

# **DEMONSTRATIVE EVIDENCE**

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## **I. INTRODUCTION**

Every trial lawyer knows that demonstrative evidence is routine in modern personal injury trials and can potentially be of great significance in the outcome of the case. All too frequently, however, serious attention to the preparation and production of demonstrative evidence is delayed until shortly before trial; as a result, the potential benefit to the case is diminished. A sounder approach is to begin the preparation and use of graphics in the very beginning of the case and make their development an integral aspect of case preparation. This leaves time for refinement and evaluation so that the best result may be obtained. Another frequent mistake, made even by experienced lawyers, is to allow the development of litigation graphics by intuition and happenstance rather than because of careful analysis and testing. A better approach requires focus and planning from the beginning, and in the end yields a superior result.

Targeting, timeliness and testing are the hallmarks to the production of effective demonstrative evidence. Keeping these principles in mind throughout the development of the litigation graphics for any case will significantly improve the results.

## **II. SKILLFULLY USED DEMONSTRATIVE EVIDENCE CAN BE THE MOST POWERFUL WEAPON IN THE TRIAL LAWYER'S ARSENAL**

### **A. Graphics Help Everyone Understand and Remember the Matters at Issue**

We have all been taught that "seeing is believing" from our early childhood, and we experience this on a daily basis. Every school teacher and college professor used some visual aid techniques during our school years (even if it was only a blackboard), so that we have been accustomed to this technique from our earliest experience. Some studies show that more Americans are accustomed to getting news and other important information by television rather than by newspapers. For those who do read, the newspaper with the largest circulation in America (*USA Today*) makes the heaviest use of color photographs and graphics.

Most of us have heard about the study prepared by Weiss McGrath and published by McGraw-Hill. That study was designed to evaluate information retention achieved by groups of people. The groups were presented with important information, tested on it after three hours, and then again after 72 hours. Those who received the information orally ("telling") remembered about 70% after three hours and only 10% after 72 hours. Those who received the information visually ("showing") remembered about 72% after three hours and 20% after 72 hours. The group that received the information both orally and visually ("telling and showing") remembered much better: they recalled 85% after three hours and 65% after 72 hours.

Obviously, these statistics are a serious issue for any trial lawyer. Even in a one-week trial, it is essential for a jury to be able to recall information during deliberation presented during the first day or two of trial. If only 10% of the jury (1.2 jurors) can even *remember* what was said by hearing testimony alone, the party with the burden of proving a particular issue is in serious trouble. It doesn't do any good to have extraordinary proof if the jury cannot even remember it.

Lawyers must remember that their own background and experience in understanding and remembering information are not very good touchstones for the jury's capability. After all, lawyers spend their entire professional lives listening to information being transmitted, writing it down, and remembering it. In addition they take in huge volumes of written material on a daily basis, and their professional careers depend upon their ability to understand and recall that data. Jurors, on the other hand, may not have been in a formal classroom for several decades. Therefore, the experience which is thrust upon them--sitting on hard seats, day after day, and listening to seemingly endless testimony (and without the ability to ask questions for clarification)--amounts to harsh and unusual duty, to say the least. As a result, it is essential that all possible learning facilitation be employed to communicate more effectively.

**B. The Most Important Step in Obtaining Good Demonstrative Evidence is to Identify the Outcome-Determinative Issues**

Since lawyers now have a wide understanding of the need for demonstrative evidence, there is a great deal of visual material used in modern trials. However, much of it is not particularly effective because the sponsoring lawyer has not sufficiently "targeted" the issues to be communicated.

A reasonable goal might be to use one piece of demonstrative evidence with each witness (both on direct and cross-examination) for each element of the trial. Ideally, the exhibits alone would almost argue the entire case, to the point that a deaf jury could understand the case merely by reading the exhibits. If such a jury were only to see the exhibits and then be required to answer the court's charge, they could probably do so if the exhibits had been prepared to address all the outcome-determinative issues in the case. All too frequently, lawyers prepare exhibits without giving adequate attention to the most critically disputed facts and how their resolution will cause the jury to answer the questions in the court's charge.

**C. Preparing the Court's Charge is the First Step in Determining the Core Issues of the Case**

The best way to truly understand what the outcome-determinative issues in the case will ultimately be is to write out, completely, the charge of the court to be submitted to the jury. When very specific attention is directed to the precise instructions and definitions which will be given by the court with the questions to be answered, it is then possible to write an "abbreviated" charge that boils the case down to a few pivotal issues. This is one of those situations in which *getting the question right* means everything. Only when you know exactly what the question is, will it be possible to develop the information that will lead the viewer to the desired answer. All too often we delay the important step of writing out the charge because we know "approximately" what it will be, and therefore, we believe we know "essentially" what questions need to be answered. It's like shooting a gun: if you glance down the gun barrel sights and pull the trigger, your chances of getting a bull's eye are not as great as when you carefully aim through the sights and squeeze the trigger.

#### **D. A Graphics "Brainstorming" Conference Including All Trial Team Members is Crucial**

After carefully targeting the outcome-determinative issues, the next step is to assemble everyone working on the case and spend some time together thinking and talking about how demonstrative evidence can be used to accomplish the job. This meeting should include the entire trial team (including outside investigators and graphics contractors, if any) because each person can help provide various images and analogies to get the ball rolling for demonstrative evidence. Typically this group will consist of people of various ages, sexes, educational and cultural backgrounds and temperamental proclivities. Since the 12 jurors will not all be male, age 40, with college degrees in liberal art and a high interest in mechanical matters, it is important that the images and graphics produced are effective with all kinds of people. Demonstrative evidence materials need to be designed such that homemakers, laborers, professionals, farmers, etc. can comprehend them. The best ideas for the presentation of complicated matters by demonstrative evidence do not necessarily come from the lawyer with the most knowledge about the case or a litigation consultant. Good presentation ideas often come from the various members of the litigation team who tend to see issues more like an average juror.

#### **E. Starting the Graphics at the Beginning of the Case Will Produce Many Advantages**

##### **1. Use in Discovery**

When demonstrative evidence is produced early, it can be of tremendous value even in investigating the case. Instead of just interviewing an eyewitness to a collision, it can be enormously helpful for the witness to describe what was seen using a photograph, drawing or model as an aid. The same principle applies during depositions. When graphics are available for all to use in the deposition, it can make them shorter and more effective. Demonstrative evidence can also be used to explain the essence of the case to the judge during pretrial hearings. If the court has a keen grasp of the precise factual issues in the case (which is helped by a review of graphic material), the court will surely find it easier to make correct procedural and even administrative rulings with respect to the case.

##### **2. Use in Settlement**

We all know that the majority of all lawsuits settle before trial. However, cases do not settle until each side has a clear comprehension of the strengths and weaknesses of the case. Given what we know about the power of demonstrative evidence to make people (including lawyers, mediators and insurance executives) understand and remember facts, we should realize that there is a tremendous potential for demonstrative evidence to have significant impact on the settlement process.

When one side comes to the settlement table with powerful demonstrative evidence, ready for trial and illustrating the proponent's keen grasp of the elements of the case, the litigant's probable success before a jury cannot be underestimated.

### 3. Time for Improvement

When exhibits are prepared early, they are not only useful in the litigation process, but as that process progresses any weaknesses or shortcomings which the exhibit may possess are uncovered. It's like submitting your witnesses for deposition: the other side probes the witness for weakness and attempts to learn what those weaknesses are, but you learn what the problem areas are in the process and can shore them up if possible. Similarly, demonstrative evidence that is used long before trial will be subjected to the scrutiny of many sharp eyes and can often be improved in the process.

#### F. **Effective Use of Demonstrative Evidence at Trial Requires Preparation, Rehearsal and Judgment**

##### 1. Courtroom Inspection and Planning

Lawyers who try most of their cases in a particular courthouse get in the habit, without really thinking about it, of preparing all their demonstrative evidence for use in *that* particular courtroom. It is essential, however, when preparing material for a different courtroom to carefully survey that environment and make sure that the demonstrative aids will be suitable for that very room. Obviously, you must be able to move larger items up and down stairs, into elevators and through doors. It is important to sit in the jury seats and witness chair and make sure that everyone in the room is not only going to be able to see your demonstrative evidence but also get the full impact. Shipping the evidence out of town means that attention needs to be given to suitable packing cases and possible repair of the materials after arrival. Planning for the unforeseen is essential, because some element of the unforeseeable always happens. This means preparing to have the necessary materials and personnel available to make modifications to the demonstrative evidence when the unfolding events of the trial require changes and repairs.

##### 2. Rehearsal is Essential

It's probably better for lead counsel not to plan to handle any aspect of demonstrative evidence in the courtroom other than working with the pointer and the witness. Lawyers who are generally competent, at home or in the office, to push buttons or flip switches can become horribly mal-adept at these matters during trial. A lawyer who is focusing upon the substance of a witness' testimony, various procedural matters that are unfolding as the trial develops, the overall logistics of the presentation of the case, and trying to read the jury as the trial progresses is simply "keeping too many balls in the air" to be also responsible for making sure that the videotape machine is properly rigged for showing a deposition. Whoever is charged with managing the demonstrative evidence during trial (and sometimes it will, of necessity, be the lawyer trying the case) must rehearse and practice with these materials in the very courtroom where they will be used until they can be handled with certainty. Otherwise, mistakes will inevitably occur and much of the effectiveness of the exhibits will be lost due to clumsy handling.

##### 3. Sometimes You Don't Use It

An experienced trial lawyer knows that it may be necessary to talk to a dozen witnesses before four are found to submit for deposition and prepare for trial. Often good judgment in a

particular case means that only one or two of those witnesses will actually be put on the stand. Knowing which witnesses to omit can be just as important as knowing which ones to call. The decision is made based upon the exigencies of the case and one's projection of how the case is going with a particular jury. The same principles apply to demonstrative evidence. Exhibits, like witnesses, have the potential of harming or helping the case. It is essential that the decision of which exhibits to use be continually evaluated as the case progresses. Preparing the exhibits gives you the option of using them if needed, but the mere fact that an exhibit is ready should never be controlling in the decision about whether to use it.

### **III. THERE ARE MANY GRAPHIC TOOLS AVAILABLE FOR SELECTION—AND THEY MUST BE CHOSEN WITH CARE TO FIT THE CASE**

#### **A. "Flat Graphics"**

The most frequently seen exhibits in the courtroom continue to be charts, graphs, drawings, and sketches — produced before trial and constructed on the spot during the trial. They substitute for the "notes" that the jury may or may not be taking about the trial. When exhibits go into the jury room, they are available for each juror to use in making the true "final arguments" in the case, i.e., the summations that the jurors make to each other during deliberation. In any hotly disputed case, it's probably unusual to convince all 12 jurors of the correctness of many outcome-determinative issues. However, if you can sway several jurors to your way of thinking and can arm those jurors with arguments which they can remember (aided by the charts which are in evidence), these jurors can persuade other members of the jury who were not convinced during the trial. In order to accomplish this, however, they must not only be persuaded themselves, but they must have the ammunition readily at hand to persuade the others.

One useful (and inexpensive) technique in this regard is the liberal use of 20" x 30" foam boards during the course of trial which can be used to record "core" ideas or even quotations from witnesses as the case progresses. If, during cross-examination, the defendant says that he never saw the plaintiff's car before impact (and you consider this to be a crucial admission), then you can simply write on the chart "I never saw the plaintiff's car before the impact" and ask the witness whether you have correctly recorded his statement. You may also want to ask the witness to date and sign the exhibit and then move that it be admitted into evidence. Assuming that you do not overdo this technique and use it too repetitively in a way which would prolong the trial, neither the judge nor the jury should be upset with you for this approach. Now you can be virtually certain that all 12 jurors will understand (and not forget) this vital fact even if they do not get to their jury deliberations until many days later. The chart is there to remind them, in black and white, of a fact which has now been established in open court. Pre-prepared charts, drawings and sketches are not only helpful in a large format size suitable for courtroom use, but in a letter size for inclusion in a jury and bench book as well.

#### **B. Photographs**

Photographs of all kinds remain staple items for most personal injury trials. For crucial photographs, it is a good idea to make very large enlargements which can be seen easily from any point in the courtroom and to include letter-size copies of them for the jury and bench book.

Sometimes it is helpful to have duplicate copies of photographs so that they can be freely marked upon with felt tip markers by various witnesses. A similar objective can sometimes be accomplished by the use of plastic overlays with large photographic exhibits. Cases which involve a large number of photographs may be better presented by the use of slides made from the photographs or by presentation of a separate photograph book, or both. Photographs can be effectively presented by a videotape "visualizer" which consists of a video camera designed for courtroom use. The photograph is placed upon an easel by the counsel table and then by use of the video camera it can be flashed up onto one of more television screens throughout the courtroom so that everyone can have a close look at the photograph. This makes it easy to zoom in on various portions of the photograph which may be in issue and to mark the photograph with a felt-tip marker so that everyone can see the marks being applied to the photograph at the same time.

### C. Models

Scale models which can be purchased "off the shelf" are relatively inexpensive and can be enormously helpful in interviewing witnesses, taking depositions and explaining basic facts to the jury. Scale models which are fabricated specifically for a case can be quite expensive but many times can serve an explanatory, illustrative function which is difficult to duplicate with any other medium. It is important to remember that even when the model is present in the courtroom, it is still useful to present it with photographs (and/or slides) or with the use of the courtroom video visualizer. After the jurors look at the model and grasp the overall spacial relationships involved, they may get a clearer view of the specific areas at issue through a photograph rather than the model.

### D. Day-in-the-Life Videos

Day-in-the-life videos are becoming increasingly commonplace in cases involving catastrophic injuries. Whether the injury is quadriplegia, paraplegia, severe burns requiring extensive debridement or simply the practical difficulties of life after a limb has been amputated, the detail of these matters is best presented in a videotape illustrating the particular difficulties involved. The videotape can be narrated by a member of the victim's family or a medical expert or both. *Air Shields, Inc. v. Spears*, 590 S.W.2d 574 (Tex. Civ. App. — Waco 1979, writ ref'd n.r.e.) and *Apache Ready Mix Co. v. Creed*, 653 S.W.2d 79 (Tex. Civ. App. — San Antonio 1983, writ dism'd) are Texas cases admitting such day-in-the-life presentations over strenuous objection. *Grimes v. Employers Mutual Liability Ins. Co.*, 73 F.R.D. 607 (D. Alaska 1977), is a case where the court gave a thoughtful analysis of a day-in-the-life film which included narration. Texas courts should generally reach the same results under Tex. R. Civ. Evid. 403, which simply reminds the court to balance any prejudicial effect of the videotape against its probative value. An example of a ruling in which a court rejected a videotape showing a burn victim's physical therapy is *Thomas v. C.G. Tate Construction Co.*, 465 F. Supp. 566 (D.S.C. 1979). The court found that portrayals of pained facial expressions, grimaces, and audible expressions of pain were simply too extreme to be presented to the jury. In comparing this kind of demonstrative evidence, it is absolutely essential to present the material in an objective and tasteful manner in order to avoid exclusion by the court or disapproval by the jury.

## E. **Reenactments**

Video (or filmed) reenactments offer a unique way to show the jury exactly what happened in a complicated accident. Although the typical presentation may only last a minute or two, a well-constructed reenactment has the ability to present complicated facts in an understandable manner that often could not be matched even with hours of testimony and conventional exhibits. In addition to presenting the precise detail of the sequence of events, it captures some of the raw emotion often associated with a traumatic event in a way that would be virtually impossible to do otherwise. The admission of reenactments is also governed by Tex. R. Civ. Evid. 403, the principal of balancing probative value against prejudicial effect, and Texas cases relating to photographs and videotapes generally, such as *Ft. Worth & Denver Rwy. Co. v. Williams*, 375 S.W.2d 279 (Tex. 1964) (substantial similarity required between conditions at time of occurrence and those portrayed in the exhibit). However, because this kind of demonstrative evidence is infrequently seen by the courts, it is certainly a good idea to have a brief concerning admissibility ready at the time it is offered. For example, see Appendix A.

It is even more significant to have such a memorandum in mind before the reenactment is prepared so that both the lawyer and the reenactment production crew understand the requisite level of similarity which will be required if the piece is to be admitted into evidence. The guiding principal is simple: the exhibit must portray with substantial accuracy the factual circumstances illustrated in the video at the time of the occurrence in question. The predicate for these facts may come from a single eyewitness or the composite testimony of many factual witnesses and/or an expert.

It is essential to prepare a "story board" before the reenactment is shot and edited so that one can be certain before the filming process begins that the necessary facts essential to an accurate reenactment have been obtained and are clearly portrayed.

## F. **Video Documentaries**

Video documentaries are demonstrative evidence tools prepared for settlement rather than for presentation to a jury. However, they can incorporate most, if not all, of the demonstrative evidence which will ultimately be used during the trial of the case. Thus, a video documentary may encompass a reenactment, a day-in-the-life film, excerpts from videotaped depositions and excerpts from witness interviews, along with various charts, drawings and other material to be used at trial. A videotape documentary is an excellent tool to use with a focus group or at a mock trial to aid case evaluation and analysis. It provides an excellent means for discovering the probable impact of various elements of demonstrative evidence when and if they are ultimately presented to a jury.

## G. **Witness Summary Charts**

How many jurors in each trial can remember, even at the end of a one-week trial, the position taken by all of the key witnesses in a case on each pivotal issue? Most would agree that it would be less than 100% accuracy, even when the testimony has been clear cut. Yet, there is a convenient and economical way to make sure there will be 100% recall — using a *witness summary chart*. Such a chart is prepared by merely listing the names of the witnesses down the left-hand side and the key issues to be tracked across the top. Twelve witnesses and twelve issues to be tracked (144 items to

be remembered and kept straight) can be easily tabulated during the course of the trial, and the jury can have the chart available for all to see during their deliberations. This approach has been specifically endorsed by the Texas Supreme Court in *Speier v. Webster College*, 616 S.W.2d 617 (Tex. 1981). Factual matters can also be charted in a similar manner under the authorization of Tex. R. Civ. Evid. 1006 which provides that voluminous writings and other materials can be presented in the form of a chart as long as the underlying data is admissible and produced in court. Obviously, this technique can be applicable to medical bills and records, test results, laboratory findings, and an endless variety of other matters that are important, yet require simplification.

## **H. Jury Books**

Jury books (and bench books) offer a convenient way to present all kinds of graphic material to the court and jury. They tend to work best when they are used in conjunction with, rather than in lieu of, traditional exhibits. This means that counsel can use a blowup of a particular medical record or photograph for use in discussing an issue with a witness, and the jurors can turn to an identical copy of that photograph or exhibit in their own book behind a numbered tab. More significantly, it means that the jurors may turn back to that exhibit (or one used earlier in the trial) as needed to clarify their understanding of a particular matter. The best approach seems to be to limit copies of exhibits in the jury book to the most critical ones. On the other hand, counsel may want to provide the court with a bench book which contains all of the exhibits for completeness. There is no specific Texas rule of procedure discussing jury books, nor is there a rule governing the use of *motions in limine*. Courts that have used the jury book approach seem to almost universally favor them, as do jurors.

## **I. Exhibit A: The Plaintiff**

We should never lose sight of the fact that Exhibit A in every case is the plaintiff, as exemplified by appearance, dress and demeanor. Like it or not, we are all affected, to a greater or lesser extent, by the appearance of people we meet. For this reason close attention should be given to the appearance and demeanor of the parties, not only long before trial, but long before they are presented for deposition. If adjustments need to be made in hairstyle, makeup, wardrobe or general demeanor, they should be addressed well before the party is presented for deposition. All litigants deserve to "put their best foot forward" in the litigation process since appearance can affect the outcome of the trial. For this reason it is the responsibility of counsel to evaluate their appearance and determine whether adjustments are needed or are possible. It is important for this to be accomplished before deposition, since more and more depositions are taken by videotape and inevitably potential effectiveness of deponents as witnesses are judged by the interrogating lawyer. The party's deposition should be regarded as a "dress rehearsal" for testimony at trial and treated accordingly with respect to attitude and appearance as well as content.

## **J. Computer Animation**

Computer animations share many of the same possibilities as video reenactments and with potentially less cost and more precision in controlling its use. Because the jurors routinely see similar material on television, they intuitively understand the medium of presentation. The predicate for the animation is simply expert or fact witness testimony that what is being presented on the screen

accurately portrays the occurrence in question or the matter at issue. There is no need to go into the detail about how the animation was produced unless it is also being presented as an animation in which the computer "calculated" the movements which are seen on the screen rather than merely portrayed them in the means requested by the operator. If the computer has, in effect, been asked to give its "opinion" of the trajectory of an airplane or automobile in a collision situation, for example, it will be necessary to prove the capability of the computer hardware and software by appropriate expert testimony.

#### **K. Jury View (Video Substitute)**

Jury views seem to be rarely used in Texas, probably because of logistical difficulties. They are authorized in law in the discretion of the trial judge, but only in the absence of an objection by either party, according to *City of Pearland v. Alexander*, 468 S.W.2d 917, 926 (Tex. Civ. App. — Houston [1st Dist.] 1971) rev'd on other grounds, 483 S.W.2d 244 (Tex. 1972) (jury view permissible only with consent of all parties). However, it is possible to give a jury much of what they would see in a jury view by way of a well-constructed videotape. The predicate for the videotape can be the same as with any other photograph, i.e., expert or factual testimony that what one sees and hears on the videotape accurately portrays that which was perceived at the scene where it was made. If a videotape deposition is taken at the same time the view of the scene is made, it can be possible to have deposition testimony, in effect, narrating the videotape jury view at the time that it is taken.

#### **L. Edited Videotaped Depositions**

The preparation of an edited videotaped deposition is similar to the production of demonstrative evidence in many respects. Like the production of demonstrative evidence, there are no specific rules for the manner in which a videotape deposition is to be prepared for presentation other than the general guiding principal that the presentation be accurate, fair and helpful to the jury. A useful technique is to insert a title on the screen at the beginning of any videotape deposition indicating the name of the witness and when the deposition was taken. It is also helpful to put *titles* or *headers* at the beginning of various segments of the deposition to make the testimony easy to follow. Obviously, these inserted additions need to be essentially neutral and generally helpful to be permitted by the court and accepted by the jury. Some examples of appropriate headers for a 30-minute videotaped deposition of an accident witness might be as follows:

*Background and experience*

*Activities on the morning of June 23, 1987*

*Events seen immediately before the bus-truck collision*

*Observation of the bus-truck collision itself*

*What occurred immediately after the collision*

*Original statements given to the police*

### *Opinion concerning the speed of the truck*

These *headers* not only make the videotape deposition testimony easier to follow, but they also rapidly identify certain sections of an edited deposition for the purposes of objection should the need arise. For example, in the illustration set out above, the defense might wish to object only to the opinions of this fact witness with respect to the speed of the truck, and the inserted material would make that easier to accomplish either before or during the deposition.

A good videotaped deposition should incorporate the use of demonstrative evidence within the videotaping process itself. However, the mere fact that the exhibit may be seen on the videotape with the witness does not mean that the exhibit may not be shown to the jury contemporaneously with the playing of the deposition. This is particularly true if the exhibit cannot be seen in the videotape itself with the requisite clarity to make it useful. In that situation it would be important to have a blowup of the exhibit and/or a copy of it for the jury notebooks.

### **M. Summary Boards**

Summary boards which state in a succinct form the contentions of a party with respect to key issues can be used throughout the trial. As with *motions in limine* and jury books, there is no specific legal authority addressing the use of such materials, but they do seem to be helpful in keeping everyone straight about the issues in the case. Typical utilization would be to begin with four such boards (prepared on a size readily visible to the jury panel) which would succinctly state the plaintiff's position with respect to key issues to be addressed during the voir dire. Since everyone agrees that the parties have the right to state their core contentions as part of the voir dire examination and since it is easier to grasp assertions which may be seen as well as heard, it would seem apparent that there is no reasonable objection to the use of these boards at the discretion of the court. They are also useful during opening statement to reiterate the assertions which the parties say they will be supporting with evidence. Once a decision has been made to use this approach, it is obvious that much care and attention must be given to the statements which are placed before the jury in this format. The statements must be clear and concise and must be assertions which the party is willing to stick to until the bitter end since they are so prominently displayed in the courtroom. Some courts allow these boards to remain visible (in a location in the courtroom where they are not in the way) throughout the remainder of the trial. Other judges prefer that they be removed after opening statement and used again only with specific witnesses or in connection with summation. In talking with juries after trials in which this technique has been used, I have discovered that jurors universally like the use of the position boards (even when they don't agree with the statements on them) because it does help everyone to keep matters straight. In some cases, some or all of these boards have been admitted into evidence after they have been used in connection with the examination of various witnesses. They can be used as a variation of the witness summary board by simply asking various witnesses whether they agree with the propositions listed on the boards and then checking them off in a yes or no fashion after the question has been answered.

One thing is certain about placing four brightly colored 36" x 48" boards in front of the courtroom at the beginning of the trial: you have very carefully thought about your case and know *exactly* what you are there to prove. At the end of the case, everyone in the courtroom should have much clearer idea about whether or not you have, in fact, succeeded in doing so.

#### **N. Desktop Publishing Equipment**

Another use of computers in trial practice is in relation to *desktop publishing*. The modern combination of high speed personal computers with large memories and laser printers (including color printers) make it practical to produce many charts and graphs in the attorney's office which formerly needed to go to a print shop for work by a commercial artist in order to achieve a professional look. This equipment can also be used in producing written settlement brochures which can stand alone in a smaller case or be used as an adjunct to a videotaped documentary in a larger case. For an example of the kind of brochure that can be developed in a smaller soft tissue injury case, see Appendix B.

#### **O. Video Editing Equipment**

Tremendous strides in video editing equipment have been made in the last few years. It is entirely reasonable and appropriate for an attorney to have quite sophisticated equipment in-house. An example of the new technology available is called *D-vision*.

### **IV. CONCLUSION**

The most important thing to remember about demonstrative evidence is that it can cause you to succeed if used properly, or it can result in absolute disaster if used incorrectly. Given the current abundance of third-party contractors willing to provide demonstrative evidence exhibits and the widespread popularity of demonstrative evidence, it is important to know when not to use these tools. Clearly, starting early and spending careful time at the beginning of a case to identify the core outcome-determinative issues is important. Matching the various demonstrative techniques to the specific nature of each case, the personalities and venue involved is also critical. Testing, refining and rehearsing with demonstrative evidence will help you get the most out of it for your client.