

## **Trial Practice: Do Not Overlook the Opportunity to Develop Effective Trial Exhibits**

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Jurors often indicate that a single exhibit in a case was a primary reason for their verdict. In such circumstances, the exhibit was invariably something that conveyed an inescapable truth about the case. It could be a photograph of a crash scene that vividly demonstrates a motorist's recklessness or a single piece of wood that explains how and why the deck collapsed or a medical illustration of a CT scan that makes it easier to see the patient's perforated bowel. The trial lawyer should constantly be looking for the best trial exhibits – from the moment the client first walks into the office until the end of the trial of the case.

The best opportunity to locate or develop trial exhibits is at the very beginning of a case. As soon as the trial lawyer decides to take on – or even look into – a case, he or she should conduct an investigation. This investigation should not only include a determination of how and why an accident occurred, but also how, why, and to what extent the client is injured or damaged. The sweep of evidence necessary to make such determinations will typically result in the development of exhibits for use at trial, sometimes hidden gems that prove to be game changers. Examples of some hidden gems discovered or developed during the initial investigation stage are:

Liability exhibits: 911 audio tape of call made from an eyewitness; police aerial photographs of accident scene; surveillance video capturing actual accident; and cell phone records showing the motorist was texting at the time of the crash.

Damages exhibits: Police video of plaintiff unconscious at the accident scene; actual Glasgow Coma Score sheets from the rescue squad indicating the patient had indeed sustained a moderate – severe brain injury; graphic pre-surgical photographs of the patient's injuries found in the hospital or physician's records; and videos conducted shortly after an accident, depicting the patient in the days after an accident struggling with his or her injuries.

The development of trial exhibits is an on-going process that continues after the initial investigation. In the time period leading up to trial, the trial lawyer should identify the critical issues and themes for trial and tailor the trial exhibits to advance such issues and themes. Focus groups and mock trials are the best way to test what exhibits are the most impactful. Examples of some hidden gems developed in the pre-trial period are:

Liability exhibits: Simple calendar chart made after subpoenaing the truck driver's logs, demonstrating the driver had driven in excess of 14 consecutive hours at the time of the crash and in excess of 11 consecutive hours in each of the three days prior to the crash, in violation of the Federal Motor Carrier Safety Regulations; chart made from the download of a bus' data recorder, showing a pattern of excess speeds in direct conflict with the driver's deposition testimony; Google Earth photograph showing an aerial view of the intersection after focus group jurors indicated they needed to see an overhead view of the accident scene in order to determine if the defendant was negligent; and blow-up of a police photograph of the accident scene to show debris from a crash that was inconsistent with the defendant's testimony, after focus group jurors found the debris to be a determining factor in finding the defendant liable.

Damages exhibits: Calendar exhibit showing the plaintiff went to over 100 physical therapy visits in the year after the crash; chart summarizing the immense amount of daily pain medications the plaintiff took in the two years after the crash in a chronic pain case; medical illustration of a lumbar spine injection in case where the plaintiff had undergone six such injections following an accident; and audiotape of the tinnitus (ringing in the ears) the plaintiff had to endure on a permanent basis made by the patient's audiologist.

The development of effective trial exhibits is a constant process for trial lawyers. Not only is the process crucial to victory or defeat at trial, but it is one that can be quite rewarding and fun for the trial lawyer who enjoys utilizing creativity and vision in strategizing his or her cases.

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