

Litigation eNewsletter



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Electronic Communications with Triers of Fact

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Technological advancements in today's courtrooms allow attorneys to formulate their trial strategies with highly sophisticated visual techniques for communicating their arguments with jurors. Today's best courtroom demonstratives are theory-driven, analytical graphics, with a functionality grounded in a long-standing knowledge-base of applied research, skillfully designed to help jurors understand case material and arguments.

Although every individual juror is undoubtedly unique, **research consistently shows that bimodal forms of communication, including both auditory and visual components, maximize the effectiveness of information exchange.** This has particular applications in the field of complex commercial litigation where the information to be conveyed is often extremely complicated and voluminous. In these cases, jurors are likely to become overwhelmed by the sheer volume and complexity of the issues they have been called upon to assess, and visual means of communication become more essential to an effective information exchange. Thus, it is left to the trial attorney to assist each juror in interpreting case facts and arguments so that the jury, as a whole, can evaluate the evidence and decide upon a just verdict.

Electronic Communication With Jurors At Trial

While attorneys are communicating with jurors throughout every phase of the trial, the precise modality of information exchange depends upon the stage of trial and the purpose of the intended communication. Given the time and resources often available pre-trial, most of today's top litigators are opting to use presentation software, such as PowerPoint® and Flash®, to enhance their opening statements. This type of **digital media helps attorneys teach jurors specific case facts on-screen in a slow, systematic fashion that allows for easy assimilation and retention of case material.**

Click [here](#) to view sample animated graphics.

Graphics Presentation

Enable pop-ups to
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presentation



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on
Communicating
with Jurors

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For instance, it is important to remember that simply projecting an image on a large-screen does not facilitate juror learning or retention of case facts. Instead of showing an entire document on screen and asking jurors to take in the information globally, enlarging and highlighting key text while dimming the background document or minimizing the document is an effective means of directing jury attention to what you want them to notice, and will help them retain that information.

During trial, technology savvy attorneys rely on programs such as *Sanction®* and *Trial Director®* to display evidence. These software applications enable the trial team to prepare case exhibits, including video and audio clips, transcripts and documents, into a fluid, digital presentation. Documents can be instantly located and projected, key language can be enlarged and highlighted in seconds, and videos can be shown with or without running transcripts. Programs such as *Sanction* offer the advantages of instant display and flexibility, essential to effective case management and strategy today.

While *Sanction* is beneficial for use with direct examinations, it is particularly useful during cross examinations when the trial team cannot be certain about a witness' likely testimony. The trial strategy may need to

One important thing to keep in mind when designing visual aids for trial is that the choice of what to include within the slide is equally important as what one decides to omit. While Allport, Antonis, and Reynolds (1972) found that recall was improved when participants read information as opposed to listening to it, a finding that is consistently upheld in current research, including too much information in charts can be counter-productive. Keep in mind, the goal of visual aids is to help jurors organize information so that when they deliberate, they have a clear understanding of case materials and arguments. Providing too many words on a slide or too many graphic elements simultaneously will confuse jurors and will fail to help them encode this information. Instead, charts should be clear and concise and contain only the limited information essential to assist in the retrieval process later on during deliberations. The language contained in a slide should reinforce the main point of the attorney's argument, but, just as important to remember, the attorney is there to elaborate on key phrases contained in a graphic.

shift immediately and attempt to impeach the witness. By employing Sanction, jurors are able to immediately see the point that the attorney is making by connecting the question with the visual image. Although attorneys have always been able to read the deposition into the record, the ability to display video footage to the jury has enormous advantages in terms of helping jurors to assess who is and who is not credible. With the help of technology, the jurors are able to fully comprehend the tone and quality of the testimony in question. In addition,



given that many of today's jurors are visual learners and the difficulty often associated with hearing and comprehending everything spoken during a witness' examination, the

ability to bolster one's key points with visual illustrations is essential to an effective argument.

Furthermore, these programs also have the ability to display testimony with documents. This is particularly important when a witness' testimony contradicts his or her own notes and documentation of events. Click [here](#) to view a sample video deposition.

Technology and Testimony

Although it is always preferable for witnesses to be at trial, modern technology now allows witnesses to be at trial via videoconferencing so that jurors can see the witness' real-time testimony even if the witness cannot be present in the courtroom. Although videotaped depositions have long been an option for those who cannot attend the trial, modern advancements in telecommunications, and the ability of trial teams to utilize this technology in the courtroom, is quick-becoming recognized for its obvious advantages.

During closing arguments, trial teams have their last opportunity to directly communicate with the jurors. It is at this time that argumentative graphics can be used to really convince jurors that one interpretation of the evidence presented at trial is the correct one. Core case graphics that were used in one's opening statement or with witnesses should be re-displayed and transformed into visual checklists that indicate that the attorney fulfilled his promises to the jury. Contradictory testimony and unexpected evidence should

be targeted by new graphics, tied not only to the inconsistent or surprising nature of the evidence, but also to the overall case strategy. In some circumstances, using the opposition's graphics as the foundation from which new graphics are to be designed may be particularly effective during closing arguments to help discredit the opposing side's arguments.

In addition, as research and trial experience has proven time and time again, **one of the most important aspects of effective electronic communication with jurors is congruence with the language used by the court in the jury instructions and verdict form.**

Incorporating key language taken directly from these judicial instructions is essential to persuading jurors to interpret and weigh the evidence in keeping with one's case strategy.

Conclusion

Given that society is shifting toward more visually-compelling and multimedia modes of communication, it is important that attorneys and the legal community adapt with this trend and incorporate electronic means of communication into their legal endeavors. Whether it is an arbitration, a bench or jury trial, research and practice show that evidence is more clearly understood when technology is utilized to clarify and enhance one's presentation. The key to successful communication with jurors today is to not only have technology available in the courtroom, but to really understand how to equip oneself with the tools and advantages provided by that technology. Using courtroom technology is not simply about having images flash on flat panel screens.

Effectively communicating a particular message involves thinking about the case theory beforehand, deciding what points need to be made, and really working with the trial team to use the agreed upon technological tools that help clarify those key points in the best way and at the right moments.

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