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.

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:


The Design of the 1973 – 1987 CK Truck

1. Went against 40 years of industry recognized safety practices.

2. Went against safer designs of competitors.

3. Went against advice of its own engineers.

Slide depicting bullet points of facts of a case

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

Taunton- 10
Still shot of a traffic accident animation

Medical Diagram depicting Open Reduction and Internal Fixation of Left Hip
18 Q  Let me ask you this: Just from – and again, just
19   drawing on your crashworthiness knowledge. Would
20   it be proper to design a vehicle to help keep the
21   crush and buckling outside the passenger
22   compartment, even in a serious frontal crash?
23 A   Yes.
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. All GM structures are designed to help keep crush and buckling outside the passenger compartment even in a serious frontal crash.

Example of Document markups