

WINNING VISUAL ILLUSTRATIONS

POWER POINT FOR TRIAL LAWYERS

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As trial lawyers, we educate jurors about the facts of the case to guide them to a just result. In fact, we are teachers, but we are not well trained to teach. Good teachers know skills we are seldom taught. Trial lawyers should learn the skills, techniques and characteristics of a convincing teacher. Social Scientist's research demonstrates visual aids communicate more information in less time to more people than oral discussion alone.<sup>1</sup> Most students learn more and retain more with visual aids that reinforce auditory communication. While a good story

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<sup>1</sup>J. S. Stancil & C. T. Melear, Paper and Cube Intervention Preceded by a Three-Dimensional Computer Graphic Animation to Improve Spatial Ability among Elementary Education Majors (1991); Richard E. Mayer & Richard B. Anderson, *The Instructive Animation: Helping Students Build Connections Between Words and Pictures in Multimedia Learning*, 84 J.Ed. Psych. 444 (1992).

teller captures our imagination around a campfire, in the light and rigor of a courtroom, the oral tradition (whether monologue or dialogue) loses some of its luster for kindling the imagination.

Visual aids improve understanding. Only 25% of society are auditory learners; most, over 60%, are visual learners. Visual illustrations also evoke the juror's imagination and assist in the visualization and thus belief in the Plaintiff's story.

We are accustomed to visual aids. On the evening news, pictures and videos reinforce the story line of the news anchor; bullet point lists summarize segments of the news; and computerized special effects demonstrate the tailspin of a plane or the progress of a weather front.

As trial lawyers, we should learn the skills of visual communication. There's no need to become computer animators or medical illustrators. Technology allows us to enhance our opening statements with vivid visual aids and cross-examination of the opposing expert with devastating clarity.

- I. The Law Of Visual Illustrations.
  - A. Use by witnesses.

Real evidence relates directly to a factual issue at trial.<sup>2</sup> Demonstrative evidence illustrates either evidence or issues in dispute.<sup>3</sup> Demonstrative evidence must be relevant or it will be excluded.<sup>4</sup>

“Properly introduced documentary and demonstrative evidence goes out with the jury when it retires for deliberation.”<sup>5</sup>

“Illustrative evidence may be introduced into evidence or it may be purely illustrative.”<sup>6</sup> It depends upon the purpose of its

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<sup>2</sup>“‘Real’ evidence is evidence identified and authenticated as relating directly to the events in issue at trial...” Demonstrative or illustrative evidence, on the other hand, is not immediately related to the events in question but instead derives its relevance from its similarity to or representative of the real evidence...” PAUL S. MILICH, GEORGIA RULES OF EVIDENCE §10.1 (1995).

<sup>3</sup>PAUL S. MILICH, GEORGIA RULES OF EVIDENCE §10.1 (1995).

<sup>4</sup>*Elder v. Stark*, 200 Ga. 452, 37 SE2d 598 (1946).

<sup>5</sup>GREEN, GEORGIA LAW OF EVIDENCE §87.1 (4th Ed. 1994).

<sup>6</sup>D. LAKE RUMSEY, AGNOR’S GEORGIA EVIDENCE §15-1 (3rd Ed. 1993).

use. For instance, a medical illustration used to illustrate testimony may be introduced into evidence.<sup>7</sup>

In order to use illustrative evidence, a witness must testify that it is accurate;<sup>8</sup> in addition, it must be relevant and not unfairly prejudicial.<sup>9</sup>

We have all used models, drawings, sketches and medical illustrations. Some of these may now be prepared in Power Point.

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<sup>7</sup>*Gabbard v. State*, 233 Ga. App. 122, 503 S.E.2d 347 (1998).

<sup>8</sup>*Doster v. Central of Ga. Railroad Co.*, 177 Ga. App. 393, 339 S.E.2d 619 (1985).

<sup>9</sup>*Doster v. Central of Ga. Railroad Co.*, 177 Ga. App. 393, 339 S.E.2d 619 (1985).

## B. Trial Lawyers Use Demonstrative Evidence

Counsel may use illustrative aids: O.C.G.A. §9-10-183 provides:

"In the trial of any civil action, counsel for either party shall be permitted to use a blackboard and models or similar devices in connection with his argument to the jury for the purpose of illustrating his contentions with respect to the issues which are to be decided by the jury, provided that counsel shall not in writing present any argument that could not properly be made orally."

This statute applies to both opening statement and closing argument.<sup>10</sup>

## II. Power Point

### A. Why use Power Point?

Power Point offers winning visual illustrations. These are preplanned presentations. Power Point requires careful thought and planning before trial. In fact, to some extent, these are

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<sup>10</sup>*Lewyn v. Morris*, 135 Ga. App. 289, 217 SE2d 642 (1975). In this case, although it was error for the trial court to refuse to allow the plaintiff's counsel to use a diagram to explain the positions of the cars involved in the collision, the error was deemed harmless.

its very drawbacks: It is not suited to off the cuff or extemporaneous uses.<sup>11</sup>

B. Uses at trial.

i. Its benefits, a preplanned organized presentation, describes well the qualities of an excellent opening statement and cross-examination. In these two facets of trial, Power Point works wonders in conjunction with physical illustrative aids.

ii. Cross Examination of Experts.

Power Point may highlight prior inconsistent statements quite well; or, if the deposition is videotaped, illustrate the prior inconsistent statement.

My rule of thumb for prior inconsistent statements:

Best: Video of prior inconsistent statement & transcript of same on Power Point, side by side

Better: Physical blow up of prior inconsistent statement

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<sup>11</sup>For those who wish to make extemporaneous or on the fly changes, try Anix as an add on to Power Point. It allows on the fly changes to Power Point presentations. For a more complete discussion, see Appendix, Section II(4).

Good: Overhead blow up of prior inconsistent statement

Not As Good: Power Point highlight of scanned transcript

C. Use in conjunction with other demonstrative evidence.

Power Point is one weapon in the arsenal of the trial lawyer. It should not replace all physical illustrations or the easel. It's best used in conjunction with other illustrative aids.

D. Final Hints

1. Last minute changes cannot be absorbed by Power Point quickly. Furthermore sometimes technology fails; your laptop won't boot; an electrical outage darkens your LCD projector (perhaps not your laptop); a bulb in the LCD projector fails. Even with Power Point, it may not be readily accessible. May I suggest you be prepared to make your opening without it?

2. Avoid using red and green colors. Almost 25% of the population suffers red or green blindness to some degree.

3. Quality equipment, whether LCD projector, laptop or VCR/TV counts and reflects upon you. Jurors expect a degree of professionalism from you; the equipment will be yours for years; quality equipment reflects well on you and your commitment to your case and your profession.

4. Practice with your equipment frequently. Practice does make perfect. The courtroom is no place to first use a LCD projector, Laptop or VCR/TV.

5. Know your Courtroom. Where will the plugs go, where will the screen go? How about the projector. The projector stand should have height adjustable legs. The juror box rises to different heights in different courtrooms. What may work in one courtroom may not work in another.

6. Power Point is easily overused; a jury bores from it. Use it sparingly. I adhere to the same notion in riding horses, in teaching, and to some extent, in jury trials: as much as necessary, but as little as possible.

7. Don't be flashy with your Power Point presentation. Charles Stephens often says: understate what you will prove; let me add: then over prove it.

8. Avoid boring presentations. Courtrooms evoke theater, drama, comedy, conflict and resolution. We are to some extent entertainers; make your presentation interesting; make them different; use Power Point wisely.

## APPENDIX A

### I. Hardware

#### 1. Laptop Computer

128 MB Ram

10 GB Hard Drive

CD-DVD Rom Drive

At least 400Mz Pentium Processor

Modem

Network card or zip drive - essential

#### 2. LCD Projector

The more Lumens the better

Ports for Laptop and VCR

Digital Overhead Camera

Resolution 1024x768

Toshiba Model #TLP771

#### 3. Portable Screen

Easy to use

At least 60" diagonal

Larger is better

DaLite Insta Theater Deluxe Screen

#### 4. Portable Stand

Adjustable height is essential

DaLite Portable Stand: ProJecto Model

5. Miscellaneous

Extension Cords

Surge Protector

Laser Pointer

II. Software

1. Power Point for Windows

Included in Windows Office 2000 Professional Edition

2. Nita's Book, Power Point for Litigators

Cost: \$49.95 (plus \$4.00 shipping) includes a CD with some forms. Order from NITA online at 1602 N. Iron Wood Drive, South Bend, IN 46635. Toll free 800-225-6482. Online at [www.nita.org](http://www.nita.org).

3. For those who want more sophisticated Power Point presentations, you may wish to order Anix, an enhancement tool to Power Point. It allows on the fly editing and animating features and includes embedded document and presentation features and allow greater exhibit control. Cost is \$125.95 and is available from Nita.

4. Time Map by Decision Quest. Excellent software for creating your own time lines and costs \$99.00. Available at [www.casesoft.com](http://www.casesoft.com); 904/273-5000; facsimile 904/273-5001.

5. Dazzle DVC - digital video creator. It connects between your VCR and your computer and will download your video to your computer. Costs less than \$130.00. May purchase at CompUSA and Best Buys, among others.

6. Body Works CD, Version 6.0. The Learning Company produces it. Available on line for \$12.00.

## ACKNOWLEDGMENTS

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Finally Nita's textbook Power Point for Litigators (1999) is the encyclopedia and essential for trial lawyers interested in Power Point presentations.