

FROM MY SIDE OF THE BENCH

Show It, Don't Just Say It!

BY HON. RANDY WILSON

I AM WATCHING THE DEFENSE ATTORNEY'S cross examination of plaintiff's expert. Unquestionably, the expert has commuted some near fatal errors of both methodology and calculation. I think that the defense attorney is making some great points, but I'm not sure. I'm uncertain of the effectiveness of the cross examination because I don't have the vaguest idea what the expert's specific opinion is and how it's wrong. Why? Because the attorney and witness are both huddled over a document and both the judge and jury are clueless and can't see a thing.

For reasons that baffle me, I preside over trial after trial where the lawyers make absolutely no effort to display documents to the jury during either direct or cross examination. Rather, the lawyer will stand next to the witness and systematically point out errors and flaws in expert's calculations, or admissions by a party in a memo or letter, and the jury is left mystified wondering (a) what the lawyer is talking about? (b) is it important? and (c) when is the lawyer going to get to a point?

I am even more perplexed when I look around my courtroom and see an array of monitors, projectors and a video document camera that will, in an instant, show the jury the document in question and let the jury see in living color the impact of the document. Yet, the equipment is unused.

In today's world, there is absolutely no excuse for not using even a minimum of technology to display documents. A lawyer's choices include:

- Blowups (expensive and cumbersome);
- Transparencies (inexpensive, but they have to be made in advance);
- Document projectors (the ideal solution for most small trials); and
- Computerized storage and projection of documents.

For 99% of the trials in District Courts in Texas, a simple document projector should be in use throughout the trial and should be standard equipment in virtually every trial. Even in the simple car wreck case, there are always some documents that should be shown to the jury during a witnesses' examination, e.g., photos of the cars, the police accident report, and doctors' reports. In business cases, visual presentation of the documents is imperative for memos, letters and contracts. In closing arguments in every case, lawyers could easily show the jury questions on the screen and write proposed answers to the questions. Yet, in more trials than I can count, lawyers fail to use this most elementary and mandatory tool.

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Understand. I'm not talking about rocket science technology. Even if your courtroom doesn't already come equipped, for as little as a few hundred dollars on Ebay, any lawyer can buy a simple and portable document camera made by Elmo, Canon, Sony or others, along with a simple projector. That's all you need. It takes less than five minutes to set it up. Every lawyer in Texas who calls himself a trial lawyer should have this equipment in his office and should bring it to the courtroom.

Why a trial lawyer would attempt either a direct or cross examination of a witness using documents without showing those documents to the jury is confounding. Even more vexing, however, are the bench trials I have heard where lawyers don't even bother to have a copy of an exhibit to show me—the judge and trier of fact. But, alas, that's another story for another day.

Judge Randy Wilson is judge of the 157th District Court in Harris County, Texas. Judge Wilson tried cases at Susman Godfrey for 27 years and taught young lawyers at that firm before joining the bench. He now offers his suggestions of how lawyers can improve now that he has moved to a different perspective.