Demonstrative evidence is art

In complex litigation, reinforcing expert analysis with visual aids can help decipher data.

By Kelly Lucas

A graphic can be developed to show anything it is to show. If the science isn't there to back it up, however, it won't be the DVD or display board used to present it. Understanding admissibility requirements for the use of demonstrative evidence in litigation is vital to ensuring that the exhibit serves its intended purpose in court. Just as an expert witness has to have a legitimate, scientific basis for his opinions, the demonstrative evidence used to visualize those opinions needs to be developed using the same basis, said Timothy Maher.

He's a specialist in demonstrative evidence development with Indianapolis-based Wolf Technical Services. Demonstrative exhibits ranging from bullet points on poster boards to advanced Hyperreal Techniques are used in trials today to communicate complex and technical information to decision makers who may not have a background in the subject area.

When polled by the American Bar Association, more than 80 percent of responding judges said that they had presided over cases they believed were too complex for a jury to render a fair verdict.

Seeing is believing

While incidents being litigated often involve automobile accidents, workplace injuries, or product liability claims -- issues we all become familiar with in our daily lives -- the science behind the way a machine functions or the law of physics at work when specific factors came together to create a hazardous situation must be clarified.

Complex litigation typically deals with beyond the average decision maker's knowledge and experience. The "clean slate" that this situation creates, Maher explained in his recently published book, "Demonstrative Evidence for Complex Litigation: A Practical Guide," presents the litigation team with the opportunity and the challenge of providing the information the decision maker needs to reach the informed, sensible decision that the lawyers are advocating.

Video reconstructions and simulations are often used in vehicle collision cases to visualize for jurors what an event is or was occurring. If a car goes off the side of the road and overcorrects, for example, entering the path of oncoming traffic, jurors can watch that occur. Combined with the expert's testimony explaining how the pattern of marks on the road, and wear on the tires, and other factors involved support what they've seen, the evidence can be compelling, Maher said.

"What if?" or alternative scenarios also provide a

Evidence

A powerful way to tell a story. This approach demonstrates what happened and how and why it happened. Judges in Harris and O'Connor's "Demonstrative Evidence" noted that a "case that has been well thought out and well told can win the day for a defendant who has not been spending a fortune, but who because of his ability to distill the case into a piece of machinery has had manipulation of the evidence in his favor." However, legal experts warn that software applications such as this have the potential to mislead the jury, or, at the very least, to actually mislead the jury.

It is important for the lawyer to understand that while telling a story using demonstrative evidence can be powerful, it can also be misleading. The evidence must be presented in an ethical manner, and the jury must be able to understand the evidence.

"If you have a case with demonstrative evidence, you need to explain it to the jury in a way that is easy to understand," Maher said. "That's the key to telling a story with demonstrative evidence. You need to explain the evidence in a way that is easy to understand, and you need to explain the evidence in a way that is easy to understand."