

DEMONSTRATIVE EVIDENCE

WHAT IS A DEMONSTRATIVE EXHIBIT?

A Demonstrative Exhibit is an item of evidence that is not historically connected to the case but nevertheless aids the finder of fact by illustrating some relevant point. So for example in a homicide case the prosecutor might enlarge a diagram of a body on which the Medical Examiner can draw the injuries to better convey her testimony to the jury.

Why Use Demonstrative Exhibits?

We are apparently wired to understand and retain information conveyed to us better when we are told of it through story and even better when visual aids are used to complement the story. Truly, a picture is worth a thousand words. Various studies demonstrate that comprehension and retention of information is dramatically improved when the audience is presented with verbal and visual information as opposed to merely the audio portion.¹ Visual aids help the speaker by giving emphasis to the specific points the speaker wishes to be understood. Visuals also provide the audience with interesting stimuli which compels the listener to change activity from auditory to visual and back. Finally, visual aids tend to encourage gestures and movement by the speaker which complement the speaker's ability to engage with the audience.

Types of Exhibits

The lawyer is limited only by Rule 403 and his or her imagination as to what they might use as a demonstrative exhibit in a trial.

- A measured length of string
- Photograph
- Aerial Photographs and Maps
- Scene Diagram
- Charts
 - Fingerprint comparisons
 - Tool Mark Comparisons
 - DNA Comparisons
- Quotes
- Traffic Stop Videos and Security Videos
- Models
 - 3-D

¹ Presenting Effective Presentations with Visual Aids,
<http://www.osha.gov/doc/outreachtraining/htmlfiles/traintec.html>. "In many studies, experimental psychologists and educators have found that retention of information three days after a meeting or other event is six times greater when information is presented by visual and oral means than when the information is presented by the spoken word alone. Studies by educational researchers suggest that approximately 83% of human learning occurs visually, and the remaining 17% through the other senses - 11% through hearing, 3.5% through smell, 1% through taste, and 1.5% through touch."

- Computer
- Organizational Charts
- Time Lines
- Summaries
- Exemplars
- Gun
- Currency

Foundation

The foundation necessary for most demonstrative evidence is either going to be “Is this a fair and accurate depiction?” or “Will this ____ be helpful in conveying your testimony today?” The rules implicated in demonstrative evidence include:

UTAH RULE OF EVIDENCE 403 (ex. Bloody photograph)

UTAH RULE OF EVIDENCE 1006 Summaries (ex. Summary of transactions in embezzlement case)

UTAH RULES OF EVIDENCE 702 and 703 (ex. Chart reproduced from Expert’s report summarizing DNA Evidence)

UTAH RULES OF EVIDENCE 901 (ex. Authentication necessary for admissibility of photos, audio or visual recordings when devices record automatically while not being monitored; data compilations etc.)

Have a Purpose For the Exhibit

Demonstrative Exhibits should advance the case. It does not need to be the central point but neither should you bog the trial down on excess exhibits that have no purpose. There are three basic purposes that demonstrative exhibits serve:

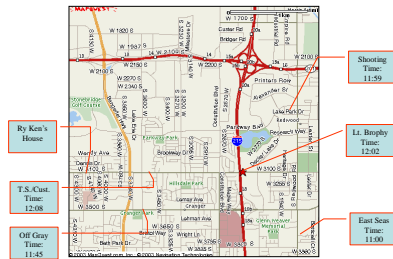
- Visuals that Emphasize
- Visuals that Associate
- Visuals that Organize

1) Most standard demonstrative exhibits we use fit in the first category, visuals that Emphasize. These are exhibits that we use to give emphasis to some point that is at issue in the case, such as the distance from the witness to the defendant or the description of the injuries. Thus, we might cut a piece of string 25 feet long to show how really close the witness was, or we might enlarge a diagram of a human form and have the doctor draw in the injuries and attach photographs of those injuries to the diagram emphasizing the nature of the injuries.

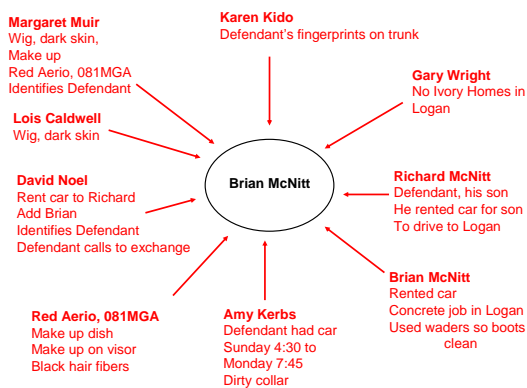
2) Visuals that Associate are exhibits that demonstrate the relationship between different pieces of evidence. So for example, a diagram of an overhead view of a scene might be complemented with a photograph of the street view much like what Google has done with Google Maps. The same could be done with bullet holes in a car and the associated bullet

trajectories and how they in turn relate to where bullets and bullet jackets were found in the car.

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3) Finally, Visuals that Organize help you bring together disparate ideas often from the testimony of several witnesses to organize them into one cohesive thought. The most common single example would be the use of a chart or PowerPoint slide that depicts the elements of the offense and how you have proved them. Other examples are summary charts or time lines or organizational charts depicting relationships of persons and or things.



Elements Counts 7-12

- ✓ 1. That the defendant, John Clinton Smith,
- ✓ 2. intentionally, knowingly, recklessly, or with criminal negligence;
- ✓ 3. failed to provide necessary food, care, or shelter for an animal in his custody; **OR**
- ✓ 4. transported or confined an animal in a cruel manner; **OR**
- 5. injured an animal.

PowerPoint in the Court Room

General

One of the most helpful tools in the courtroom is PowerPoint. PowerPoint can help with all three types of visuals. Where a photograph might be enlarged typically to 8 1/2 X 11 and mounted, PowerPoint allows you to enlarge a photograph to 4 feet by 5 feet. Where you might be able to hold up the photograph of the scene and have your witness show where it was on the photo that they found the gun and the photo's relationship to the overhead diagram, it will really bring the jury into the case when you show the diagram, zoom into a street scene and further zoom in to show where the witness found the gun. PowerPoint will also help the jury understand the case by organizing the evidence into one slide that shows them the map where the crime occurred, the car that the defendant used and the pieces of evidence that link him to that car and that crime, like corroborating testimony of codefendants, fingerprints and license plate description.

You can use PowerPoint with witnesses during their testimony as well as during opening statement or closing argument. Further, you can use it in both your closing and rebuttal argument. The one evil of PowerPoint is that it is there to help you present your case not the other way around. As you prepare, remind yourself this is the tail not the dog. How can this tool help me? With that you will succeed.

Equipment

At a minimum you will need a *computer* loaded with PowerPoint either laptop or a tower located at the courtroom. You will need something with which to *display* your images to the jury: projector and screen, monitors, or television. You will need *cables* to connect your computer to the display (unless you have a wireless system). Of course you need a *power source* as well (for both computer and display).

PowerPoint with a Witness

PowerPoint will make the testimony of many witnesses clearer and more understandable. PowerPoint will complement the testimony of an expert very readily. For example one need simply cut and paste data contained in the DNA report to make a chart ready for the witness to use in direct examination. With just a few clicks of your mouse you can turn a bland chart to life, emphasizing how certain unknown samples match other known samples. Another example might be to have your fingerprint witness walk through each point of comparison one-by-one on first the unknown print and then on the known print.

You can use PowerPoint with other witnesses in direct examination as well. For example you might have a street diagram and use arrows that show the course of the high-speed chase. Another witness with whom you could use PowerPoint is the crime scene technician relating the crime scene diagram with the photos of the exhibits and the items of evidence as they were collected.

The most important thing you must do in any case is to rehearse your examination using the PowerPoint presentation with your witness beforehand. Your questions and the expected answers need to be precise and in the precise sequence or you may be embarrassed (not to mention receive an objection) when something appears on the screen that is unrelated to what the witness is testifying to.

Dealing with Objections

This is no longer the concern that it once was, at least with the notion that, because it is PowerPoint, or because it is being projected, it is inadmissible. Judges for the most part are now familiar with PowerPoint and understand that all you are doing is what you could do with a flip chart. Importantly for them at least, it is often faster since you do not have to write the thing out as you talk to the jury. The underlying evidence though is still susceptible to the same objections; relevance, gruesomeness, foundation etc. If you have questions concerning the admissibility of a photograph or other exhibit you should solve the issue through stipulation or motion in limine.

Foundation is another question. The first answer is to go through the photographs or other exhibits with opposing counsel, including the PowerPoint brief, to attempt to induce them to stipulate to foundation. If that fails, you can present the hard copies of your exhibits to your witness. Without showing them to the jury, have the witness lay the proper foundation and then offer all of them at one time. Then seek to publish them. Now you can just publish them in the form of the PowerPoint.

If during the presentation there is an objection you can press the “B” or the “W” key and immediately turn the screen black or white and thus minimize the exposure of the slide before the judge makes their ruling on the objection.

Turn over any PowerPoint presentations to defense counsel prior to projecting the presentation to the jury. If the presentation is an exhibit to be used with a witness during direct examination, turn it over well in advance. If the presentation is a closing argument you will want to wait until just before you make the argument. Such a presentation is your work product, just like a flip chart, you do not have to turn it over in advance. Give counsel both a hard copy to follow along with and a disk showing the animation. Also give the court a courtesy hard copy with which to follow along.

PowerPoint in Opening and Closing

Demonstrative exhibits are under utilized in opening statements. If the main purpose of opening is to familiarize your jury with the evidence they are about to hear and the main tool we use in conveying that information is story-telling why would we not want to complement that story with a few well-chosen demonstrative exhibits. If you have a map that helps the jury to understand the scene and the story then use the map in your opening. If there are a large number of witnesses in your case show the jury pictures of your witnesses as you tell your story, otherwise the long list of unfamiliar names start to

run together. In opening statement before you can use an exhibit you must have a good-faith belief that the exhibit is admissible before you can use it.

In closing argument you should always consider presenting the jury with a visual display of the elements (not an enlargement of the instruction). This is after all what we must prove beyond a reasonable doubt. In addition, if your case is about the identity of the actor then charts that demonstrate the relationship between the evidence and the defendant are often very helpful. If the case is a circumstantial one, use PowerPoint to demonstrate how the evidence converges on to the defendant. If your issue is whether the crime was an intentional one or just a mistake you can demonstrate quite well through a summary chart or other association type charts. However, if your case involves the language of a statute like self defense or reckless mental state, bring the important words like “reasonable” or “necessary” out through charts that enlarge the important words through a zoom function.

Basic Computer Tips for Presentations

1. Turn off your screen saver.
2. Run everything from the hard drive.
3. Have a backup.
 - a. disk or drive
 - b. presentation method
4. Have a hard copy for introduction (judge and defense counsel).
5. Copy all files into the same folder.
6. Be prepared for crashes, lock ups, and warnings.
7. Know how to get your LCD to display from a laptop computer.
8. Run from the AC Adapter, not the battery.
9. Check the internet.
10. Use simple black on white or white on dark slide design.
11. Don't use sound effects.
12. Use simple entrance and exit effects.
 - a. fly in for bullet points
 - b. wipe for arrows
 - c. zoom to circle something or to zoom in on photos or text

Provided by: Fred Burmester, Deputy Salt Lake District Attorney