Show the Story and Save the Jury

By William S. Bailey and Robert W. Bailey

Jury Duty — A Life Changing Experience

Serving as a juror in a felony trial over 20 years ago rocked my world. Despite my wife’s well-placed skepticism when the summons for jury duty arrived, I was seated on a criminal felony case. However, the initial thrill soon dissipated, replaced by a constant struggle to stay awake. A combination of pinching myself and mortification over the thought of being caught napping managed to keep my eyelids open. Determining the root cause of my somnolence would come upon later reflection.

A basic shift had occurred on the other side of the jury box. As part of the audience for the first time, the courtroom pace and information flow compared unfavorably with outside world. Nor was this perspective unique to me as the lawyer member of the panel. My fellow jurors also chafed over the slow, repetitive wordiness and lack of visuals. Rather than the picture, we repeatedly were given the thousand words.

But before I could get too self-righteous, honesty prompted the disturbing realization that I had been no better in my prior trials. The upshot of my jury service was the firm resolve to make a fundamental attack on courtroom boredom in my advocacy style. Nagging, elusive practical questions loomed: “What does a new concept visualized trial look like?” “Where do the necessary creative ideas come from?” “Are judges ready for this?” “Will I end up falling short and looking foolish?”

Books on art, film, layout, graphics, advertising and multi-media communication filled my shelves. My concept of trial advocacy steadily evolved into something more akin to a film director, driven by theme, story and visuals.

— William S. Bailey

The Creative Challenge

The lead article in the June, 1996 issue of the ABA Journal, “Opening The Mind’s Eye” put all of this into a context. In a rapidly changing world, lawyers have to dump rote thinking and get more creative in order to survive, let alone succeed. One quote in particular leaped off the page: “At one time, lawyers did not have to be particularly creative to thrive.

Being smart...workmanlike...gregarious and well-connected was enough. Not anymore.”

Show The Story: The Origin Of A Book

Reflecting on all that we had learned about presenting information visually, my trial consultant brother Robert and I discussed writing a book together. We wanted a complete guide for creating and using visuals in legal cases, including foundation, admissibility and ethical issues. Since nothing of this sort existed for lawyers, what should our format be?

Our efforts culminated in “Show The Story: The Power of Visual Advocacy,” published by Trial Guides in the summer of 2011. Substantial input from judges, law professors and experienced plaintiff and defense trial advocates helped us to go far deeper with our ideas and techniques.

Our Visual World

People are much more visually sophisticated today than at any other time in history. We want and expect communication to include images; that’s what fills the screens of our personal computers, televisions, and cell phones and dominates our popular culture. Information must be visually interesting in order to effectively persuade an audience.

The advertising industry spends billions of dollars each year in search of powerful symbolic images to stimulate and motivate us to buy things.
Television Has Forever Changed Communication

More than any other medium in modern life, the less formal, entertaining and compact communication forms of communication on television dominates our expectations on how information should be presented. Modern audiences have been conditioned by the fast pace and visual shorthand of television, resulting in shrinking attention spans and a demand that presenters get to the point quickly.

The average television news story lasts only about a minute and a half, with pictures flashing on the screen as the broadcast journalist narrates. Sound bites are in; long speeches are out.

The Importance of Visualizing Legal Cases

So how does all of this affect representing clients in the modern world? Law is about not only critical thinking and problem solving but also effective communication. With so many competing points of view, capturing the attention and respect of a decision maker is critical.

Visual-communication strategies aren’t just for the mass media; they offer many advantages to lawyers, too, including:

1. Showing things that language alone often cannot.
2. Increasing attention, comprehension, and retention.
3. Adding power, dramatic effect, and interest.
4. Shortening the time required to communicate.

The Predominance of the Visual

Our eyes are the windows into our brains, making sense of the world, allowing us to recognize patterns, providing the basis of informed decisions.

Jurors must quickly take in large quantities of new information that lawyers in the case have spent years collecting. This requires effective communication. Saturation bombing of details will not work. Good teachers educate their students by showing new information so that it can be seen. An effective lawyer has to do the same. Alan Morrill recognized decades ago that jurors without visuals are likely to be clueless:

With anything more than a simple set of facts involving an intersection collision, it is probably safe to say that . . . [with] words alone, not one juror has a clear picture in his mind as to how the accident occurred.1

Beyond Information Collecting

Lawyers are proficient information collectors, using the rules of discovery to accumulate a large volume of details. As a case progresses, it becomes harder and harder for us to keep the trial story in view. What themes will help the jury sort things out? What the jury most wants and needs to hear and see is the story, not the details.

Sales Resistance

Beyond the capacity of visuals to educate and inform, they bridge the persuasion gap between words and images. Jurors today are sophisticated, heavily filtering what they hear, knowing instinctively that you are advocating for a client’s point of view. Words are the suspect agents of a sales pitch.

Seeing is believing. Directed to our nonverbal subconscious minds, images are more resistant to juror skepticism than words. This is why modern advertising focuses so heavily on the visuals, with only minimal words. There is a powerful lesson for trial advocates in this!

Judicial Perspective: Make It More Visual

A number of judges have noted that a lack of images in a trial is likely to lead to juror confusion. Former trial and appellate court judge, Dean Warren Wolfson of DePaul University School of Law, has said:
[Often] the jury hasn’t the slightest idea what the lawyer is talking about. Lawyers can’t rely on words only. . . . Juries will retain best, and believe best, what they see and hear at the same time.²

**Visual Advocacy—Twenty-first Century Persuasion**

The multimedia approach of using words and images in communication is the modern way of persuasion. Visual advocacy puts the information of a legal case in the same visual-verbal format that judges and jurors are used to in the outside world. Combining the traditional forms of oral advocacy with images results in a powerful, persuasive form of communication that can become the tipping point of any case.

There is growing evidence that the instant gratification of electronic devices and the Internet is rewiring the human brain. This expresses itself in a number of ways, including a dramatic shortening of attention span. We now think in terms of seconds-long sound bites. Modern jurors have a stopwatch ticking in their brains—get to the point and keep it interesting, or they’ll tune you out.

Various researchers have shown that as much as 75% of all learning takes places through the eyes, with visual memory the most crucial ingredient.³

The brain is like a leaky bucket, quickly losing much of the information it receives. Visualizing the important elements of your case helps to plug the holes in the bucket.

Visuals allow an audience to decode and store information better.⁴ Visual advocacy engages both the creative power of the emotions and a sense of logic to produce an integrated message that both educates and persuades.

The lesson in all this is inescapable—you must move beyond word-driven appeals with too many details.

Jurors want and need to see visuals along with words. Logical detail combines powerfully with photographs, illustrations, and videos. The result is an appealing presentation directed to the whole brain.

Better audience engagement
SAVE-THE-DATE

"Connecting with ABOTA"
2013 ABOTA Leadership Conference

Vinoy Resort & Golf Club
St. Petersburg, Florida
January 24, 2013

civility
achievement
history
foundation
strategy
tools
challenges
successes
image
membership

Registration for chapter leaders will open in July.

www.abota.org
is the goal of visual advocacy, creatively integrating an emotional message with a logical one. The emotional component is particularly important, as no matter what people tell themselves, emotion and heart often trump logic.

Remember this simple equation: seeing plus hearing equals power; the power to persuade and the power to communicate more effectively.

**Thinking Like a Film Director**

The availability of cameras, computers, projectors, and presentation software has all combined to make visual storytelling more accessible than ever before. But these tools alone are not what make a story compelling; rather, it is the way a story is crafted and visually presented. Even the most advanced technology cannot make a poorly designed story good.

Thinking more like a film director will improve the visual design of your case.

Film directors are responsible for the creative process of translating words into pictures. To accomplish this metamorphosis, they read the script multiple times and imagine what each scene might look like.

Once they have a vision for the film, they work closely with other members of the production team to make that vision a reality, capturing the audience’s interest. They consider how they will establish settings and introduce the story’s characters, creating feelings and interest in the audience. In order to guide the visualization of a trial story, you must think more like a film director.

Once they have a vision for the film, they work closely with other members of the production team to make that vision a reality, capturing the audience’s interest. They consider how they will establish settings and introduce the story’s characters, creating feelings and interest in the audience. In order to guide the visualization of a trial story, you must think more like a film director.

**Creative Step 1—Write the Story**

Early in discovery, once you have a basic idea of the facts of a case, write a rough draft of the story in the present tense. Use short sentences, and develop the story’s theme.

**Creative Step 2—Visualize the Facts**

Read each numbered sentence and imagine what images could be used to visualize each important fact, considering photographs, computer graphics, videos, documents or graphs. Write your ideas beside each sentence and work through your entire rough draft.

**Creative Step 3—Collect the Images**

Once you have identified the story’s visuals, begin collecting those images. Do site inspections and take photographs. Add visuals as new facts are learned and your story develops. Talk with your experts about what exhibits will best illustrate their opinions. Determine who is the best person to establish the foundation.

**Creative Step 4—Document the Settings**

Visit the settings where important events happened in the story. These include places where actors in the trial story made choices. Take photographs or videos from different points of view. Review these visuals and decide which medium best shows the story.

**Creative Step 5—Sequence the Images**

Lay out and sequence the story’s most important visuals, then revisit and revise the order over time. Building the trial story is a dynamic evolutionary process. Show your visuals to partners and/or staff, eliciting questions and comments. Jurors are likely to have the same reactions.

**Creative Step 6—Focus the Visuals**

Test the visual story as well as the oral story with a focus group. Be willing to see and hear the feedback the focus group provides. Sometimes this feedback will be different from your own ideas about “the way it should be.” Be flexible, adapting the story as indicated by the feedback.
Creative Step 7—Edit the Story

After getting feedback on your presentation, edit the words and images. You may end up needing to do another focus group.

Creative Step 8—Prepare for the Opening

Make a pretrial motion to get the judge’s approval of the visuals you’ve created for use in the trial. The court may order that changes be made or additional foundation provided. Not waiting until trial gives you the time to do this.

Check out the logistics of your courtroom or settlement conference location ahead of time. What equipment, if any, will you need to bring? Are there any compatibility problems? Where is the optimal place to position yourself so everyone can see you and the visuals at the same time.

In summary, you must be a master of the visual story as well as the oral story. Those that use sophisticated visual strategies to present the case story will have a distinct advantage over those who do not. The times in which we live require trial advocates to begin thinking and presenting more like film directors. Show and tell is a proven approach that will not detract in the least from the dignity or traditions of our profession.

Why is it so Important to Show the Story?

There is a powerful emotional impact on an audience when you show the story. But this goes far beyond a temporary dramatic effect, making your entire case more memorable. Why is this?

Even the most intelligent people have a very limited capacity to absorb new information. Research consistently shows that long-term retention is no better than 5-10%. To overcome this, we must be effective teachers, both showing and telling. Up to now, this has been mostly tell and little show.

Summary — How do People Learn Best?

1. Use words and pictures together.
2. Relate new information to pre-existing.
3. Reinforce words and ideas with images.
4. Sequence from the simple to the complex.
5. Simplify the complex with images.
6. Use graphic devices to get attention.
7. Use visual tables of contents.
8. Allow people to “see” solutions.
9. Engage the audience and sustain their interest.
10. Inject passion, fun and, at times, provocation.

The Top Takeaways From “Show The Story”

1. Find a theme.
2. Build a story around it.
3. Make it visual.
4. Go to the scene.
5. Set up the conflict.
6. Show the rule.
7. Reveal the choices.
8. Visualize the climactic moments.
9. Show and tell.
10. Foundation, foundation, foundation.

Conclusion

In our electronic world, images now dominate our lives. We lawyers need to be more like film directors, approaching our cases visually to “show the story.” It will make your life as a lawyer more creative and satisfying, with better results for your clients.

1 Alan E. Morrill, Trial Diplomacy, 2nd ed. (Chicago: Court Practice Institute, 1974).

William S. Bailey is an ABOTA member from the Washington Chapter. He has taught and written about advocacy techniques for more than 30 years.

Robert W. Bailey is a nationally recognized trial consultant specializing in visual communication and story development.