

## Not All Demonstratives Are Created Equal: Five Easy Ways To Improve Yours

By **Jason Fowler** (March 9, 2018, 10:30 AM EST)

Few lawyers these days would discount the role of demonstratives (typically, slides) as part of an overall campaign to persuade the fact-finder, particularly jurors. Indeed, research shows that nearly two-thirds of people are visual learners, meaning it is very likely that a lawyer's argument will be better received when accompanied by an effective demonstrative. Remarkably, simply seeing a picture can stimulate the part of the brain that is responsible for forming memories.

Not all demonstratives are created equal, however. While lawyers as a group have mastered the art of presenting arguments orally and in writing, there is much room for improvement in how we present arguments visually. This article outlines five tried-and-true techniques that lawyers can use to vastly improve the quality and persuasive power of demonstrative exhibits that accompany their arguments.



Jason Fowler

### 1. Plan Ahead

Many lawyers do not start thinking about demonstratives until shortly before trial. That is very late in the game, however.

One of the judges I clerked for told me the first thing he would do when he was retained on a new case was prepare the jury instructions for the claims at issue so he knew what he needed to get during discovery. The same concept applies to demonstratives. A lawyer who thinks about how the case will be presented visually early on can make sure that discovery is pursued to support those visual themes.

Planning ahead also has other benefits. For example, it gives you an opportunity to test different visual themes with your fact witnesses and experts while there is still time to change course. If your fact-finder is a judge, it also gives you the opportunity to begin exposing her to your visual arguments (for example, in motions), which will resonate more strongly at trial if she is already familiar with them. Finally, it allows you to include the demonstratives you plan to use at trial in your expert report, which greatly increases the likelihood that you will actually be able to use them at trial. While most jurisdictions will allow an expert to use new demonstratives that are fairly supported by the expert report, some jurisdictions are not so lenient, and the last thing you want as you're preparing for trial is uncertainty about whether the judge will allow you to use your key demonstratives.

## **2. Eliminate as Much Text as Possible**

A demonstrative should support your argument; it shouldn't be your argument. Unfortunately, too many lawyers feel compelled to include at least a summary of their argument in their demonstrative. But demonstratives do not need a lot of words to be persuasive. If you don't believe me, watch Steve Jobs' early presentations that convinced millions of people that the iPhone was the phone of the future, or one of the handful of TED Talks seen and shared by nearly 50 million people. These presenters deliver powerful and persuasive presentations without summarizing their argument on screen. There is no reason, in most cases, that lawyers cannot do the same.

Regardless, the reality is that most people cannot read and listen at the same time. If the audience is reading your demonstrative, they aren't listening to your argument (at least not with their full attention). And anecdotal evidence suggests that because people can read faster than you can talk, what usually happens is that the audience will read your demonstrative and then tune out until you advance to the next one if they think they got the gist. Any nuances or emotion in your oral presentation will therefore be lost.

If you need to include text on a demonstrative — and in many cases you might — that text should be reduced to the bare minimum. And in all events, avoid putting your text in bullet points, which for most people signal that a boring presentation is about to begin. Someone once said that bullets don't kill people, bullet points do. That might not be true, but bullet points can certainly kill your ability to connect with and persuade your audience if they immediately discount what you are saying as tedious.

## **3. Make Sure You Really Need a Demonstrative**

Not all arguments need or benefit from a demonstrative. It is often the case that lawyers will draft their presentation — an opening statement, for example — and then instruct that corresponding demonstratives be prepared. The end result is often dozens and dozens of slides and billboards, most of which are fairly characterized as demonstratives for demonstratives' sake.

By presenting a demonstrative, you are hoping to command some portion of your audience's attention. Make sure that portion of their attention span is worth it. There are arguments that require nuance or an emotional element that can only be conveyed orally. If the audience misses that nuance or emotion because they were looking at a demonstrative, you have lost an important opportunity to persuade them that you are right and your adversary is wrong.

Using unnecessary demonstratives can also deprive you of the opportunity to make a connection with your audience. In a jury trial, for example, the jury often forms important impressions during opening statements about the lawyers and their clients that will remain with them through deliberations. It is difficult, however, to form a personal connection with the jury if they are constantly staring at your demonstratives while you are talking.

Carefully limiting your demonstratives to only those arguments that need them will have the added benefit of substantially reducing the number of demonstratives. It is much better to have a handful of great demonstratives (and to use them repeatedly) than a truck full of good ones. Moreover, given that demonstratives are rarely allowed to go back to the jury room, it is in your best interest to have a handful of effective demonstratives that the jury will remember and come back to during deliberations. That is far less likely to happen if you have bombarded the jury with hundreds of demonstratives.

#### **4. Make Sure Your Demonstratives are Visually Appealing**

Your audience is used to consuming information that is visually appealing. The internet has come a long way from the days of AOL and CompuServe, and today virtually all websites your audience frequents present information in ways that are aesthetically pleasing. It would be a mistake to think that the audience expects or will be satisfied with any less from lawyers.

You do not want to risk a perception that your demonstratives are amateurish, because it can undermine the credibility of your argument. Would judging your arguments based on the quality of your demonstratives be petty? Maybe. But anyone who has done a mock jury exercise and watched their deliberations knows that jurors can be petty, and it only takes one strong-minded juror to turn the tide of deliberations for or against you. Retaining a good trial consultant will help ensure that your demonstratives are visually pleasing, but a good rule of thumb if you do not have a trial consultant is to keep the demonstratives simple and clean, with consistent backgrounds, colors and fonts. Less is usually more.

#### **5. Check That Your Demonstratives Convey What You Think They Convey**

You have been living with your case for months, if not years. Of course the demonstratives make perfect sense to you, but they may not be as clear to an audience that just heard about your case for the first time. If they are trying to figure out what the demonstrative is supposed to convey or how it supports your argument, they will not be giving you their full attention, and as a result could miss an important aspect of your argument.

William Strunk and E.B. White famously cautioned in "The Elements of Style" that "When you say something, make sure you have said it. The chances of your having said it are only fair." The same advice applies to demonstratives. Test your demonstratives before you use them with a judge or jury, preferably on people who know nothing about the case. Office staff and family members make great focus groups, and will often provide valuable insights not only about your demonstratives, but about your arguments as well.

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*R. Jason Fowler is a partner at Covington & Burling LLP in Washington, D.C., practicing in the firm's litigation and intellectual property groups. He is the co-author of a book recently published by the American Bar Association entitled "Demonstratives: Definitive Treatise on Visual Persuasion."*

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