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7 Mistakes To Avoid When Using Trial Graphics

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Many judges seem to be getting fed up with PowerPoint overkill. At the American Bar Association's Antitrust Spring Meeting in Washington, D.C., in March, several federal district judges expressed candid views about the use of PowerPoint slides at trial.[1]

U.S. District Judge Daniel Crabtree of the U.S. District Court for the District of Kansas said they were "more invasive than kudzu" and described its overuse as "a sin."

During a panel discussion, Judge Crabtree went on to characterize the "typical routine" of lawyers in complex cases: "I stand up, I'm going to talk to you for 30 minutes. Here's all the pages I'm going to show you on this screen, and you're going to spend time reading them and not listening to me."

U.S. District Judge Richard Boulware of the U.S. District Court for the District of Nevada agreed that overuse of slides "can draw away from your focus."

With these unusual comments from the bench in mind, it's a good time for lawyers to assess when and how they use visuals to make sure presentations are as effective as possible. The following are seven mistakes to avoid.

1. Showing Your Hand

In a contested matter, exchanging exhibits or demonstratives before they are used in court means that opposing counsel knows where the lawyer is going with an argument or witness. The other side can then come to court with a plan of counterattack.

Thus, attorneys should take a pause and view the demonstrative exhibit from opposing counsel's point of view to understand what they will take away or learn from it.

If a demonstration you're planning on using with a witness will give opposing counsel too much insight into your strategy, you should consider building a preconceived graphic in real time while in court, using an oversized pad and large markers. Not only will this strategy shield part of your argument from opposing counsel, but it also adds dynamism to the presentation, increasing the likelihood that the fact-finders will pay attention.

2. Overplaying Your Hand

Having a graphic turned against the client can be one of the worst outcomes during trial. This can happen when a graphic isn't fully thought out or if it is overly aggressive.

Overplaying a graphic can undercut both the lawyer's and the client's credibility. And if a lawyer loses credibility, they harm the client's case and their own reputation. Thus, it is critical to make sure that the evidence supports every slide or graphic published to the jury or judge.

Conversely, think about ways opposing counsel may overplay their hand, and develop a plan to use that against them. And be on the lookout for things that may not have been anticipated, such as a chart that mischaracterizes the evidence or facts.

For example, consider a hypothetical patent litigation trial. Imagine if one side created an animation to show the jury how the product was supposed to work, but then opposing counsel found an actual video of the product from the company's website that differed from the animation treated for trial. Opposing counsel can then argue to the jury that the video from the website was the other side's own media, yet they chose to create something for trial that didn't align with the facts.

3. Dumbing Down Slides

Many cases require the explanation of complex science, technology or financial transactions. This can be a challenge, especially with jury trials.

While judges and jurors may not have the education or training to readily understand the subject of the testimony or case, they most definitely know when they are being talked down to. Patronizing the finder of fact is not a winning strategy. There's a risk of oversimplifying slides to the point of insult, and a difference between visually clarifying a complex concept and depicting the obvious.

Instead of oversimplifying, embrace the concept that sometimes to persuade, one must simultaneously teach.

For example, attorneys often include graphics of extremely basic things like industry structure to show manufacturing, wholesale and retail channels when such concepts can be easily described.

4. Insufficient Detail

While some situations may call for a simple presentation of pared-down arguments or facts, it is a mistake to always assume that less is more. In some circumstances, adding more data, especially if it is correlated in a persuasive way, can be the most effective way to present evidence.

Edward Tufte makes the point in his book, "Beautiful Evidence," that viewers are adept at reading financial tables and sports statistics, and thus should be accustomed to deciphering complex graphics that are presented in a visually compelling format.

The key is to avoid smothering the viewer with disorganized detail, but rather to present it in a persuasive and coherent manner, making sure to group, color code, distinguish and summarize sufficiently so that the viewer doesn't get lost in a sea of data. Your main point should leap out regardless of how much or little data you include.

For instance, as exemplified in the hypothetical example below, a demonstrative with hundreds of different types of interactions over a period of time could use different color bands and icons to represent the individual interactions and show the patterns over time.

Each icon can be supported by evidence, which can be displayed using trial presentation software or document callouts prepared in PowerPoint.

5. AI Overuse and Abuse

While this point could easily be the basis of a separate article, given the exponentially increasing use of generative artificial intelligence, it's worth raising.

When creating graphics or presentations, AI shouldn't be blindly relied upon or serve as a substitute for independent thought. And it should be checked closely for accuracy of content, appropriateness of context and to make sure it has only provided information that was requested (and not additional erroneous content).

While saving time might be attractive, it shouldn't be at the expense of creativity, details personal to the client or alignment with the advocate's style of argument. What's more, even with straightforward and reasonable prompts, AI can produce astonishingly strange and inappropriate graphics, devoid of attention to demographics or common sense.

Of course, when using AI to make graphics, the user also needs to consider implications related to attorney work product, attorney-client privilege, authenticity and chain of custody.

An AI-generated graphic or presentation can be a good starting point or help to generate ideas, but to be the most effective, the finished product needs to be personal to the client and advocate.

6. Inadequate Attention to Design Details

Formatting can enhance visual persuasion. Ignoring small consistency details — color, font, alignment and placement — is a common mistake. Inconsistent formatting can distract from the substance or create confusion.

No detail is too small to consider when the goal is to ensure that you are using things like color and font to your subtle yet full advantage.

Human eyes are naturally drawn to movement. If there are changes from slide to slide in aspects such as image or text placement, color, size, and font, fact-finders will notice. This can be distracting and draw focus away from the argument.

Be vigilant about checking and rechecking visuals to make sure they are clean and consistent. If there's time, a colleague should take a look, or you should come back to it a day later. You might be shocked at how much more you will see with the separation of a bit of time.

7. Overfocusing on Visuals

Particularly in the stressful run-up to a high-stakes trial, teams can get so wrapped up in visuals that they lose focus on the case. Valuable preparation time that may be needed for substantive case issues can be siphoned off by immaterial aspects of graphics, such as the exact shade of blue in a slide background.

The case should always drive the graphics.

Conclusion

The ideas discussed in this article showcase many of the frequent issues that come up when working with demonstratives for trial. There will always be some other mistake or example or counterpoint.

Nonetheless, following the advice in this article, counsel should be well equipped to integrate impactful visual storytelling into a thriving, persuasive law practice.

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[1] https://www.mlex.com/mlex/articles/2458076/avoid-the-sin-of-bad-slide-decks-us-judge-says.

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