?

This is the part that we learned on the job. Initially, it didn't occur to us to include an immersion version. We tested no graphics versus flip chart versus static graphics versus animation. When the results for those four conditions came in, we were surprised at how little difference it made. In each of the four conditions, we saw close to 55 percent favoring the Plaintiff and 45 percent favoring the Defense. While there were small differences in credibility or comprehension of specific points, there was unexpectedly no consistent pattern favoring one graphic approach over the others.

That told us two things. One, our mock jurors seemed to be stubbornly responding to the facts of the case more than just the mode of presentation -- rather like real jurors. And two, the occasional use of graphics did not seem salient enough to make a significant difference. In the context of an 18-minute summary, the Defense attorney's use of three key visual aids only took up approximately three and a half to four minutes. So the dominant experience for the mock jurors, realistically enough, was listening to an attorney speak, and the periodic breaks to include graphics weren't enough to engage the jurors in any different way.

So, to test the theory that a more continuous engagement with graphics would be more effective, we created the fifth version, focusing on immersion. Using the same video-recording of the attorney, we layered on a visual component that continuously, but simply underscored what the attorney was saying. We continued the use of the static and animated graphics used in the other version, but also added simple text, imagery, and charts to provide a continuous visual flow that would reinforce, and not compete with, our defense attorney's arguments.

The advantages of visual immersion:

Comparing the results of this visual immersion to the other versions, we found a far greater number of statistically significant conclusions, as well as a consistent pattern in those conclusions: In nearly all cases, the version based on the continuous use of graphics performed better than versions including no graphics or occasional graphics.

Why would it be better to provide your audience with a continuous visual track to the presentation? We would love to wire jurors up to neuroimaging technology to find out exactly why, but for now, there are two good theories.

One, because it is cognitively more complete. By showing, as well as telling, throughout the presentation, you are engaging and using more of the jurors' working attention, causing them to pay more attention, and to notice and see more of your argument. This is often referred to as "the cognitive theory of multimedia learning:"

"People have two separate information processing channels – one for visual/pictorial processing and one for auditory/verbal processing. When words are presented as narration, the auditory/verbal channel can be used for processing words (i.e., the narration) and the visual/pictorial channel can be used for processing pictures (i.e., the animation), so neither one is excessively overloaded." [1]

Two, because it requires less mode shifting. When you interrupt a verbal explanation with a sudden request to, "hey, look at this...", you are asking your listener to change the way that they've been paying attention. Instead of listening, they are now looking. When you are done with the visual part, they'll go back to just listening. Of course, we have sophisticated brains, so we can accomplish those switches with ease, but it is reasonable to still expect a little bit of information loss as we jump from one style to another. Better, the theory goes, to keep a listener engaged using one combined and mutually reinforcing visual and verbal approach.

More superficially, an audience could also simply see greater visual use as a sign of greater preparation, which by itself can make a source more credible.

Taking legal persuasion 'Beyond Bullet Points:'

Of course, the idea of using comprehensive visuals (PowerPoint or Trial Director, for example) is not new to lawyers. Still, for every lawyer who makes complete use of graphics throughout an opening statement, there are dozens who either present using no graphics, or using only the occasional graphic. Even for those who have discovered PowerPoint,

the resulting presentations will often bear a suspicious resemblance to their speaking notes, blown-up on the screen. That, decidedly, was not our approach. Instead, we based our graphic immersion version generally on "Beyond Bullet Points" (Cliff Atkinson, 2005), a book written by the visual communication consultant who authored Mark Lanier's presentations in the Vioxx trials. This approach is grounded in cognitive research and learning theory, and is based on the notion that elements which might work well in a textual or report format -- like longer textual explanations, bullet points, more detailed diagrams, etc. – do not work well in an oral presentation medium, like an opening statement. Cognitively, the slide show should reinforce the message and make it more memorable and powerful. It does this by conveying a structure of key ideas (this is a reason to use different colors associated with each main section), and by focusing each slide on a single-pointed message (most often, a single image paired with a very short but complete thought heading).

Recommendation: Prepare opening with an equal emphasis on words and visuals.

A graphic immersion approach can be used by experts in testimony, and by attorneys in closing argument as well. But for your opening, we recommend an approach that combines a single, simple visual with a clear written message to make one clear point per slide. This is an approach that starts with the way you prepare. The following, for example, is drawn from a comprehensive set of recommendations we prepared on a tire blowout case. Instead of creating a script first, and then working in a few graphics, we developed both at the same time in order to pair a continuous line of verbal persuasion with a complementary sequence of visual persuasion. Here is a short example excerpted from those recommendations.

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Recommended Content	Recommended Visual
*When it came to protecting the public — when it came to letting my clients, and thousands of other users and sellers know that the tires were defective and to know the full effects of that defect, **this tire company put us all in the back seat**. They didn't give sellers, consumers, and my clients the information that they needed in order to make a safe choice.*	
• Let's take a look at what went wrong. If you are taping something down — let's say you are taping a child's drawing to the wall — it is a simple matter. You need to make sure you have enough of the paper under the tape in order to be sure the tape will hold. Now, you don't fuss over it so much when it is a drawing on the wall. But you would fuss over it if it was a tire that people's lives are depending on.	
• The company knew about this dangerous condition. And regulators knew that they knew. You'll even hear the defendant emphasize that they notified some consumers. *• Sounds pretty good, right? But let's just see where they put that internal language in their notice to consumers.*	
• What would have been better? Well, what about notifying all of the companies currently selling that tire. There are 17,579 of them. At first, that sounds like an awfully huge number. *• But you have to remember, this is a company that is used to sending information — brochures, advertisements, and of course, the tires themselves, to all of these dealers.* *• At bulk rate postage, the notice that would have saved my client's lives would have cost less than $5,000.*	

Part II: Comprehension

When we think of great attorneys, the skills that we most often cherish are persuasion and logic -- the power to get a judge or jury to think and to do what you want. But what about the ability to inform, to explain, to simply make something clear? An effective teacher can be more trusted, and ultimately more effective, than even an attorney with a full briefcase of rhetorical technique. After all, if you can get your fact finders to understand the critical point from your perspective, then you are more than halfway to persuading them.

In Part II, we focus specifically on the role of visuals in building comprehension. The finding? Good visuals help teach the case, but the best visual teacher lies not in the occasional use of graphics, but in an immersion approach, with an attorney or witness using a continuous graphic presentation (like a well-designed PowerPoint deck) to accompany their verbal explanations.

Difficult causation arguments:

The fact pattern we developed for our study saddled the Defense, realistically, with some difficult causation arguments. Thus, one thing that we wanted to look at is whether jurors could get past the simple "first A then B" thinking (Bat hits ball, ball hits boy) in order to consider more specific causation questions. Part of our approach was to test jurors on their comprehension. We found that those jurors who saw the continuous visual approach were able to correctly identify the Defense causation arguments (better recall), than jurors who saw either no graphics, or a different graphics approach: an average of seven correct answers out of eight possible, compared to around six and a half in the other conditions (p<.05). It isn't a large or dramatic advantage, but it is a statistically significant one: a small but reliable edge for attorneys who want to make sure that jurors have the most accurate understanding possible.

Memorable damages numbers:

In this case, the Defense wanted to hedge its bets against a liability finding by providing an alternate number for damages. Because the Plaintiffs in this case were arguing for substantial lost earnings, and a fairly elaborate life-care plan for the injured boy, the Defense needed something other than an open wallet in case the jury got to that point. But in order for jurors to anchor on an alternate number, they first need to remember it. In our study, we tested our mock jurors' ability to remember alternate damage numbers in the same way that we did for causation: by checking the accuracy of their recall. Again, jurors in the immersion condition had better recall of the correct numbers by a statistically significant margin – a small but dependable advantage:

Graphic immersion promotes better memory of preferred damage amounts.[2]
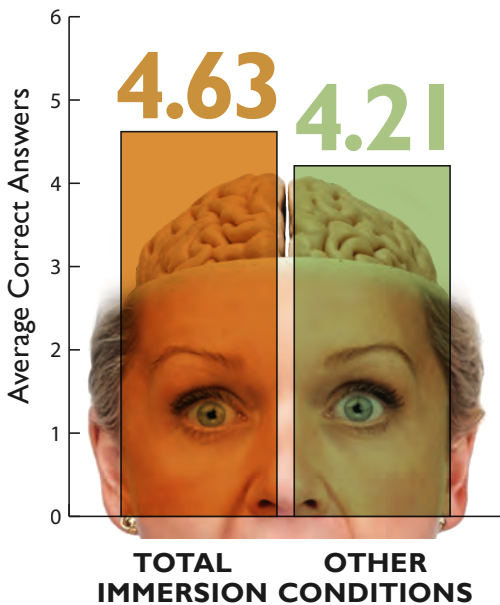
Interestingly, those in the visual immersion condition also had a significantly smaller decrease in their recall of the Defense damages numbers, when measured three to five days later, than those in the other conditions (p < .0001).

Recommendation:

One clear recommendation is that, while you shouldn't expect graphics to make your case by themselves, you can rely on a small advantage if you use graphics to teach, especially when you use them continuously to accompany an opening or a closing argument. But one thing attorneys don't always consider is the fact that you can also incorporate continuous graphics in expert witness examination. That is right, you can help turn your expert into a teacher with the magic of PowerPoint. Of course, testimony is presented as Q and A, not as a direct speech to the jury. But it is possible to subtly shift to a more presentational mode without drawing an objection:

Attorney: Doctor Green, when you say "overlapping belt construction," what does that mean? Can you explain that to me and to the jury?

Expert: Well, yes, I've prepared a slide show which I think demonstrates this.

Attorney: Your honor, if I may, I have those slides and they've been provided to plaintiffs' counsel...

Court: Go ahead, for demonstrative purposes.

Attorney: Okay, Doctor Green, I'll just hand you the 'clicker' so you can advance the slides when you need to...

And suddenly, what was dry legal questioning becomes an engaging college class. But there are three rules to this approach:

*1. **The slides are prepared by the expert.** They can get whatever help they want from attorneys, consultants, or graphic experts, but for the testimony to be natural and believable, the slides should be the expert's product.*

*2. **The slides should practice good visual hygiene.** That is, don't just put speaking notes on a slide. That isn't effective because it requires jurors to read and listen at the same time, and pulls attention away from the expert and toward the screen alone. Instead, the slides should consist of clear and simple visual reinforcements to accompany the expert's testimony.*
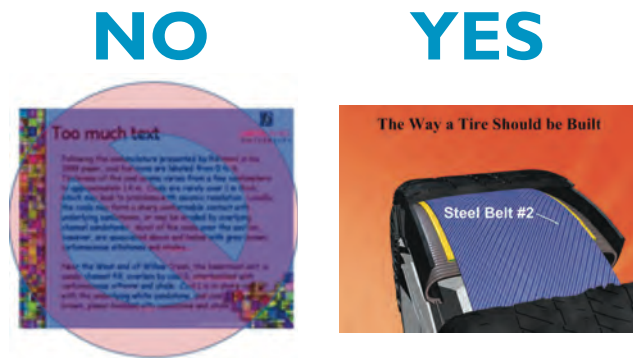
*3. **The attorney recedes, but does not disappear.** If your adversary is awake during this teaching moment from the expert, then you're likely to draw an objective for "narrative." But this can be avoided as long as you keep the lawyer in the process, asking helpful, transitional questions as the presentation goes along. If it sounds scripted, it will ring false. But if it sounds like the lawyer is just trying to get clarification -- to be "the voice of the jury" -- then it will seem natural and educational.*

Ultimately, the goal is to give the expert that power to be the teacher and to hold the jury's interest by immersing them in well-prepared and simple visuals.
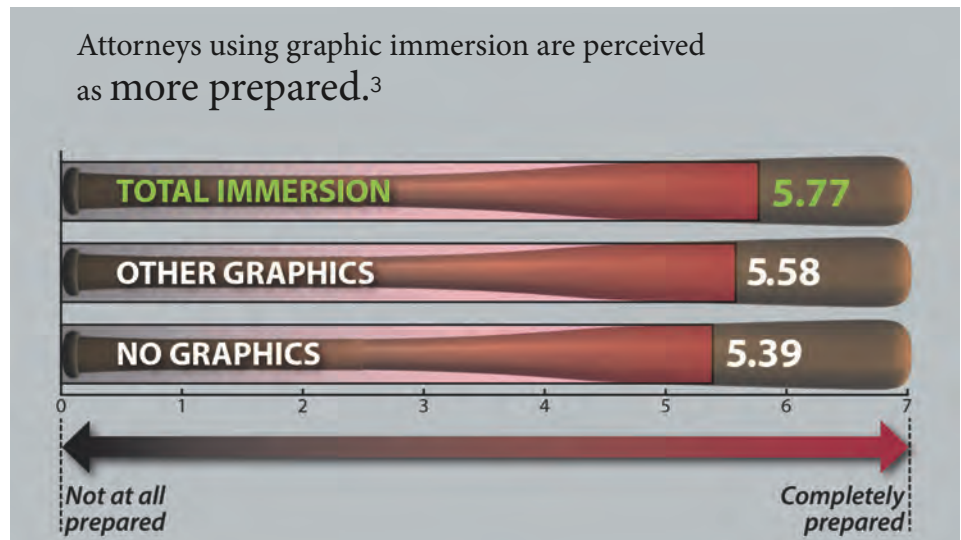
Part III: Comparison

We sometimes meet attorneys who want a low technology approach in trial. I imagine they see themselves standing in front of the jury saying something like, "well...I'm just a country lawyer and I don't know much about all these new fangled gadgets – documents flying on the screen, Star Wars animation and whatnot. But I do know one thing..." The thought is that jurors will look at the party using all the technological bells and whistles on their side and think, "well, that is deep pockets and manipulation!" Then they'll look at the other side, with arguments clothed only in reason and the law, and think, "well, that there must be the simple truth!"

But does this David versus Goliath schtick actually work when jurors are comparing two parties with differing reliance on technology in the courtroom? Based on our study, we think that the answer is no. Years ago, when technology was first coming onto the scene, there may have been suspicion of the higher technology party. But today's juries are much more used to sophisticated visual strategies because they're more likely to see them on the news, at school, and on the internet.

The perception of preparedness:

Naturally, juries and other audiences look for signs that those addressing them are prepared. That is why it can spell doom to fumble with anything -- documents, technology, motions -- in front of a jury. From their standpoint, the attitude is, "You are pulling us out of our lives and using our time, so rule one is 'be prepared.'" One of our main findings is that the party using graphics is perceived as more prepared, particularly when attorneys use immersion approach in which jurors see continuous imagery accompanying a presentation.

Attorneys using graphic immersion are perceived as **more prepared**.[3]

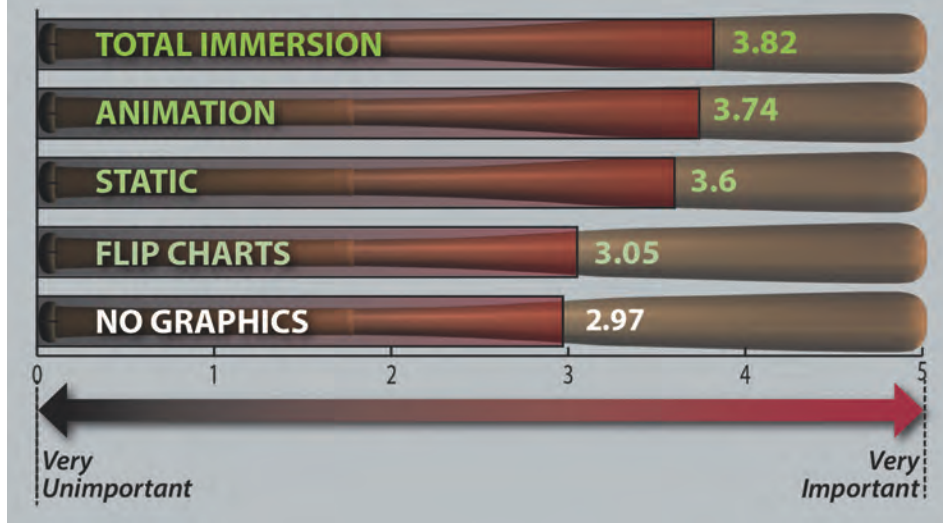|	
TOTAL IMMERSION	5.77
OTHER GRAPHICS	5.58
NO GRAPHICS	5.39

Not at all prepared — *Completely prepared*

So at a statistically significant level, jurors are likely to see the party using graphics, continuously, as modestly more prepared than the party who doesn't.

The perceived importance of the presentation:

Another interesting finding from the research is the role of graphic style in highlighting the importance of the presentation itself. After viewing the summary arguments, we asked our research participants to rate the importance, or unimportance, of various issues and features of what they saw. When the Defense presentation made greater use of visual tools, mock jurors saw the Defense presentation as significantly more important than when the Defense didn't use graphics, or used fewer graphics. More specifically, jurors seeing presentations based on a graphic immersion approach from the Defense, felt that the imagery used, by both parties, was significantly more important.

Graphic immersion raises the **importance of imagery** used.[4]

TOTAL IMMERSION	3.82
ANIMATION	3.74
STATIC	3.6
FLIP CHARTS	3.05
NO GRAPHICS	2.97

Very Unimportant ← 0 1 2 3 4 5 → Very Important

In other words, instead of seeing jurors distrust and discount the side with greater technological reliance, we found the opposite: If one side is using visuals, than the case is more likely to be about the visuals used, and that is something — country lawyer schtick notwithstanding — that can only hurt the less technological party.

That finding is also quite consistent with hundreds of post-trial interviews that we have conducted. It is quite rare these days to come across a former juror criticizing technology for being too fancy or too expensive. When technology fails, the more common accounts are that: a) the attorney didn't know how to use it and wasted our time, b) it was repetitive and wasted our time, or c) we couldn't understand it, so it wasted our time (see the theme?). In the more common instances where technology doesn't fail, jurors just see it as one of the many tools that were used to help them understand the case and to make a good decision.

Recommendations for 'looking good' when compared to the other party:

1. ***Don't be the party making less use of technology.*** *Doing that doesn't make you seem simple and honest, and doesn't make the other party look like deep pockets. It only sacrifices the advantage of better teaching, while also risking the message you are less prepared, and less interested in clearly explaining the case to the jury.*

2. ***Do use a continuous visual approach when you can.*** *In opening statement, closing argument, and even witness testimony, relying on a visual strategy that is fully integrated with your verbal strategy is more effective. Jurors pay better attention and perceive a more prepared advocate when you have both words and imagery for each important point.*

3. ***Use a professional.*** *Your job is to focus on the evidence, the law, and the persuasion. Someone else's job should be to make sure the technology works. Technology is good, but an attorney fussing with technology is an irritation. Hire someone to sit at counsel table and call-up, zoom, and highlight documents. That person should have redundant systems (more than one hard drive with the exhibits) and should test everything in advance. You also need a person with the skills to conceptualize and execute demonstrative exhibits before and during trial.*

4. ***Consider cost-sharing.*** *For many cases, each party will have their own trial technician and their own set of equipment and exhibits. The reasons for doing that (you're used to working with your own person, you don't completely trust the other side) are good reasons, but the redundancy that is built-in to it is part of what makes litigation so expensive. If the two parties share the expense, however, and use a professional trial technologist, our experience is that you can trust they will be efficient, neutral, and fair.*

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Part IV: Centrality

"I know how to explain it, and I think I even know how to persuade jurors on it — but how do I make it central for them? How do I make this fact the first thing they remember about this case?"

That question, asked recently by an attorney on her way to trial, highlights the importance of, well, "importance" itself. More than just importance, the need is for centrality, because everything can be important (as attorneys often tell us), but only a few things can be truly "central."

The ability to make a fact or issue central is the focus of Part IV in reporting the results of Persuasion Strategies' Visual Persuasion study. We found a big part of the solution for making something central is to make it visual. And the best way to make it visual is to make it continuously visual. While you might think the approach of making continuous use of graphics could prevent the key points from standing out, we found the opposite. When our presenting defense attorney used visuals throughout every moment of the presentation, that approach served to reinforce the importance of key alternate causation arguments.

A critical alternate cause argument:

While the Plaintiff in our fact pattern focuses on alleged defects in the bat design, Defense needs to redirect attention in other directions, specifically toward two theories of alternate cause.

The first alternative cause offered to jurors relates to the injured boy's pitching form. The Defense contention was, rather than ending the pitch in a position which allowed him to field the ball, as pitchers are trained to do, the Plaintiff in this case ended his pitch in a vulnerable position that increased the risk of injury.

Vulnerable Position

The other alternate cause was uniquely visual: the pitcher's ability to see the ball. The Defense contended a white banner placed behind home plate, by a local radio station, prevented the ball from standing out clearly and decreased the pitcher's reaction time after the ball was hit.

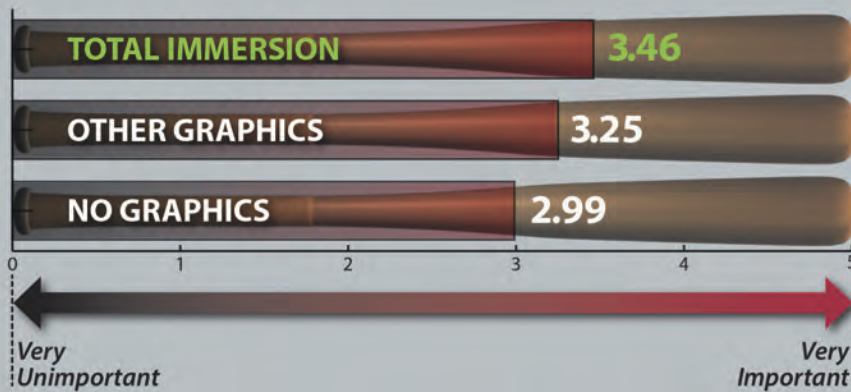**Less Visibility**   **More Visibility**

In the different versions of the Defense presentation, the attorney uses words alone to describe these alternatives, draws them on a flip chart, uses designed images, plays animations, or uses an immersion approach consisting of continuous use of a number of different approaches.
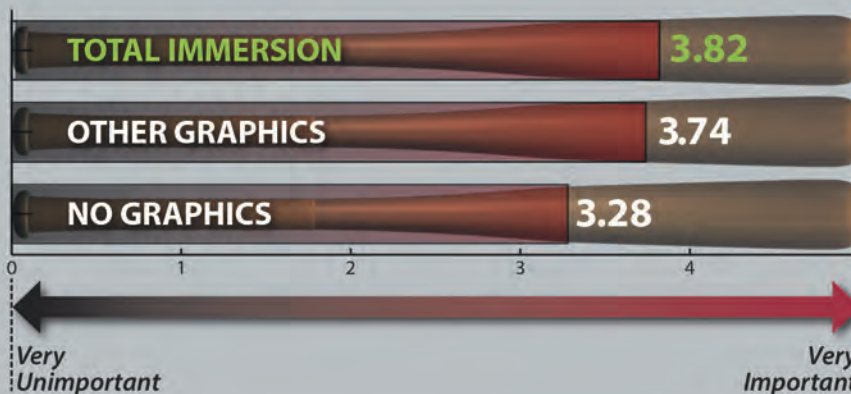
As in the other situations we've described, using graphics was significantly better than not using graphics, and using an immersion approach was best of all.

Graphic immersion raises the **importance of alternative cause:** pitching form.[5]

TOTAL IMMERSION	3.46
OTHER GRAPHICS	3.25
NO GRAPHICS	2.99

Very Unimportant ← → Very Important

Graphic immersion raises the **importance of alternative cause:** ability to see the ball.[6]

TOTAL IMMERSION	3.82
OTHER GRAPHICS	3.74
NO GRAPHICS	3.28

Very Unimportant ← → Very Important

Recommendations:

*1. **Decide and focus.** Of everything you need to prove (yes, we know, it is all important), decide what is central. Key ways to know: "If they don't understand this, we lose," or better yet, "Once they do understand this, they'll have an easier time understanding everything else." Once you know that, ask yourself what you are doing, verbally and visually, to make those points stand out. On the two alternate cause arguments mentioned above, for example, the immersion version included animated examples on those points, while nearly all other points were reinforced with static graphics.*

*2. **Test your graphics.** Early focus groups and mock trials provide great opportunities to find out what works and what doesn't work visually. If you ask jurors specifically, "What do you think about this chart?" They are likely to critique the design or execution in sometimes ideosyncratic ways. Instead ask more generally, "Of everything you heard today, what stands out to you the most?" or even more simply, "Why do you side with party x or y?" Then you follow up with, "Okay, what else?" a few times, then you are likely to get better information on what is truly important and central to jurors.*

*3. **Don't just save your graphics for jurors.** There is nothing about going to law school, sitting on a bench, or working as a mediator or arbitrator that makes one immune to the benefits of visual persuasion. For example, for a recent contract mediation, we invested substantial time and thought into an interactive timeline. It was pretty slick: Using Flash, it could expand and contract, becoming more or less detailed as the need required, and it included specific documents and testimony that could pop out and be highlighted at different points of the story. It turned out the mediator was enamored with the tool and used it to frame his understanding of the story. That is a big advantage any day.*

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Part V: Caution

Astute readers will notice one claim that we haven't made: namely, that graphics will win your case. By themselves, they won't. When we compared five different approaches to graphics (no graphics, flip charts, static graphics, animations, and continuous graphics use), and compared the reported case leaning, and verdicts on liability and causation, we found no one method presented a statistically significant advantage over the others.

I'll admit, even for a dispassionate researcher, this was a bit of a disappointment. As we designed and prepared the study, we had allowed ourselves to dream, "Wouldn't it be great if, keeping the script constant, we could find the difference between winning and losing in graphics alone?" Alas, not in this case. Perhaps that is a necessary dose of reality. The central caution we leave you with is you won't win your case because you use graphics. Good visuals do provide a definite edge: they improve comprehension, allow you to compare more favorably to the other side, and help to make the key points more memorable. By themselves, good graphics won't turn the case in your direction. In Part V, we take a sober look at this final caution and provide some parting advice on focusing your visual persuasion in litigation on what it does best.

No significant difference on verdict:

By default, in our fictionalized fact pattern, the case leaned in favor of the Plaintiff. So what we wanted to test was whether manipulation of graphics use could improve the defense. We did see improved comprehension, better perception of the importance of several central issues, and greater perception of preparedness when the Defense supplemented their argument with graphics, particularly when making use of graphics continually rather than occasionally. This did not, however, translate into a reliably higher overall win rate when Defense emphasized visual persuasion. While the highest percentage of straight Defense verdicts ("no" to both

liability and causation) did occur among those mock jurors who had seen the Defense version using the "immersion" approach of continuous graphics (followed in order by flip charts, animations, static graphics, and no graphics), the differences were not quite large enough to be statistically significant.

As interesting as it would have been to report a clear significant difference here, it is probably a realistic result we're reporting. After all, in each of the Defense versions we tested, the evidence, the story line, even the specific script did not differ. Where graphic style did make a difference, it was in some pretty key areas: comprehension, perceived importance, and party comparison. The fact this didn't result in a greater percentage of Defense verdicts doesn't mean anyone would want to sacrifice those advantages.

Recommendations:

Based on the ability to better explain, better show preparedness and effective presentation, and better emphasize what is central to the case, we are confident in the recommendation to use graphics, and to use them continuously rather than just occasionally. Based on the results of this study, an opening statement, closing argument, or expert witness testimony accompanied by a well-designed PowerPoint presentation is more clear and more memorable than one that just uses sporadic graphics, or no graphics at all.

At the same time, it is important to emphasize visual persuasion is not a magic bullet and not all graphics are created equally. The decision of what is best for your case should be based on a thorough analysis of the issues of the case, as well as an opportunity to pretest the visuals through mock trial or focus group research. In general, however, there are three golden rules that you can mnemonically remember as "The Three S's" -- Good graphics in litigation should simplify, supplement, and sell.

Simplify:

Here is a scenario that has happened thousands of times in the days running up to trial. The team asks for a timeline, then scrutinizes draft copy produced by the graphic designer:

"Wait," one member chimes in, "the Andersen memo isn't here...and we need to show where the comment period kicks in...and there was a meeting on the fifth...and we need to show Johnson's letter was earlier in the day than Elliot's email..."

And bit-by-bit, what was a clean timeline of just the critical events becomes a dumping ground for every document and date, important or not. The bottom line is graphics exist to simplify, but far too often the role they serve is to complicate. When the central imperative becomes "include all of the events," then the resulting graphic is comprehensive at the expense of being clear.
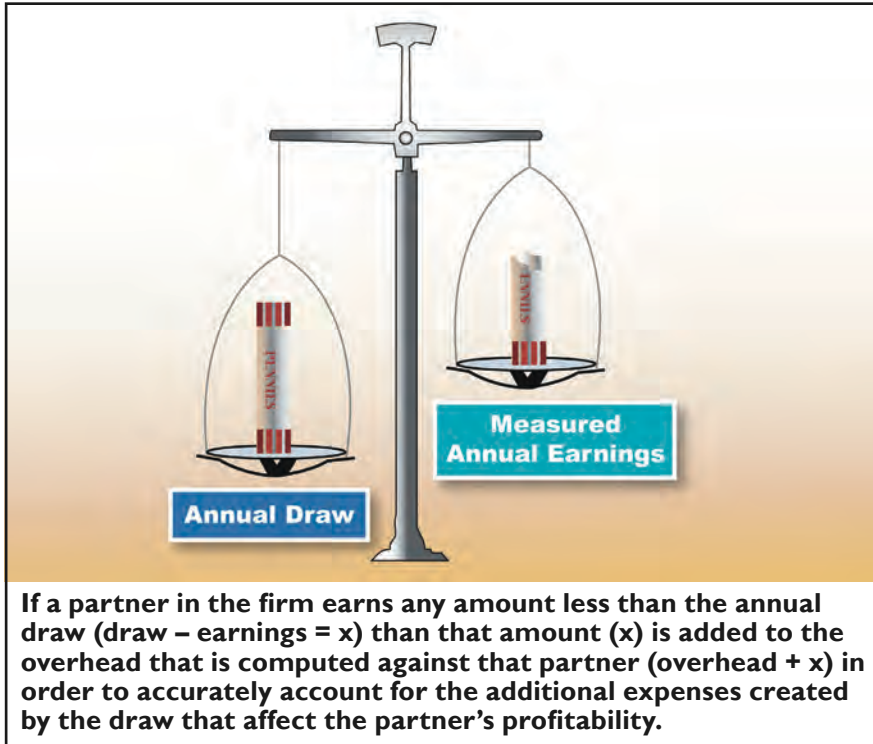
Instead of including everything, the timeline should selectively focus on its own message. By design, it should include only those key events that frame the story as you want the fact finders to understand it. As you and your witnesses work with the timeline, you will inevitably add more context and details that are not explicit in the demonstrative, but the smaller number of key events will still serve as a reference point for you and jurors. Most importantly, the leaner timeline should convey a clear message. In fact, one test of a good timeline is whether it can be summarized in a short header, like so:

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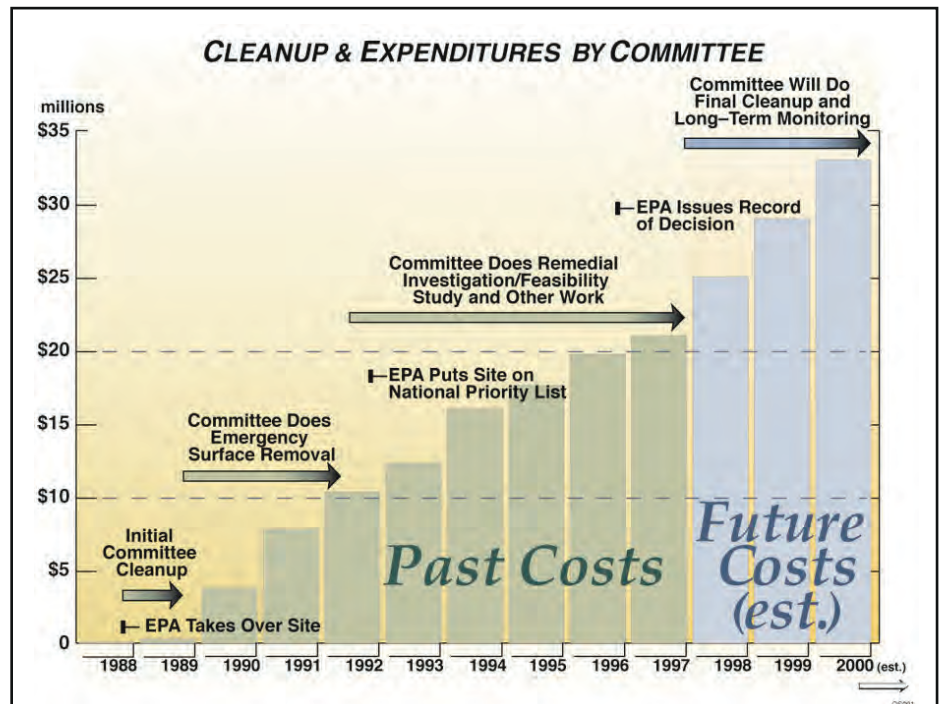
Supplement:

It is important to remember you aren't simply handing your PowerPoint file to your judge or jury. It isn't supposed to stand on its own. Instead, visual persuasion works best when it is supplemented by a clear explanation from the attorney or witness.

For example, the following graphic does too much, because it tries to include the complete explanation as part of the visual. It invites your jurors to read instead of listen and see.

If a partner in the firm earns any amount less than the annual draw (draw – earnings = x) than that amount (x) is added to the overhead that is computed against that partner (overhead + x) in order to accurately account for the additional expenses created by the draw that affect the partner's profitability.

Instead, that same explanation is likely to be more clear if it is the verbal accompaniment to a more visual, less text-heavy demonstrative, like so:
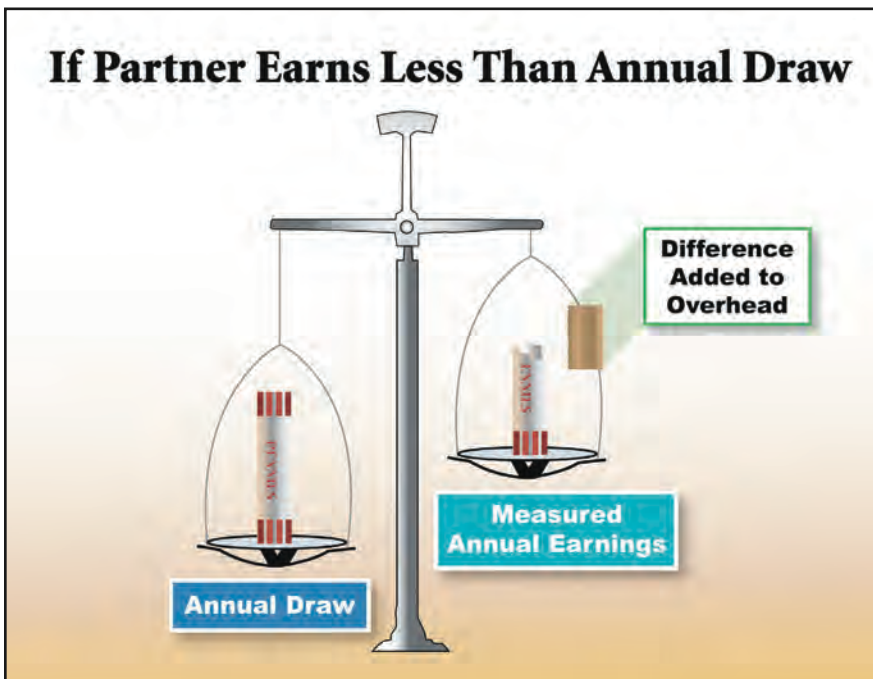
Sell:

We want to be on the side of clarity and to feel that a jury with the best understanding of the case is naturally going to side with you. It is nice when that happens, but experienced litigators know juries are usually a little more nuanced than that. There are often points where greater clarity just serves to make some of your adversary's arguments more clear.

When developing graphics, lawyers, consultants, and graphic designers alike are at risk of falling into the "teacher mode." That isn't a bad impulse - after all, jurors are more likely to trust a teacher than an advocate. When you are putting your teacher hat on, it is critical to ask, "Who is most likely to be helped by this better understanding?" Take the following depiction of the process of creating cardboard tubes, for example. By dividing the manufacturing process into simple, numbered, color-coded steps, the graphic makes it simple, clean, and understandable. If that is your goal, then you've done a good job. If, on the other hand, this is an intellectual property case in which it is in your interest to make the process seem complex, sophisticated, and "non-obvious," then your explanatory demonstrative will inadvertantly be selling the other side of the case.
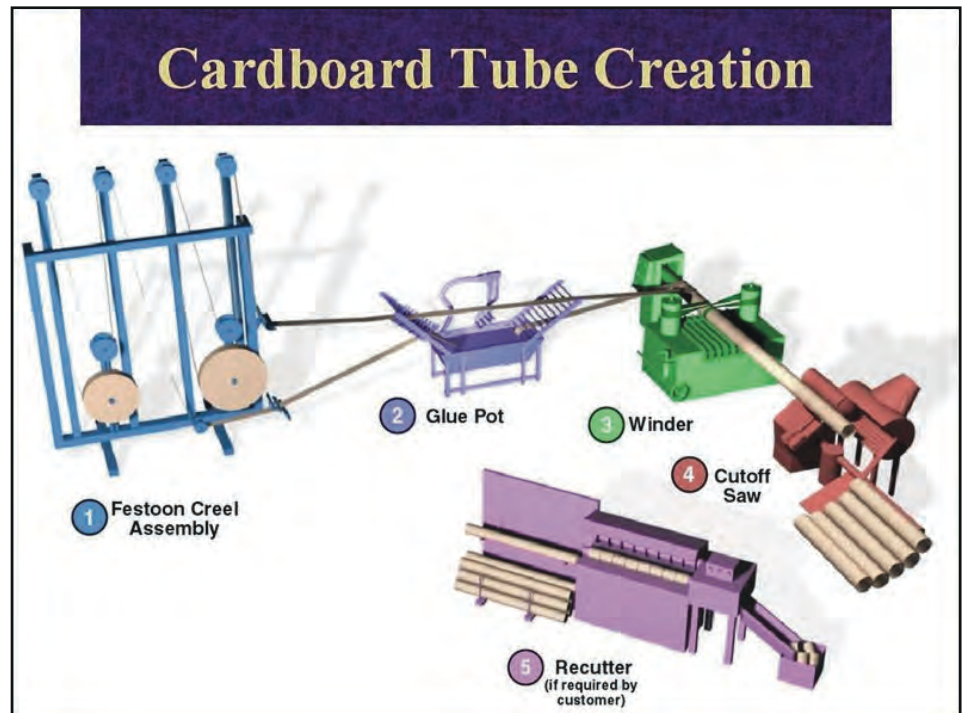
The demonstrative exhibit should help you explain, but in a way that also subtly helps you to sell your side of the case as well.

These are just a few of the considerations that go into effective demonstrative exhibit design. The best approaches, naturally enough, will be based on a complete analysis of the strengths and weaknesses of your case, and a full understanding of where your greatest needs are to show, as well as tell.

References:

[1] Mayer, R. E. (2001). *Multi Media Learning*, Cambridge University Press.

[2] Persuasion Strategies Visual Persuasion Study (2011): p< .002.

[3] Persuasion Strategies Visual Persuasion Study (2011): p< .0001 over no graphics, .027 over other graphics.

[4] Persuasion Strategies Visual Persuasion Study (2011): p< .0001 over no graphics and flip charts.

[5] Persuasion Strategies Visual Persuasion Study (2011): p< .0001 over no graphics, .006 over other graphics.

[6] Persuasion Strategies Visual Persuasion Study (2011): p< .001 over no graphics.

A special thank you to Persuasion Strategies' graphics team for their work in designing the various graphic versions tested in this study, and in developing the demonstrative exhibit examples *(the good ones, not the bad ones)* referred to in this series.

Cover Illustration: Pam Miller, 2013.

To have a more detailed conversation about how these findings may affect your litigation strategy, please contact Ken Broda-Bahm at KBrodabahm@persuasionstrategies.com or 303-295-8294.

PERSUASION STRATEGIES™

Dr. Ken Broda-Bahm has provided research and strategic advice on several hundred cases across the country for the past 16 years, applying a doctorate in communication emphasizing the areas of legal persuasion and rhetoric. As a tenured Associate Professor of Communication Studies, Dr. Broda-Bahm has taught courses including legal communication, argumentation, persuasion, and research methods. He has trained and consulted in 19 countries around the world and is a past President of the American Society of Trial Consultants. Ken is a lover of new ideas, exotic places, innovative gadgets, and good arguments. He is married to the other Dr. Broda-Bahm (wife, Chris), and is the proud dad of 5-year-old Sadie. Learn more about Dr. Broda-Bahm at www.persuasionstrategies.com.