

**PRESENTING YOUR CASE THROUGH  
PERSUASIVE DEMONSTRATIVES**

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### **Introduction: Why Use Graphics At Trial?**

Today, we live in a culture of visual communication. Half of the human brain is devoted directly or indirectly to vision,<sup>1</sup> as compared to just 3% devoted to hearing.<sup>2</sup> Images grab our attention and can hold our attention. Just look at the social media we consume – applications like Instagram and SnapChat consist of primarily photographs. Today, 3.2 billion images are shared each day on social media platforms, and over 95 million photos are uploaded each day to Instagram alone.<sup>3</sup> Jurors have come to expect the same type of visual communication in the courtroom as they see in their everyday life. If the majority of jurors spend their daily lives consuming visuals to obtain information, why would they be any different in a courtroom?

Not only do jurors expect visuals, but visuals help jurors retain information for a longer period of time and more accurately. In a number of studies, psychologists and educators have found that retention of information after three days is six times greater when the information was presented by visual and oral means than when the information is presented by the spoken word alone.<sup>4</sup> After three days, people retain only 10% of what they heard from an oral presentation, 35% from a visual presentation, and 65% from a visual and oral presentation.<sup>5</sup> That means, when you combine words with pictures, you increase the brain's ability to store the information in long-term memory. The interlinking between the words and images gives additional meaning to each.

Dr. Richard Mayer from the University of California researched this interplay in what he calls the “multimedia principle.” Dr. Mayer's theory centers on the idea that learners attempt to

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<sup>1</sup> <http://news.mit.edu/1996/visualprocessing>

<sup>2</sup> <https://www.seyens.com/humans-are-visual-creatures/>

<sup>3</sup> <https://www.brandwatch.com/blog/amazing-social-media-statistics-and-facts/>

<sup>4</sup> OSHA, *Presenting Effective Presentations with Visual Aids*, available at <http://www.rufwork.com/110/mats/oshaVisualAids.html>.

<sup>5</sup> *Id.*

build meaningful connections between words and pictures and that they learn more deeply than they could have with words or pictures alone. He tested the principle by giving one group of subjects a lecture while showing an animation of a tire pump in action. He gave the other group the lecture without any animation. Dr. Mayer then posed questions to the participants designed to test their understanding of how and why the pump works. Only 28% of the participants who heard only the lecture gave acceptable answers to the problem-solving scenarios; whereas, 62% of the participants who heard the lecture and the animation gave acceptable answers.

Using demonstratives that tap into the power of visual communication can be a game-changer for your persuasiveness in the courtroom. Researchers from the Management Information Systems Research Center at the University of Minnesota and at 3M Corporation found that presentations using visual aids were 43% more persuasive than unaided presentations.<sup>6</sup> This presentation and paper will address the rules for trial graphics that will help you to be the most persuasive with your demonstratives.

## **I. WHAT MAKES GRAPHICS PERSUASIVE?**

The three overarching rules to making graphics persuasive are: (1) simplicity; (2) visual interest; and (3) few bullet points.

***Simplicity.*** When thinking about keeping your trial graphics simple, and yet still persuasive, focus on “attention economy.” Attention economy is the management of content and information in a manner that is mindful of the limited nature of consumer attention. In 2015, a study by Microsoft suggested that humans’ attention span is only 8 seconds and is shorter than a goldfish. Those findings were ultimately debunked (how would they know a goldfish’s attention span?), but the message is still an important one – in a culture of constant distractions, engagement

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<sup>6</sup> D.R. Vogel, G.W. Dickson, and J.A. Lehman, *Persuasion and the Role of Visual Presentation Support: The UM/3M Study*, found at <http://misrc.umn.edu/workingpapers/fullpapers/1986/8611.pdf>.

is key for holding jurors' attention. One way to accomplish attention economy is to minimize the information on a slide. For instance, important statistics or numbers should receive their own slide. Also, limit a slide to one theme. Finally, be aware of the "10-minute mark" for juror tune-out. According to biologist John Medina at the University School of Medicine, even during a presentation of moderately interesting content, your audience's attention will "plummet to near zero" after 9 minutes, 59 seconds.<sup>7</sup> Every 10 minutes you need to re-engage your audience by doing things that will grab the jurors' attention, such as changing speakers, moving to a different position in the room, playing a video, or using a new type of demonstrative (such as switching from a PowerPoint slide to a board or easel).

**Visual interest.** An important part of creating visual interest in your slides is the color scheme. A study by the Poynter Institute showed that using colors on visual aids increased attention value 130% and retention value 235% over black and white. When using colors, remember that colors send messages. Consumer researchers have found that 84.7% of consumers say that color is the primary reason that they buy a particular product.<sup>8</sup> Within 90 seconds of initial viewing, people make a subconscious judgment about a person, environment, or product, and up to 90% of that assessment is based on color alone.<sup>9</sup> Be aware of what message the colors you are using are sending. For instance, red sends the message of urgency and aggressiveness. Gray sends the message of balance and neutrality. Black sends the message of credibility and authority. Blue is the most trustworthy color. Yellow should be used when you want to highlight or draw attention to something. Besides colors, visual interest does not mean crazy PowerPoint animations with

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<sup>7</sup> <https://www.forbes.com/sites/carminegallos/2014/04/30/why-powerpoint-presentations-always-die-after-10-minutes-and-how-to-rescue-them/#281ea09078ba>

<sup>8</sup> <https://www.ragan.com/85-percent-of-consumers-buy-products-based-on-color/>

<sup>9</sup> Satyendra Singh, (2006) "Impact of color on marketing", *Management Decision*, Vol. 44 Issue: 6, pp.783-789, <https://doi.org/10.1108/00251740610673332>

bullets flying in or disappearing. Those types of animations detract from the substance and add delays to the presentation.

***Few bullet points.*** Sparse slides maximize juror recall. The more space on a slide, the more jurors will be able to recall about that slide. Our working memory can only process four or five elements of new information at a time.<sup>10</sup> The fewer demands on our attention means the less time our brain has to spend processing the visual elements that may distract from listening to what the speaker says. Use more pictures and as few words as possible. Interestingly, though, if you make the audience work a little harder to process the information on the slide, such as using original texts on call-outs (versus typing it out in Times New Roman font) or using a picture that you have to explain to the jury, that can lead to improved storage of the information. As to the age-old question of whether to bullet or not to bullet, the answer is to bullet only if you cannot come up with any other way to meaningfully depict your message. People read faster than they hear – 150 words per minute spoken versus 275 words per minute reading. If you use bullet points, jurors will finish reading the bullet points before you can say them, which means they will stop listening. Therefore, using charts or symbols that complement the substance to be conveyed orally can help the jurors make connections and conclusions themselves, rather than having the presenter spoon-feed it to them. Jurors are more effective advocates for a particular conclusion when it is their own.

## **II. HOW TO USE DEMONSTRATIVES PERSUASIVELY**

Beyond making the demonstratives themselves persuasive, you have to be able to use the demonstratives in a persuasive way. This means that you should reconsider how to let your graphics *emphasize* your point, rather than make the point. Do not just read the slides to the jurors.

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<sup>10</sup> [http://www.human-memory.net/types\\_short.html](http://www.human-memory.net/types_short.html)

Do not put all of the information on the slides. Think through your transitions between slides so that you make the connections in the case come alive for your jurors. Weaving the slides together can illustrate to the jurors how the facts and themes in your case are woven together to substantiate a verdict in your favor.

Also, carefully consider the key strengths of every case and vary the type of demonstratives used to underscore these points. In addition to using PowerPoint slides, consider using flip charts, the ELMO, boards, or demonstrative re-enactments. To get the full benefit of visual persuasion, use a mixture of different types of demonstratives to ensure that the jury is visually engaged with imagery throughout the presentation. Here are some ideas:

In a products case, try to have the actual product or a replica of the product for the jury to touch and feel and, in some cases, test out themselves. Experts can also use the product to explain the defect or lack of defect to the jury.

Medical and technical illustrations are another great way to demonstrate a point by having the jurors come to the conclusion on their own. Anatomical models can be useful in that the jury can touch and interact with it, and they can be used by experts as a teaching aid. Additionally, there are now Apps that you can use to create your own illustrations, or there are a number of trial graphics companies that will create illustrations as well. You can also look for videos of surgeries or other procedures on YouTube. Georgia law allows illustrations and simulations, including videos, even if they are not a recreation of the exact incident, if an expert establishes the foundation that the demonstrative is a true and accurate representation of the real thing. *Key Safety Sys., Inc. v. Bruner*, 334 Ga. App. 717 (2015); *see also Cornell v. State*, 265 Ga. 904 (1995) (“Whether a computer simulation is a fair and accurate representation of the scene sought to be depicted addresses itself to the discretion of the trial judge which will not be controlled unless abused.”);

*Cleveland v. Bryant*, 512 S.E.2d 360 (Ga. App. 199) (computer-generated animation, which merely illustrates the witness's testimony, is admissible if it is a fair and accurate representation of the scene sought to be depicted).

Flip-charts or other graphics created live can be a great way to make the jury feel involved in the presentation and to keep them engaged. These can be used in witness examinations to create a list of key facts or concessions that you could later use in closing. When the jury sees you break out the same flip-chart you created in front of them with a witness, that will trigger their memory of that examination and give additional credibility to those points.

Blowing up medical records and photographs on boards is also a good way to use the evidence in a more interactive way with the jury. They can also have more impact with the jury if they are seeing a blown-up picture in front of them than on a far-away screen.

Flow-charts can be helpful to depict legal issues, such as causation or liability.

Finally, think about creating demonstratives during discovery to be used in trial. For instance, if you have a deposition of a medical doctor, have the doctor draw on a medical illustration during the deposition and then show that at trial. Blow it up as a board and walk through the demonstrative with the doctor during the cross-examination. It will be hard for the doctor to argue with his own illustration.

Because it is within the trial court's discretion to admit demonstrative evidence and allow it to go back with the jury, *see Pickren v. State*, 269 Ga. 453 (1998), always request this. You never know which demonstrative the jurors might use to argue your side to the other jurors in the jury room.