

Demonstrative aids: Use them!

By: F. Dennis Saylor IV and Daniel I. Small ◉ July 12, 2018

As a rule, lawyers do not make enough use of demonstrative aids. That was probably true in 1975, when graphics were hard to create, often expensive, and cumbersome to use in the courtroom. It's certainly true today, even though graphics can be easily created (for free) and easily displayed to juries.

To be clear on what we're talking about, demonstrative aids are not part of the evidence. They are created after the fact and for purposes of trial, and in order to help explain the evidence. (Sometimes demonstratives are referred to as "chalks," dating back to when chalkboards were in regular use in trials.)

Here are some typical examples:

- Diagrams
- Charts
- Graphs
- Maps
- Timelines
- Lists
- Video animations

A demonstrative aid is not evidence and does not usually go to the jury room. The basic rule is that a demonstrative aid can be used if: (1) it is based on the evidence, (2) it would help the jury understand the evidence, and (3) it is not unfair.

Demonstrative aids should be used in virtually every trial. They are helpful, they provide visual interest, and they're usually simple to make — and jurors like and expect them.

Judge Saylor goes back to the jury room and speaks with jurors after every trial. It's remarkable how often the jurors have created their own charts and lists and timelines — sometimes, those things are taped up all over the walls. That they find it so necessary and helpful shows that the lawyers have missed an important opportunity. Surely it's better to create your own demonstrative aids and show them to the jury than to hope that the jurors will do it on their own and get it right.

In a complex case, the need for demonstrative aids may be obvious. Hardly anyone would try a patent case, for example, without them. But they can be just as effective in a small case.



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Let's take a simple federal drug case involving a controlled buy of cocaine. Suppose you are the prosecutor. Suppose there were eight conversations — telephone and in-person — that were recorded. Suppose those conversations had different participants and took place at different locations.

It's obviously not impossible for the jury to keep those conversations straight. It may not even be very difficult. But why not make it as easy as possible? Why not prepare a chart listing the dates and times of the conversations (1 through 8)? And the participants and locations? For that matter, why not show the jury a map of the locations? And photographs of the locations? Or a timeline perhaps connecting them to other events? And, for closing argument, why not prepare a chart with the key quotations?

Maps are particularly important in certain kinds of cases. Just about any case involving the movement or location of people or vehicles (such as a chase or a collision) is likely to benefit from a map or drawing of an intersection.

Numbers of any complexity can be almost impossible to follow without seeing them in writing; show them on a graphic if you want people to understand them. Sometimes a demonstrative can be as simple as writing down words, like a list of names.

It is important, of course, that demonstrative aids be accurate and not misleading. They should be disclosed to opposing counsel before they're shown to the jury, in order to give counsel a fair opportunity to object. Don't make them so aggressively argumentative that they're bound to draw an objection.

Demonstratives should also be simple, clear and free of clutter. Don't put too much information into any one visual. Think about using multiple charts, instead of one, if you can't figure out a way to display your information clearly.

Finally, don't let the perfect be the enemy of the good. If you have the ability and the budget to create fancy demonstratives, fine. But making them clear is more important than making them pretty. Simple demonstratives can deliver powerful messages. Use them.

Previous installments of Tried & True can be found 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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