

# Practice makes perfect visual presentations

MIKE ROGERS

*Organizing and preparing your case for trial will be easier if you follow these 10 rules for integrating technology into your visual presentations.*

Let's face it: The slam-dunk case never goes to trial. The only cases that do are the ones with problems.

To succeed at trial, you must anticipate and overcome those problems before you reach the courtroom. Using technology to organize, prepare, and try your case will contribute to your success, but you must be committed to practicing with it before your courtroom presentation and using it throughout the trial.

Adding technology to your case presentation at the last minute can have embarrassing or even disastrous consequences. For instance, the attorney who makes an opening statement that incorporates a slide presentation that he or she has not rehearsed will look stilted, confused, or ineffective. The attorney who has not sought a ruling about the propriety of a particular slide may be stopped mid-presentation with an unfavorable ruling and have to take the slide down. The attorney who does not call an exhibit by its name on the exhibit list will be left standing while the paralegal or trial technician tries to figure out which exhibit to display, telegraphing the point to the jury that the attorney is not organized.

The bottom line is that the longer you wait to prepare your presentation, the more likely you will make a mistake that inhibits your ability to put evidence in front of jurors. Why does this happen?

Part of the reason is tunnel vision: You can become so focused on your thorough understanding of the case that you forget about the learning curve you went through to grasp the subtle facts and nuances of the case. Those subtleties and nuances will be lost on a jury unless you take the time to consider how to convey them convincingly.

To that end, the more time you spend brainstorming about how to present information to a jury, the better your case presentation will be, and the better your chances of connecting with jurors and securing a just recovery for your client. Follow these 10 tried and true rules to keep you on track.

**1. The earlier you start preparing, the better.** Start to think about the visual trial before you file the complaint. In their book *Rules of the Road*, trial lawyers Rick Friedman and Patrick Malone suggest drafting jury instructions before drafting a complaint. Jurors can use these instructions as a

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## Rules (Standard of Care)

1. Nurses must document a patient's change in condition.
2. Nurses must communicate a change in condition to the physician.

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## Why are the rules important in this case?

1. Blood clots can build over time.
2. When a blood clot cuts off blood supply to a part of the body - it dies.
3. When a patient is helpless they rely completely upon the nurses.
4. Nurses are the eyes ears and advocates of the patient.

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For your opening statement, create a PowerPoint slide for each core concept, or rule, of the case. For each rule, create a corresponding slide that explains how the rule applies to the facts of the case. These slides are from a nursing malpractice case.

road map to a fair recovery.<sup>1</sup>

Think about what your jurors will read and see during your opening statement, and draft the jury instructions, or rules, with the idea that your jurors will write them down or that they will at least internalize them as you speak. The rules should reflect the core concepts that your jurors must understand to render a verdict in your client's favor. They should become rhetorical devices that can be woven into the story of your case.

Once you have begun drafting the rules, put them onto PowerPoint slides. You can tinker with the slides' exact language as your case progresses.

The illustration above shows two examples of how rules were used in a nursing malpractice case that resulted in a substantial settlement while the jury was deliberating. The first slide presents the general principles regarding nurses' behavior toward patients. The second slide explains the principles that apply to the medicine because the patient developed a blood clot that led to tissue death.

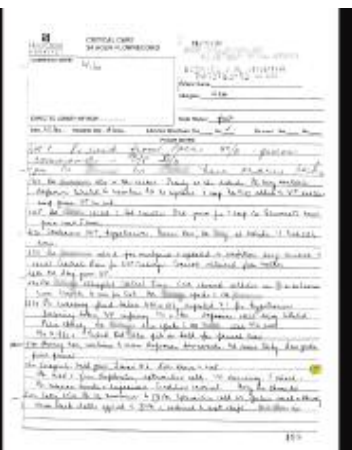
Each slide was drafted with the objective of having the lawyer take the position of teacher for the jury about the rules' core concepts. We animated each rule so that, at trial, the attorney could underscore its importance to the case. With this type of rhetorical device, you can build your intellectual framework

for your argument as you move to each additional rule.

**2. As you receive discovery, digitize it with an eye toward displaying it in the courtroom.** Answers to interrogatories and requests to admit facts, handwritten statements, business records, trucker log books, and other important documents should be displayed to the jury if they help illustrate your theory of the case. Scan discovery documents at 300 dots per inch (dpi); at that resolution, they will look clear and crisp when they are projected on the screen or enlarged and printed on a board.

Use optical character recognition (OCR) software to convert scanned documents that contain typewritten text into a computer-readable format. Such documents may be searched, indexed, or copied into other documents, which means that you can automate aspects of document review to save time working up your case.

Once you have scanned the documents and run them through your OCR software, put an electronic Bates stamp on every page. Refer to the Bates stamp number during depositions and pleadings. Later, you can synchronize



Use case analysis software to create a chronology of the injury involved in the case. In the nursing malpractice case, for example, each entry in the patient's medical chart is a separate item in the chronology.

the video clip of the deposition with the relevant document page. When you're in front of the jury, you can zoom in on the Bates stamp and then on the relevant portion of the document, showing the jurors that they are seeing the same document that the witness saw.<sup>2</sup>

**3. Once you have your documents in an electronic format, put them into a workable chronology.** Three chronologies are relevant to each case: the chronology of the event, the chronology of discovery, and the chronology of the trial. Use technology to develop the first two chronologies to control the way information is presented to jurors.

In a medical malpractice case, the primary source of information that will make up the chronology is your client's medical chart. Rather than engaging a nurse practitioner to create a chronology in a Microsoft Word table that becomes hard to use, build the chronology with a case analysis program like CaseMap.<sup>3</sup>

CaseMap helps you organize your thinking about the case. You can use it to cross-reference people, places, and things with issues in the case. This gives

you the capacity to sort through one pool of information for the answers to different questions.<sup>4</sup>

Once you have created your chronology, you can make something like the illustration at the bottom of the previous page, which is information that was exported from a CaseMap file to TimeMap.<sup>5</sup> The time line entry for January 1, 2000, is linked to the actual handwritten nurse's note from that day. This process allows you to create dynamic time lines that can be used in the courtroom. In short, the time line, when used on direct examination, acts as an index to the file. Click on the link and pull up the portion of the chart that supports the assertion in the time line.

To ensure that the slides are admitted into evidence, have your witness testify that he or she helped put the time line together to better explain his or her testimony and request that the slides be admitted under your jurisdiction's summary-exhibit evidentiary rule. On the left-hand side of the illustration, underneath the time line box, is the blue bar. You can click on the blue bar with your mouse during an examination and

slide the blue bar under the time line in order to move through the time line. When you reach the time line box that you want to use, you can click on the top right corner and call up the document that is linked to the assertion in the time line box.

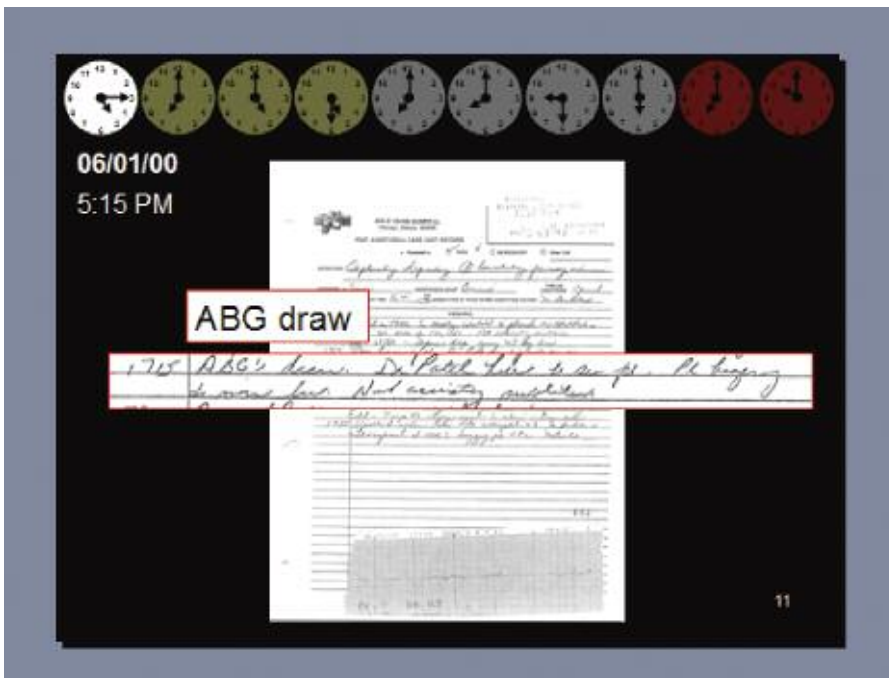
This type of time line can be used to great effect. For example, in a failure-to-diagnose case against a physician, it will underscore all the clues the doctor missed. Or in a bad-faith case against an insurance company, the time line will highlight how the defendant's agents used the claims process to delay and deny payment to your client.

Even if you are not a fan of CaseMap and TimeMap, or if your case demands a different look and feel for your chronology, you should construct chronologies that can be used to explain information visually. The illustration below is a slide from the nursing malpractice case discussed earlier. This illustration uses clocks to refer to specific events important to the facts of the case. The white clock on the time line refers to the time when the plaintiff underwent a blood gas draw. We then took a page from the chart and added a call-out box on top of the page, to show the jurors how we know when the blood gas was taken. The next slide moves to the next clock and talks about the events that were important at that time.

**4. Take video depositions whenever possible.** Demeanor evidence is compelling. If you take a video deposition and the witness makes a damning admission or continually looks to the opposing lawyer for visual prompts or unspoken advice, the camera will document this.

Have your videographer or court reporter synchronize the video deposition with the transcript. Then you can create video clips from the depositions that are easily integrated into mediation presentations, opening statements, and, of course, cross-examinations.

If you are taking an evidence deposition of a witness, try to remember to put an exhibit in front of the witness every five minutes. That way, you can synchronize the video playback to display the document or exhibit on the screen



Putting the case event slides of the medical chart entries into time line graphing software creates a compelling visual of the chronology of the event. This example was used in the direct examination in the nursing malpractice case.

while the witness testifies about it.

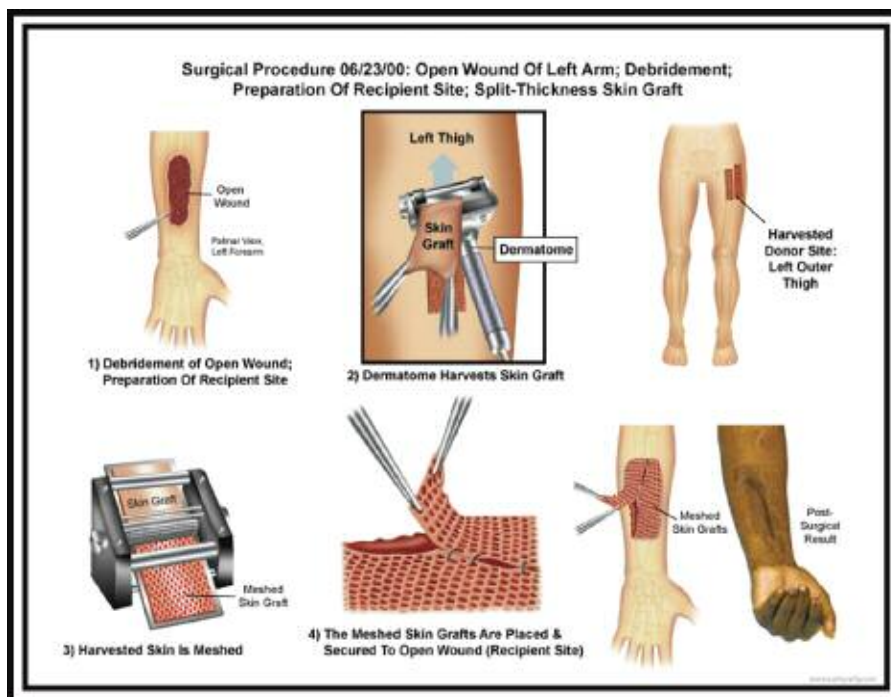
If you use a product like Verdictal,<sup>6</sup> you can abstract the deposition transcripts by issue while creating the video and text clips that can be called up on the screen. Those clips can then be integrated into a cross-examination or a mediation presentation.

**5. Keep adding to your case storyboard as you develop information.** Make a storyboard for the liability portion of your case *and* for damages. Integrate key documents, photos, and illustrations into this visual narrative. This master storyboard will help you crystallize your ideas about how to visually convey your theory of liability and damages. It will provide you with props that enhance your presentation of the evidence in every aspect of the trial, because you will see how each visual fits into the storyboard.

When I am working with an attorney before trial, I create a visual storyboard of the case. This incorporates affirmative evidence that I expect to have introduced throughout the trial. For example, in a traumatic brain injury case, we created text and video clips of concessions that different witnesses had made during discovery for use in cross-examination. We then exported those concessions from Sanction presentation software and inserted them into PowerPoint slides, so that they could be played back during closing argument. The slides incorporated callouts from key documents from the chart and illustrations from the medical illustrator who worked on the case.

From this storyboard, the attorney was able to select visuals for different parts of trial—for instance, the damages portion of the storyboard incorporated damages tables, photos, and medical illustrations to convey the plaintiff's suffering.

**6. Think about ways to illustrate the story.** When I read the books from the graphic novel series *Sin City*, my concept of the visual trial was revolutionized. I thought, if writer Frank Miller could illustrate the stories of *Sin City* with such compelling visuals (as he also did with the battle of Thermopylae in *300*), why couldn't a trial lawyer do the same with



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**In the nursing malpractice case, a medical illustrator created visuals that showed the jury some of the difficult and painful medical procedures the patient endured.**

a client's story? Trial lawyers, like comic book writers, can pick the most effective vantage point for telling their story and select the best illustrations for it. If you can visualize your case story like a comic book, you can connect with visually oriented jurors.

Integrate photo documents and illustrative concepts into the case story. For example, in the nursing malpractice case above, we used photos from the surgery in the opening statement to underscore the gravity of the plaintiff's blood clot and to set the stage for damages considerations.<sup>7</sup>

When you don't have photos, use an illustrator to create visuals. In this same case, the developing blood clot, the ischemia, and the subsequent compartment syndrome—when the patient's blood began to pool in her tissue—demanded pictures that showed what the nurses were missing. I worked with a medical illustrator to create images (shown above) that depicted what the client had to endure after the compartment syndrome healed. These illustrations, integrated into the storyboard, were introduced in an expert witness direct examination; as slides, they were in-

corporated into the closing argument on damages and pain and suffering.

**7. Think about how the jury will see the little things in your case, and use technology to emphasize them.** In a medical malpractice case against two radiologists, MRIs and mammograms were the primary pieces of evidence. The plaintiff's theory was that one defendant radiologist had misread a mammogram and the other radiologist had misread her breast MRI, both failing to diagnose breast cancer. The plaintiff developed stage IV breast cancer with metastasis to her spine, brain, and hip joints; she had been in constant pain for almost two years and had about four weeks left to live at the time of the trial.

The visual story was critical. We had to tackle the problem of how to make microscopic calcifications in the breast that were present in the mammogram films appear big enough and clear enough for the jurors to see—and be ready for best-evidence challenges to the admissibility of the films.

I decided to take photos of the films and blow them up with presentation software. I shot high-resolution digital pictures of baseline mammograms, the

mammogram in question, and the subsequent mammogram showing the cancer once it was discovered. The camera that I used captured the images without any mechanical or digital enhancement; each image was an exact copy of the film as it appeared on the light box the radiologists had used. With the digital photos, I was able to use the presentation software to allow me to zoom in on specific parts of the films without distorting the images.<sup>8</sup>

Next, I created an exhibit sheet for the lawyer so there would be no confu-

tended to the other side. All that work for nothing. The moral of the story? Be sure to prepare early, and be sure the defense receives your evidence.

**9. Use whatever you need to get your point across.** Use a combination of media presentations to communicate effectively with your jurors or mediators. The lawyer who comes up with a case presentation that uses boards, handouts, models, and computer presentations gives the jury or the mediators a multisensory explanation of the case. Changing modes of communication

to coordinate how to get specific exhibits onto the screen. At trial, the attorney would call for a document by a name the technician had never heard and then wait while the technician tried to figure out what exhibit the attorney wanted. One attorney called for exhibits that he had not given to the technician.

Don't be like these lawyers: Practice with your technology. You will be pleased with your performance, and so will the judge and jury.

One final piece of advice: Have a backup for all the technology you plan to use in the courtroom. I always have a backup computer and other equipment available in the courtroom and carry extra batteries in my briefcase. I also double-check the connections of all the cables on the equipment.

Today's technology provides an attorney with many options for enhancing the presentation of critical information at trial. The more time you spend brainstorming about how to present information to a jury, and the more time you spend preparing that presentation, the better your case presentation will be. And that means you'll have a better chance of connecting with your jurors and recovering fair compensation for your client. ■

## *A well-rehearsed, well-prepared presentation may turn a trial in your client's favor, while a failure to practice with presentation technology sets you up for disaster.*

sion about what he was asking for when he called out for the exhibit. The sheet contained a group name, an identifying number—the exhibit number that was used throughout the discovery process—and a description of the exhibit. Using this system, even a nervous lawyer can specify what he or she needs during trial, and the technician can figure out what the lawyer is talking about.

If you prefer to use bar codes to launch your exhibits, add them to the exhibit sheet. That way, you just scan the bar code, and the presentation software launches the exhibit for the judge and jury.

**8. Be sure to turn all your exhibits over to the defense.** In our cancer case, I gave the plaintiff's attorney a CD of photos of the mammogram images and MRI screen capture images. I even uploaded a set of the images to an FTP server so he and the defense attorneys could download the photos. I also told the lawyer to send the photos to defense counsel.

However, at trial, the defense attorneys alleged that they never received their copies and so could not tell whether the images had been enhanced. The judge barred our use of the photos because they had not been

also underscores the fact that the attorney is doing everything he or she can to explain the case.

**10. Practice with your technology before making any presentation.** What's the difference between a presentation that is a train wreck and one that is masterful? Practice. A well-rehearsed, well-prepared presentation may turn a trial in your client's favor or secure a substantial settlement, while a failure to practice with presentation technology sets you up for disaster.

Too many lawyers have blundered through presentations because they chose not to do a run-through. Take this rule to heart: Repetition and practice improve a presentation in every case.

One attorney who chose not to heed this advice talked ahead of his slides because he forgot to advance them. Another, who was unfamiliar with the buttons on his cordless presenter, switched off the remote during his opening statement when he wanted to advance his slides. He was fortunate that his courtroom technician heard him clicking the presenter and advanced the slides for him, but his presentation was less than stellar.

Yet another attorney chose not to review his exhibits with the technician

### Notes

1. Rick Friedman & Patrick Malone, *Rules of the Road: A Plaintiff Lawyer's Guide to Proving Liability* (Trial Guides 2007).

2. At [www.roninlive.com](http://www.roninlive.com), click on "TRIAL Magazine Exhibits" to see what the end result will look like.

3. For more information on CaseMap, see [www.casesoft.com/casemap/casemap.asp](http://www.casesoft.com/casemap/casemap.asp).

4. At [www.roninlive.com](http://www.roninlive.com), click on "TRIAL Magazine Exhibits" to see what the end result will look like.

5. For more information on TimeMap, see [www.casesoft.com/timemap/index.asp](http://www.casesoft.com/timemap/index.asp).

6. Verdictal is the next generation of Sanction, the courtroom presentation software. See [www.verdictal.com/software](http://www.verdictal.com/software).

7. At [www.roninlive.com](http://www.roninlive.com), click on "TRIAL Magazine Exhibits" to see what the end result will look like.

8. In this case, I used Sanction software ([www.sanction.com](http://www.sanction.com)), but you could use Verdictal ([www.verdictal.com/software](http://www.verdictal.com/software)), Trial Director ([www.indatacorp.com/Products/Trial/trialDirector.aspx](http://www.indatacorp.com/Products/Trial/trialDirector.aspx)), or a comparable program for similar results.