Technology as a StoryTeller's Tool

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I. Introduction – The Art of Persuasion

No doubt, great trial lawyers are remembered most fondly by their closing arguments. The closing argument is the trial lawyer's single opportunity for pure oratory in the trial process. By the time trial counsel rises to deliver his closing arguments, there is no longer an issue of a "burden of proof." Instead, the concern is now focused on the "burden of persuasion." However, it is a rare case that can be salvaged through even the most eloquent of closing arguments if the foundation or building blocks of persuasion have not been firmly established throughout the preceding stages of trial.

> At best the closing argument confirms jurors' general impressions and conclusions to which they are already predisposed by the evidence. It provides a logic within which facts can be organized and reasoned and rationales that jurors can rely on to support their opinions and defend them during deliberations. Ideally, it is the goal of every trial lawyer to fashion a closing argument that turns skeptics into committed advocates. But, in the final resolve, it will be the facts of the case and not the fashion of counsel which will be of paramount persuasion.

William L. Mock, Closing Argument: A Checklist for the Experienced Trial Lawyer, Trial Advocacy College: Essentials of Civil Litigation, October 1996.

In order to persuade, there must be evidence that shows that a wrong has been committed that has harmed your client. The jury must understand and comprehend the evidence. The jury must also perceive a need to acknowledge and act upon that evidence. The old adage, "hit them where they live," is a good adage to follow. It means to appeal to what your jury already uses and finds meaningful. To put it another way, it is much more effective to work with the thoughts, beliefs, attitudes, and values already in the jury's heads than to try to implant new ones. Persuasion has two basic elements:

(1) evidence to support your position; and

(2) your position must appeal to the needs and values of the audience/jury.

Researchers at Yale identified five steps that persuasion can be broken down into:

(1) securing attention;

(2) comprehension;

(3) acceptance;

(4) retention; and,

(5) action.

If you do not have the audience's attention, if they do not understand your message, and if they do not accept it, remember it, and act on it in the desired fashion (i.e., if they do not reach the desired verdict) you have not

succeeded. It is in these areas that technology can be and is extremely effective with a jury.

II. The Tools of Persuasion: The Use of Courtroom Technology

The challenge for a litigator in today's high tech world is to avoid boring the jury while continuing to clarify and promote the major themes of his or her case. We live in an age of images and electronic media. People are constantly bombarded with information. Individuals simply cannot process every bit of this information overload. As a result, we no longer read newspapers or magazines for in depth information and discussion, but instead we settle for 30-second sound bites or glossy talk television. Visual-minded computer literate individuals are filling the chairs of juries. This TV generation jury doesn't want attorneys taking hours and days making and proving their points. The jury wants the attorney to get to the point while using a medium it feels comfortable with, i.e., the TV screen and computers.

In the world outside the courtroom, jurors' ideas are being guided by television shows. I recently heard about an article discussing something known as the "CSI Effect." CSI: Crime Scene Investigation is a popular television show on CBS. The basis premise of the show is that forensic scientists use sophisticated technology to find physical evidence and then use even more high tech equipment to link the physical evidence to the person who committed the crime. The article recounted a criminal trial in which a defendant was acquitted. Apparently, one of the jurors noted that there was no physical evidence linking the defendant to the crime, although

there was apparently other compelling evidence presented. The author opined that since jurors believe that they know what sophisticated technology exists to find physical evidence, they now expect to see this type of evidence in every case. If there is a lack of physical evidence, it creates reasonable doubt. He called this the "CSI Effect." Jurors work with computers and graphics on a daily basis at their homes and jobs. They watch television shows that glorify advanced technology in the legal settings. Thus, when they enter the courtroom, jurors expect and require graphic and visually stimulating presentations that are fast, efficient, and powerful.

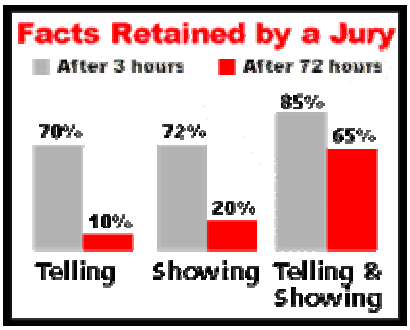
A. The Benefits and Advantages of Using Technology

1. Attention and Retention

Because of the technology-driven society that we live in today, pure oral presentations will have a more difficult time maintaining jurors' attention. Remember, these jurors are bombarded every day with flashy advertisements and graphic animations on television. Simply talking no longer holds an individual's attention. In fact, studies show that jurors focus primarily on the visual evidence used during trial. Demonstrative evidence that invokes visual attention is an invaluable tool in helping the jury comprehend difficult concepts and complex facts.

Not only does graphics and technology grab jurors' attention and maintain it, the use of technology has the added advantage of helping jurors retain what they hear and see for a longer period of time. Post-trial interviews with jurors confirm what studies have long shown: visually

delivered information is 650 times more effective that just oral argument. The powerful impact of computer graphics and animations on juries is certain. Visual materials can often successfully convey ideas and facts in a far more comprehensible and persuasive fashion than mere oral testimony. "A wise lawyer is always mindful of the fact that although jurors only retain 15% of what they hear alone, they retain 85% of what they both hear and see."



2. Simplifies and Organizes

The use of technology and graphics can be especially helpful when you have a very complex trial, such as a product liability case. For example, your average juror is not going to know the ins and outs of how a vehicle is supposed to crush in an accident. In order to convince a juror that the vehicle is not crashworthy and, thus, defective, you must first educate them on how the system should work. Obviously, the technical details could get boring and tedious. Visual exhibits and animations are effective in simplifying complex issues and help juries comprehend difficult concepts and complex facts. Plus, technology livens up a potentially boring subject

matter. Jurors now expect the lawyers to entertain and inform as well as television does.

Further, because you are taking something complex and attempting to simplify it, visual aids and technology assist you in organizing your case. You are forced to think through how best to use diagrams, charts, illustrations, and animations for a more effective presentation. It forces you to concentrate on the big picture and helps focus your litigation team on how best to present your themes in an easy to understand fashion. However, technological tools are just that -- tools to implement a trial strategy. They are not the trial strategy itself. It is only after the trial strategy is developed, should an attorney ask what is the best way to implement the trial strategy through the use of technology. Some of the following questions may be asked:

1) Is this a document-intensive case?
2) What photographs, drawings, or videos are already available that could help jurors understand the case?
3) What critical points will we need to convince the jury of in opening, case in chief, and closing argument?
4) What visual support will each of our witnesses need for their testimony to be effective?

Once these questions have been answered, a separate visual strategy can be designed to best support the trial's themes. Lawyers should always

be careful to remember that it is the message, not the median, that wins at trial.

3. Technology Builds Confidence

Seeing technology-based visual presentations demonstrates commitment, organization and strength. Your client will gain confidence because he/she will see visual proof of the case. Jurors will see a confident attorney. This type of presentation sends a clear signal to both the jury and the opposing counsel that you believe your case is strong and will be won.

B. The Effective Use of Graphics and Technology

At the end of this paper are sample illustrations of how technology can be used to emphasize key facts, the law, the themes of your case, damages, and a variety of other matters. The beauty of graphics and technology is that it can be tailored to your facts and it can be changed frequently as the case develops and more information is discovered.

Here are some simple recommendations when using technology, especially in closing arguments:

(1) Effective oral closing arguments continues to personify the art of oral advocacy;

(2) The use of technology in presentation graphics must be cautiously used;

(3) Selectively incorporate and weave your technology presentation into your closing argument;

(4) The basic rule is, less is more;

(5) Keep it simple;

(6) Technology should enhance the persuasiveness of the closing argument and not become its focus;

(7) Do not speak to the presentation/screen; only speak to the jury;

(8) Your presentation graphics should be consistent with your trial theme; and,

(9) Only use technology/presentation graphics if you believe it will assist the jury in deciding in favor of your client.

III. Conclusion

We live in a technological age, and the technology of everyday life is affecting the legal profession. A tour of any new federal courthouse demonstrates that it would actually be difficult to try a case without using the technology available. Lawyers simply can no longer avoid the use of graphics and technology. Juries and judges expect it. Technology is flexible and can be cost efficient. There can be no doubt that, when used properly, the use of technology or visual graphics is an effective and an integral part of the persuasive advocacy.

References:

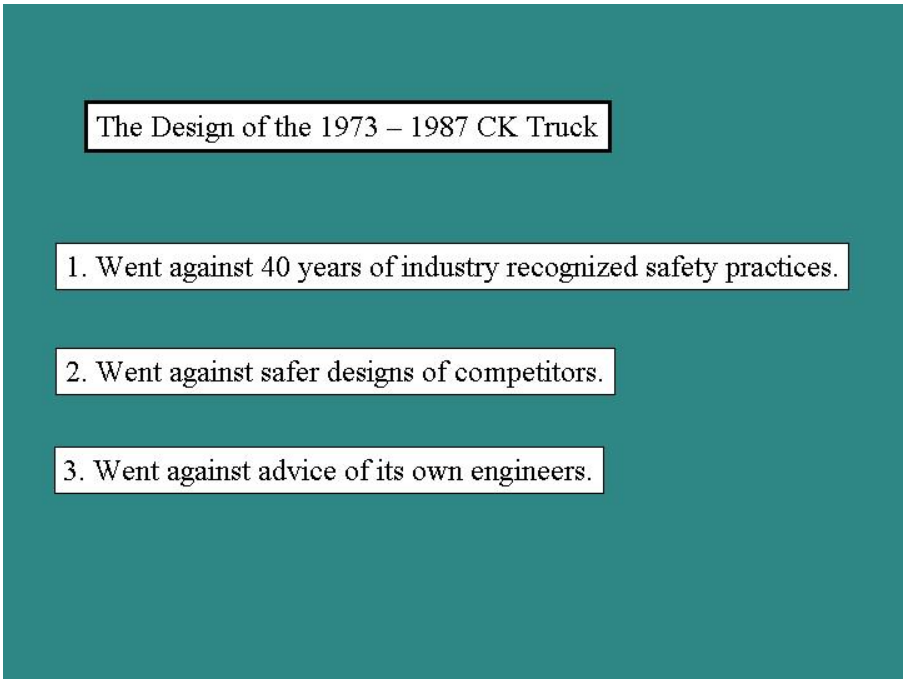
1. "Courtroom Technology: Tools for Persuasion." Frank Herrera Jr. and Sonia M. Rodriguez – published in TRIAL, May, 1999.

2. "The Use of Technology and Presentation Graphics in Closing Argument" Ed Walsh, Walsh, Knippen, Knight & Diamond – Wheaton, Illinois – Website: www.wkkd.law.com.

3. "Computer Graphics for the Complex Trial." James R. Lauridson, M.D. - Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. – presented at the 13th Annual National Expert Witness Conference, Hyannis, Cape Cod, MA – June 24-25, 2004.

4. "Closing Statements" – Mastering Trial Skills – Jere L. Beasley October 31, 2003.

5. "Using Litigation Technology Successfully" – Visual Evidence Center – Website: www.visevidence.com.



Slide depicting bullet points of facts of a case

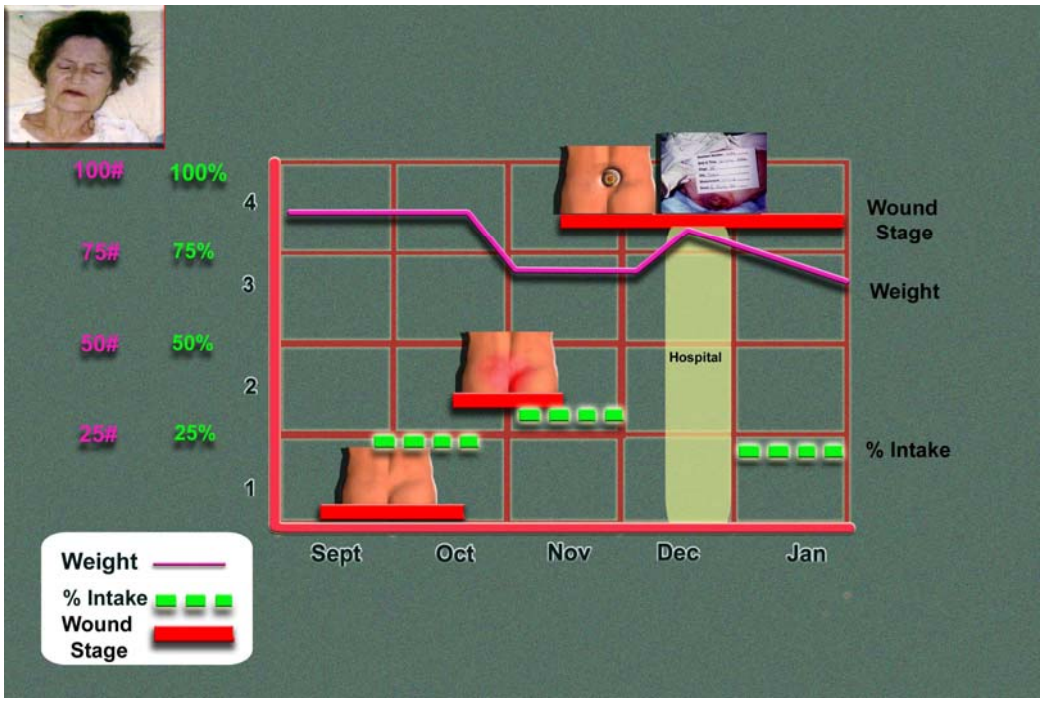
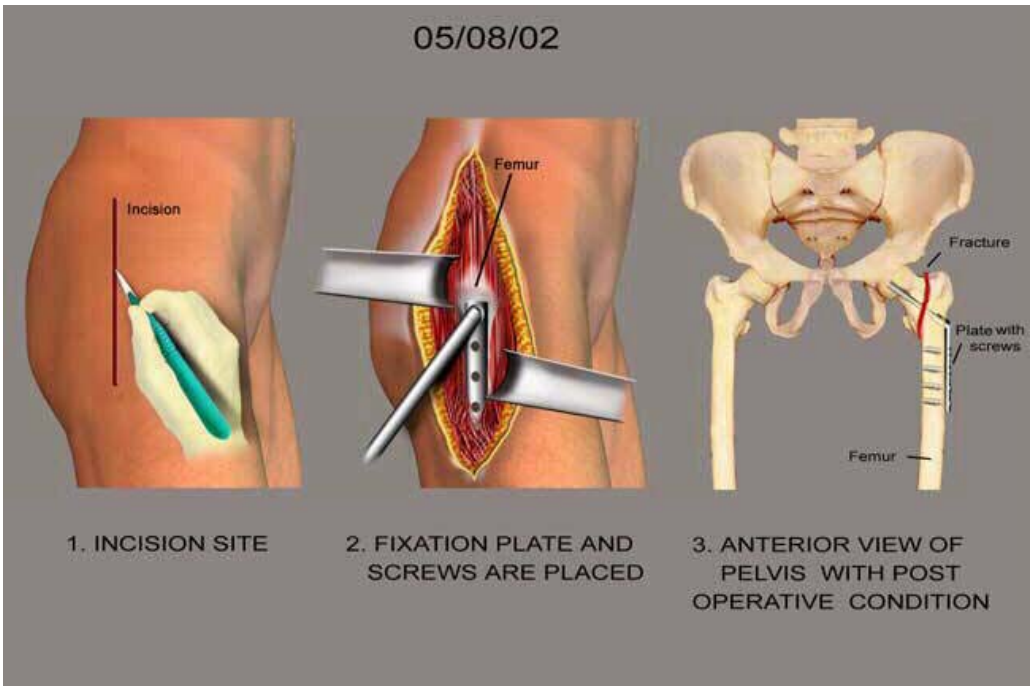
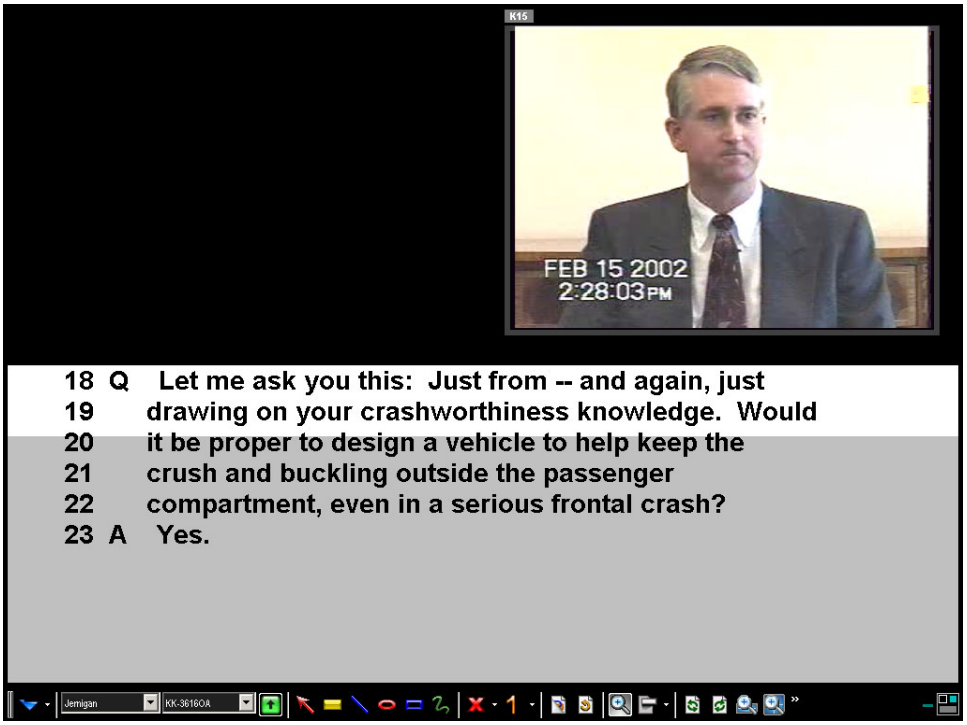


Chart depicting correspondence of decline in weight, food intake and wound growth

Still shot of a traffic accident animation



Medical Diagram depicting Open Reduction and Internal Fixation of Left Hip



Still Shot taken from video deposition of a Corporate Representative presented in Trial Director

X-ray of injured party

Q. How do you provide cockpit integrity (crashworthiness) in a small car?

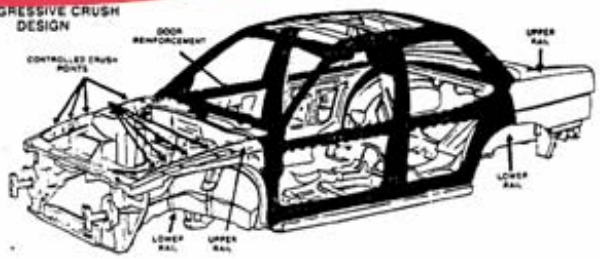
A. Most of the energy in a front or rear end crash is absorbed by the car's skeleton — the upper and lower metal rails that frame the engine and trunk compartments. The lower rails are designed to crush first at the outer end of the vehicle, and then inward. We call this "progressive crush." The upper rails and hood carry some of the energy in a crash. The hood buckles in a controlled manner into an [illegible] so that it doesn't inter-act with [illegible] pants.

The structure and metal reinforcements in the doors help the passenger compartment retain the cockpit integrity (crashworthiness) during the buckling and crushing of the rails. Along with high strength door locks and hinges, the reinforcements also help preserve the door's openability after the crash so occupants can exit the vehicle safely. (See picture below.)

All GM structures are designed to help keep crush and buckling outside the passenger compartment even in a serious frontal crash.

Moreover, all GM cars meet federal requirements [illegible] side door strength [illegible] the side guard technology GM pioneered in the late 1960s. And all GM passenger cars and trucks, large and small, meet the same government standards for roof strength.

PROGRESSIVE CRUSH DESIGN



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Q. What about energy absorption inside the vehicle?

change when they do not see a small car because of its lower roof line. Give such vehicles a wide berth.

seen, and a number view of the road. ers, windshield de- ars may want to ask available to further ow defoggers, high adjustment switch view mirror. People use of tinted glass.

The structure and metal reinforcements in the doors help the passenger compartment retain the cockpit integrity (crashworthiness) during the buckling and crushing of the rails.

- An energy-absorbing steering column that will compress when impacted by the driver in a crash, to decelerate the occupant more safely. A new "self-aligning" steering wheel is being introduced, as soon as practicable, on non-air bag equipped cars to further improve crash protection.
- A high pe[illegible] stretchab[illegible] ejection [illegible] pant's he[illegible]

Q. Just how safe are small cars?

A. Natural laws of physics help explain the relative safety associated with driving a small car. If two similar objects of differing mass collide, the lighter object will experience a greater change in velocity. It follows that the occupants

All GM structures are designed to help keep crush and buckling outside the passenger compartment even in a serious frontal crash.

Q. Aren't sma[illegible]

A. Today's GM[illegible] conspicuou[illegible] warning flashers, center high mounted stop lamps, reflective side markers and back-up lamps. You can enhance the safety these features offer by using lights at dusk and dawn.

It is particularly easy to get into the blind spots of trucks and buses. Drivers of these vehicles might attempt a lane

smaller cars (for example, easier maneuverability) are relevant to safety.

Using your safety belt in a small GM car gives you about the same protection as afforded in any large car of twice the mass, if you were unrestrained. So make sure you and your family BUCKLE UP!

If you have any comments or wish further information, please write us at: Industry-Government Relations Staff, 11-157 GM Building, Detroit, MI 48202 October 1986

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Example of Document markups