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Using Demonstrative Exhibits as Admissible Evidence Under California Law

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During trial, lawyers make many strategic decisions to try to appeal to a jury. For example, they consider not only the substance of the evidence they present, but also the emotional impact of that evidence. But the impact of a witness' testimony can be blunted if your jury is not following the testimony, so the use of demonstrative exhibits can be a useful tool to ensure the jury remains focused on the testimony.

Demonstrative exhibits can be powerful ways to present evidence to a jury. Multimedia presentations are more likely to keep a juror's interest, so mixing up your evidentiary presentations is a good idea in general. Additionally, some jurors may be better visual learners than audio learners, which means that some people may not absorb oral testimony as well as others. Visual learners, who learn best by reading or seeing images and diagrams, will be better served by visual representations of testimony.

Under California law, demonstrative exhibits can be admissible evidence. If the judge allows it, the jury can take evidence that has been admitted back to the jury room to review and consider during deliberations. Thus, if a lawyer wants the jury to be able to refer to the demonstrative while deliberating, it is important to meet certain benchmark requirements.

As outlined by the California Supreme Court, demonstrative evidence "must accurately depict an expert opinion, the expert opinion must fairly represent the evidence, the trial court must provide a proper limiting instruction, and the animation must be otherwise admissible under Evidence Code section 352." *People v. Caro*. Although the Court in *Caro* was discussing computer animation specifically and demonstratives prepared in connection with an expert opinion, the same principles would apply to hand-drawn images or static graphics, whether used in connection with an expert or fact witness.

A key component of the requirements from *Caro* is that the proposed exhibit be a helpful and accurate depiction of the testimony. *See* *People v. Hung Tran*. This is where admissible demonstrative evidence differs from the more traditional use of demonstratives in closing argument, where they are not admissible.

In *Hung Tran*, the Court of Appeal allowed an expert witness to use complicated software to enhance surveillance videos. The expert used color-coded arrows to identify specific people, and "[t]hese arrows essentially functioned like a witness writing an X on a map or placing a Post-It note with a name on an enlarged photograph." The court allowed the demonstrative to be admitted because it "simply helped the jury observe what the videos showed."

Hung Tran is a valuable illustration of the importance of demonstrative exhibits. The expert was testifying about where specific people were on a low-quality surveillance tape. If the witness was just testifying orally, a juror may have had difficulty following along. But with the physical demonstration that the jury could then review during deliberations, the witness's testimony was clear.

When a witness's testimony and demonstrative are both admissible, the jury has multiple ways to refer to that evidence during deliberations. Different presentations may resonate with different jurors in different ways, so presenting key evidence through the use of demonstratives is a valuable tool in a trial lawyer's toolbox. When on trial in California, in order to make sure the jury is armed with all of your persuasive evidence, it is important to make sure your demonstratives meet the requirements for admissibility.

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