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## Trial lawyers cater to jurors' demands for visual evidence

By Sylvia Hsieh  
Staff writer

As jurors demand slicker, speedier, sound bite-like presentation of trial evidence, lawyers are hiring visual artists, computer graphic designers and illustrators to transform piles of documents into light, sound and images.

While words, paper and argument are the tools that lawyers are most comfortable employing, jurors expect a courtroom display bordering on entertainment.

Video games, smart phones and legal TV shows have all fed these expectations.

"Jurors have the expectation of all the whiz-bang gadgetry of 'CSI Miami' and want to know why you can't get a whole case done with less time for commercials," said Rubin Guttman, a plaintiffs' personal injury attorney in Cleveland.

The lower cost of technology has fueled greater competition among providers of visual evidence and made such evidence almost a must for any size case.

"You literally can't go to trial without some type of presentation in 30-second sound bites and attention-grabbers to make a point: animations, graphics, videos. It's more and more like the Discovery Channel," said

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— Dan Copfer



Dan Copfer, president of Visual Evidence/E-Discovery in Cleveland.

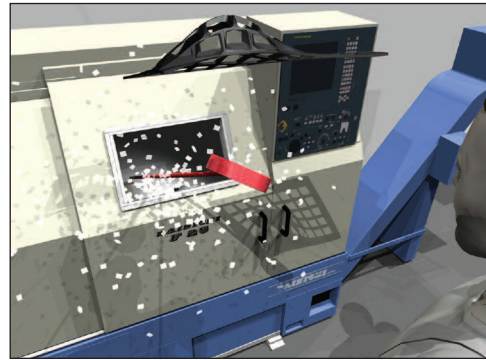
Not only is visual evidence not just for the Goliaths anymore; it's also not just for jury trials. Lawyers are also going increasingly visual in mediation and arbitration.

In one recent example, Copfer's company was hired to create visual evidence for a small California company with 10-12 employees in a mandatory mediation against a large corporation over a contract dispute.

"This little company can afford to pay a few dollars. The cost of technology has gone way down. It's an even playing field," said Copfer, whose team consists of graphic artists and illustrators from the Cleveland Institute of Art.

### 'Every case can be visual'

According to Brian Carney, every legal case can be turned into a visual story.



By David R. Voytek Visual Evidence / E-Discovery LLC

Computer graphic used in a wrongful death suit brought by the family of a metal lathe worker struck and killed by a metal part he was working on. The plaintiffs alleged the welds holding parts down were of poor quality.

Visual recreation of the scene of a residential stand-off for a civil case in which the city argued its police officers were threatened by an elderly resident and thus required to use deadly force to control the situation.



By David R. Voytek Visual Evidence / E-Discovery LLC

Carney, a former prosecutor, noticed over a decade ago that juries weren't grasping evidence in criminal cases and his office wasn't presenting evidence in a way that made it easy for juries to understand.

Carney was also a videogra-

pher, and he started a multimedia department to help prosecutors present their cases in more visually appealing ways.

He now owns WIN Interactive in Quincy, Mass., a provider of visual presentations for lawyers in criminal and civil cases.

Criminal cases naturally lend themselves to visual storytelling, he said.

“A crime happened at a scene, the defendant ran away, was arrested, and hid evidence somewhere else. A crime is inherently a visual case,” Carney said.

Michael Moore, a prosecutor with the Beadle County State’s Attorney in Huron, S.D., said he uses video graphics to bring to life abstract concepts like timing and distance.

“I can have a computer graphic artist design a model to show the shooter was 10 feet away from the victim and show the pattern of the shot. It looks like a modern video game like ‘Grand Theft Auto’ that looks 3D,” said Moore.

Moore said he also uses electronically converted crime scene sketches to help illustrate officers’ testimony from their perspective.

“When an officer testifies he saw this piece of evidence, like a blood splat, he can point to the screen and say, ‘This is where I was standing,’ so the jury can see exactly what [the officer] was looking at from his vantage point,” Moore said.

Even cases that lawyers think of as strictly document-based – like a business case – can be communicated through visual media.

Michael Diamant, a business attorney, recently hired graphic artists to create video animation of organic molecules in a patent case over cement molecules.

“The animation showed [the] complex ... combination of molecules [covered by the patent]. The other side said there was only one configuration,” said

Diamant, a partner at Taft Stettinius & Hollister in Cleveland.

“What I’m trying to do with the jury is to focus the issue so they can understand [it] in a clear graphic way, and take away all the noise around it,” he said. “Visual artists come up with pretty creative ideas how to do it. ... Sometimes I tell them exactly what I want. Sometimes I tell them the problem and they give me a bunch of different thoughts.”

One of the downsides to going visual at trial is cost. Expenses can range anywhere from \$5,000 to \$50,000, which some cases cannot justify, Diamant said.

“You’ve got to have value, because the client is going to pay for it. Even if you win the case, they will have fewer dollars net in their pocket,” he noted.

#### Evidentiary challenges

Hiring visual and computer artists may be great for juries, but it can be a challenge to get by judges as gatekeepers of evidence.

“Artists have great ideas, but a lot of them are inadmissible,” said Carney.

His team is made up of 3D animation modeling artists and two lawyers with graphics backgrounds in video, computer programming and illustration.

In closing arguments in the notorious Michael Skakel murder trial, Carney created a controversial audio-visual montage that used edited portions of Skakel’s own recorded voice describing his feeling of “panic” dubbed over gruesome photos

of the victim, Martha Moxley. On appeal, the defense argued that the montage confused the jury into thinking Skakel’s “panic” referred to the murder, when he was really only worried he had been seen masturbating in a tree where the victim was found.

The Connecticut Supreme Court upheld the audio-visual montage as “not deceptive,” finding that all of the audio and photos had already been admitted into evidence. (*State v. Skakel*, 888 A.2d 985 (Conn. 2006).)

Copfer says that 90 percent of the visual evidence his company creates for trial lawyers is for demonstrative purposes to illustrate a point, and never makes it back to the jury room.

For visual evidence that you do want to get admitted, you need to have the artists designing the visuals work closely with your experts.

In a homicide case that Moore prosecuted alleging that a homeowner murdered an intruder by repeatedly shooting him in the back as he ran away, both his expert and his graphic designer contributed to an animated recreation of the events.

“I had the forensic pathologist review photos of the crime scene, ballistic tests of the shotgun and the police report, and he rendered an opinion about the muzzled target distance and angle of the victim when he was shot,” said Moore. “When I got the report, I immediately thought that I needed to have a computer graphics designer to [render] visually ... what this expert was saying.”

However, in order to get the animated interpretation into evidence, he had the designer create computer graphics for the time of each gunshot but not for the time between shots.

“My expert could only tell the distance between the shooter and the victim at the time each shot happened. He didn’t know what happened between shots one and two,” said Moore, noting that the jury convicted the defendant.

Moore said that he has lost *Daubert* challenges when he has tried to admit computer graphics created when an expert enters numbers into a software program.

“If you have accident reconstruction software, it’s based on a formula where you plug in the speeds and times, then the computer generates a simulation of the accident or crime. It’s not truly their opinion; they are putting in numbers and can’t articulate how it happened. I’ve had that successfully challenged,” he said.

Another pitfall is to go crazy and try to turn every bit of evidence into a visual.

“Lawyers can get overenthusiastic about creating visuals. They forget they have to be directly connected to the evidence,” warned Carney.

And if everything is turned into a video, jurors will soon tire of it.

“On the one hand, they want to be entertained. But you can’t run an hour’s worth of video testimony because they’re used to switching channels,” said Diamant.

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