

## Showing exhibits to the jury

By: F. Dennis Saylor IV and Daniel I. Small ○ June 14, 2018

As a rule, lawyers talk too much and show too little. People learn more, and understand better, when they are shown the things that are being talked about. One of a trial lawyer's more important challenges is to find the best ways to make that happen.

We'll talk about demonstrative aids in our next column, but for now let's focus on the exhibits themselves.

Exhibits are part of the evidence of the underlying events in dispute. With occasional exceptions (such as crime scene photographs), they were not created in order to be used at the trial. Here are some typical examples:

- Documents (contracts, emails, etc.)
- Photographs
- Tangible objects (guns, drugs, etc.)

An exhibit must be "admitted" in evidence. Once it is "in evidence," it can be shown to the jury and used by any party for any legitimate purpose (unless the judge has limited its use).

If it is not admitted, it cannot be shown to the jury. Exhibits go to the jury room during deliberations.

When introducing exhibits, keep it simple and free of clutter. Memorize a short colloquy for offering an exhibit in evidence. Make it simple, spare and direct. Don't "move" it in evidence; don't offer it for "the record"; don't say that you "would like to" offer it. Just offer it. For example:

*Mr. Witness, I am showing you what has been marked as Exhibit 17. Do you recognize it?*

*Yes.*

*What is it?*

*It's a letter sent to me by John Smith of Megadeth Corporation dated April 17, 2006.*

*Your honor, I offer this as Exhibit 17.*

Too often lawyers make the mistake of thinking that when they hear the magic word "admitted," their job is done. If a document or other exhibit really matters, show it to the jury. (And if it doesn't really matter, think long and hard about why you want to put it in evidence.)

You want to make sure the jury has a chance to do three things:

1. **Read it.** The jurors should be able to see the document clearly and read it at their own pace.
2. **Digest it.** The jurors should have time, even if only for a moment, to digest what they just read.
3. **Understand it in context.** The jurors should see the document at the time when it matters — normally, during the relevant testimony.

There are seven basic ways to show a document or other exhibit to the jury:

1. Tell them to read it later. You can leave the document on the table with the other exhibits and tell the jurors in closing arguments to read it on their own during deliberations. Don't do this; it won't work.
2. Hold it up. You can hold the document in your hand in front of the jurors and show it to them that way. Don't do this, either.

3. Pass it around. You can ask permission to “publish” the document, by handing it to juror No. 1 and having it passed from juror to juror. Do this only if you have no other choice. The jurors will not study the document closely (they will feel obligated to pass it on quickly), and they will be distracted from the testimony.
4. Put a copy in a binder. Putting copies of documents in three-ring binders and letting each juror have his or her own copy can be very effective. This method is perhaps the best way to let jurors read something at their own pace. It can be logistically difficult if exhibits are disputed, as nothing can be given to the jury before it comes into evidence. Also, some old-fashioned judges may not permit it. If you do this, make sure the notebooks are tabbed and that each tab is the exhibit number. Don’t put Exhibit 17 at Tab 4.
5. Blow it up. You can blow up copies of documents, have them mounted on foam core board, and display them on an easel. This can be expensive and cumbersome, but it is often highly effective. It also works well for closing arguments, as there are no electronic devices to fool with and no pages to turn.
6. Show it on a document camera. Many courtrooms have document cameras that will permit documents to be shown (as well as magnified) on a large screen (and individual juror monitors). This method is typically very useful and has the advantage of being relatively adaptable and permitting greater spontaneity.
7. Show it electronically. Many courtrooms permit the electronic display of documents from, say, a laptop onto a large screen or individual monitors. This usually comes with some bells and whistles (such as electronically highlighting or juxtaposing exhibits). It often does not work as well as it should, because it can be awkward to use, because lawyers flash documents up and down too quickly, and because technical problems can occur.

However you display the evidence, remember that the point of the exercise is to show the documents to the jurors and to educate them. Don’t ever assume that the jury will simply figure things out on its own.

In the words of Rod Stewart, “Every picture tells a story.” Trial lawyers should take that to heart. Exhibits can have great persuasive power; don’t hide them from the jury. Take the time to put exhibits before the jurors as clearly and directly as you can.

*Previous installments of Tried & True can be found at [here](#). Judge F. Dennis Saylor IV sits on the U.S. District Court in Boston. Prior to his appointment to the bench, he was a federal prosecutor and an attorney in private practice. Daniel I. Small is a partner in the Boston and Miami offices of Holland & Knight. He is a former federal prosecutor and teaches CLE programs across the country.*

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