

ADVOCACY

Visual Aids

“Reason is founded on the evidence of our senses.”

Percy Bysshe Shelley

The extent to which visual aids can be used in a case will depend upon the nature of the case. In matters that are complex or factually convoluted or where the testimony of witnesses involves concepts that are not part of the common experience of the tribunal (especially if the tribunal is a jury), visual aids can become a vital part of your presentation.

The range of visual aids available is limited only by the imaginations of counsel and the witness. There are many forms of such aids used regularly in the Courts. Commonly seen in the Courts are visual aids that include chronologies, charts, flow charts, diagrammatic representations, photographs, enlargements of extracts from written materials such as legislation or contracts, models (eg of buildings, sites, machines and other items or structures), plans or maps and computer generated graphics.

Those aids can be directed towards a variety of purposes. They may be designed to: assist the tribunal to understand the order of events; to appreciate the physical location in which events occurred; to assist in explaining the relationship between one fact or set of facts and another; to trace the path of some evidence (eg a chain of custody situation); or to enable an expert to better explain some complicated concept.

Care should be taken in choosing the visual aid employed to assist you or your witness in the presentation of the case. As technology develops more and more options will become available. You should be careful to ensure that you are not unduly influenced by the wizardry of the available techniques. It will be counterproductive to have the court or the members of the jury marvelling at the techniques employed and yet totally missing the message that is sought to be conveyed. Further it is necessary to remember that some forms of electronic

presentation may not leave any hard copy for the jury or the tribunal to consider quietly at a later time. Some presentations by Powerpoint and some forms of computer generated reconstruction may be better left alone if their product is not readily accessible to the tribunal when it retires to consider the outcome of the proceedings.

One of the most useful aids in a civil proceeding involving convoluted factual circumstances is the simple chronology. In most instances the development of a chronology is important for the proper preparation for the presentation of your case and it is easily converted to provide a reliable aid to the tribunal. It can also be updated as the trial proceeds by the inclusion of transcript references and references to exhibits for use in your final address. In my experience chronologies are extremely useful and yet are surprisingly under utilised.

Whatever visual aid is adopted it is essential that it fairly represent the evidence that is or will be before the tribunal. If it does not it is likely to be met by an objection and, in any event, will not help the tribunal. If an evidentiary matter necessary to support the visual aid has not been established or has been misunderstood by the advocate the aid will be of limited assistance to the case and may serve to highlight a flaw in the case. In those circumstances it will be counter-productive.

Having determined that you will use a visual aid and having identified that aid, it will be necessary for you to consider some tactical matters. Is the aid to be introduced at the time of your opening, in the course of evidence or is it to be first used in final address? If it is to be used in the opening or in the course of evidence you will have to consider whether there can be any objection to it and to devise a response to any anticipated objection. If it is to be used for the first time in your final address you should ensure that the visual aid is entirely consistent with the evidence that has in fact been given and that you can point to the source of the information which the visual aid seeks to portray or reflect.



Hon Justice Riley

It is important to remember that the purpose of such an aid is to complement and supplement the oral testimony. It is to simplify, clarify and enliven information that may otherwise be difficult to explain or convey. It is certainly not to detract from that testimony or to complicate or confuse what the witness has said. You must be careful not to overdo the use of visual aids. This will lead to confusion.

Careful consideration needs to be given to the nature of visual aids used in a case and the methods by which, and the times at which, they are to be introduced to the tribunal. It is necessary to keep firmly in mind that visual aids, and the technology that may constitute the visual aid, are simply tools available to you to better present the case of your client.

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