

Let it Show

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“Demonstrative Exhibits”

Presented by
The Benjamin Cardozo Team

★ What?

- Defining Demonstrative Exhibits
- Distinguishing from Other Evidence
- Types of Demonstratives
- Case Studies of Demonstratives

★ Why?

- Benefits
- Example of Streamlined Testimony
- Unofficial Accommodations

★ How?

- Presenting Demonstratives
- Making the Record
- Example of Effective PowerPoint Use
- Challenging Demonstratives

PRESENTATION OUTLINE



WHAT ARE DEMONSTRATIVE EXHIBITS?

LET'S GET CRACKING! DEFINING DEMONSTRATIVES



Demonstrative exhibits are defined by the purpose for which they are offered at trial; demonstrative exhibits aid or assist the jury in understanding the evidence or issues in a case.

State v. Ramirez, 287 Neb. 356, 842 N.W.2d 694 (2014). See, also, 2 McCormick on Evidence § 214 (Kenneth S. Broun et al. eds., 7th ed.2013).

DISTINGUISHING DEMONSTRATIVES: NO HUMBUG!

Demonstrative Exhibits

- Not necessarily admissible
- Explains or illustrates substantive evidence; must relate to admissible evidence
- Must fairly/accurately reflect substantive evidence
- Must aid trier of fact in understanding evidence

“Real”/Substantive Exhibits

- Must be admissible
- Must make a fact of consequence more or less probable than it would be without evidence
- Rules of Evidence



Timelines
Calendars
Simulated Videos
Models
Computer Reconstruction
Scientific Tests
Diagrams
Charts
Graphs
Photographs

Minimum Wage

Days Between	Pay Rate	Amount Owed
9/3/14-6/30/15 = 300 days = 42.86 weeks	\$14.167 x 40 hr. = \$566.68/wk	\$24,287.90
7/1/15-6/30/16 = 365 days = 52.14 weeks	\$14.472 x 40 hr. = \$578.88/wk.	\$30,182.80
7/1/16-6/30/17 = 365 days = 52.14 weeks	\$14.805 x 40 hr. = \$592.20/wk.	\$30,668.75
7/1/17-10/03/18 = 459 days = 65.57 weeks	\$14.948 x 40 hr. = \$573.92/wk.	\$39,877.31
	TOTAL	\$125,016.76

September 2, 2014 = \$0.60 shift differential = \$13.567+\$0.60 = \$14.167

July 1, 2015 = 2.25% increase = \$13.567*1.0225=\$13.872 + \$0.60 = \$14.472

July 1, 2016 = 2.4% increase = \$13.872*1.024=\$14.205 + \$0.60 = \$14.805

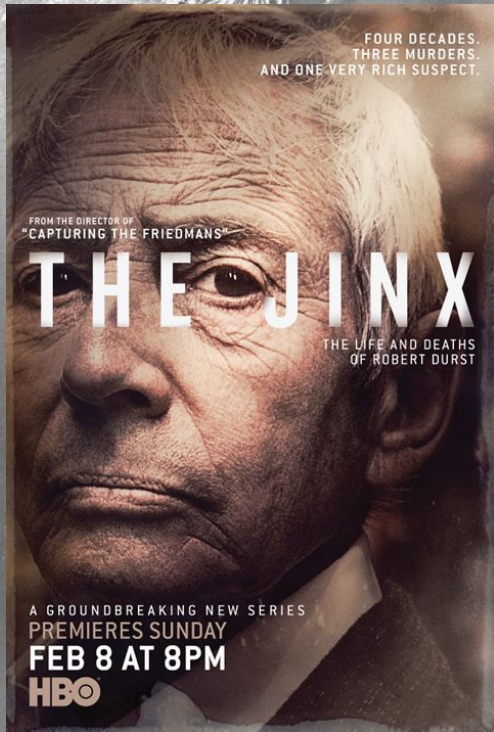
July 1, 2017 = 1% increase = \$14.205*1.010=\$14.348 + \$0.60 = \$14.948





“UNWRAPPING” DEMONSTRATIVE EXHIBITS
WITH CASE STUDIES





The Context of the Case:

- ❖ *DEFENDANT:* ROBERT DURST
- ❖ *VICTIM:* SUSAN BERMAN
- ❖ *CRIME:* FIRST-DEGREE MURDER

The Prosecutor's Problem:

- ❖ DATES, DATES, DATES

The Demonstrative Solution:

- ❖ A CALENDAR

CASE STUDY 1



**CLOSING
ARGUMENTS**
with **VINNIE POLITAN**

VERDICT WATCH "THE JINX" MURDER TRIAL

The Life and Trials of Robert Durst

LIVE

COURT 

ABUSED." I BLAME LARRY NASSER AND I ALSO BLAME AN ENTIRE SYSTEM THAT ENABLED AN 8:04 PM ET

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		Admits discovering reinvestigation	1	2	3	4
5 Letter to Bobby	6 Meeting with Joel Cohen	7 Susan calls Bobby	8	9 \$25,000 check written	10	11 Reinvestigation is public
12	13 Susan calls Bobby 3 times	14 Durst stops using his phone	15	16 In Galveston	17	18
19	20	21 \$25,000 check cashed	22	23	24	25

VERDICT WATCH

"THE JINX" MURDER TRIAL

The Life and Trials of Robert Durst







CASE STUDY 2



CASE STUDY 3



CASE STUDY 4



WHY WOULD YOU USE
DEMONSTRATIVE EXHIBITS?

THE CASE FOR USING DEMONSTRATIVE EXHIBITS

- 1) *Relaxes Witnesses*
- 2) *Fact Finder Can Follow Along*
- 3) *Easier to Remember and Understand*
- 4) *Focuses the Issue for the Fact Finder*
- 5) *Aids Witnesses in Answering Questions*
- 6) *Shortens Testimony*
- 7) *More Persuasive*

THE CASE FOR USING DEMONSTRATIVE EXHIBITS

Q: And where was the location of the accident?

A: On South Street.

Q: Where on South Street?

A: In front of Southview Christian Church?

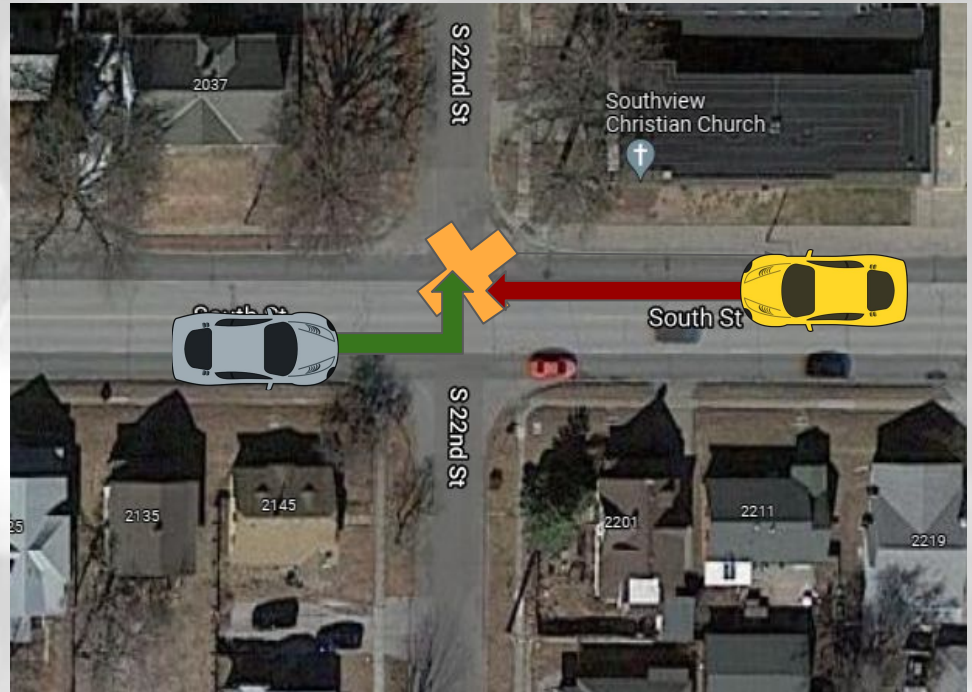
Q: Where is that?

A: Between 22nd and 24th.

Q: How many lanes of traffic are there?

A: Two going one way; two going the other way.

OR



“SEEING IS BELIEVING”

- 1) A picture is worth a thousand words.
- 2) Visual testimony is more memorable than verbal testimony.
- 3) Grabs attention and keeps jury involved.

Presentations using visual
aids were found to be
43% MORE PERSUASIVE
than unaided presentations.

VOGEL, ET AL., *PERSUASION AND THE ROLE OF VISUAL PRESENTATION SUPPORT:
THE UM/EM STUDY* (1986).

THE CASE FOR USING DEMONSTRATIVE EXHIBITS

Data From IRS Form 1065 -- [REDACTED]

Item No.	Item Description	1999	2000	2001	2001	2002	2003	Type of Cost
	Type of Partnership	P.L.L.C.	P.L.L.C.	P.L.L.C.	L.P.	L.P.	L.P.	
1	Gross receipts or sales (less returns and allowances)	881,110	2,405,674	2,946,517	1,204,740	2,045,688	2,195,542	
2	Cost of goods sold							
3	Gross profit	881,110	2,405,674	2,946,517	1,204,740	2,045,688	2,195,542	
4	Ordinary income (loss) from other partnerships, estates, and trusts							
5	Net farm profit (loss)							
6	Net gain (loss) from Form 4797, Part II, line 18							
7	Other income (loss)	75	0	0	278,000	5,518,741	5,000,134	
	D.D.T.'s, Account Balances					5,518,741		
	Miscellaneous Income	75					691	
	Commissions				278,000			
8	Total income (loss)	956,185	2,405,674	2,946,517	1,474,740	7,564,429	8,126,676	
9	Salaries and wages	8,727	44,210	72,054	53,555	142,962	171,983	50% variable
10	Guaranteed payments to partners							
11	Repairs and maintenance	203	553	2,048	675	797	3,012	
12	Bad debts							variable
13	Rent	20,790	12,929	2,196	1,780	28,902	75,645	
14	Taxes and licenses	1,214	3,646	16,313	1,661	12,618	17,710	
15	Interest	7,178	7,910	2,500	3,922	3,922	3,109	
16	Depreciation (less depreciation reported elsewhere on return)	700	957	2,055	127	10,746	13,414	
17	Depletion							
18	Retirement plans, etc.							
19	Employee benefit programs							variable
20	Other deductions	818,722	2,114,409	2,782,888	1,051,950	6,723,149	7,013,499	
	Accounting	1,770		1,600	248	6,855		
	Advertising	62,225	226,118	265,118	112,610	578,127	666,894	
	Automobile and truck expense	8,000	15,520	2,273	15,325	1,144	14,900	variable
	Bank charges	180	361	322	131	1,254	1,145	
	Commissions			278,000				variable
	Delivery and freight	1,150	2,930		1,320			variable
	Dues and subscriptions	476	145	136				variable
	Equipment rent					24,551		
	Gifts		1,000				50	
	Insurance	503	3,243	5,715	4,842	10,174	13,680	
	Legal and professional		2,578	1,205		1,559	33,082	
	Meals and entertainment (50%)	248	1,138	187	461	8,719	1,523	variable
	Miscellaneous	120			436	500	10	
	Office expenses	2,690	4,650	28,580	9,808	10,797	17,732	variable
	Outside Services	150						
	Parties and fees					2,928	5,411	
	Postage		1,347			10,585	21,055	variable
	Supplies	87						
	Telephone	12,608	15,725	13,655	5,560	31,852	48,165	variable
	Travel	336					8,225	variable
	Utilities			1,011	130	7,150	701	

THE CASE FOR USING DEMONSTRATIVE EXHIBITS

OR

Year	2014	2015	2016	2017
Income*	\$2.4	\$2.9	\$1.4	\$7.8
Costs*	\$2.1	\$2.8	\$1.1	\$7.6
Profit*	\$0.3	\$0.1	\$0.3	\$0.3

*in millions

THE CASE FOR USING DEMONSTRATIVE EXHIBITS

Another benefit of demonstrative exhibits is they provide unofficial accommodations for individuals with certain learning disabilities.

- ★ Dyslexia affects 20% of the population, including left-right confusion with directional dyslexia
- ★ ADHD appears in 4.4% of adults and 12.5% of lawyers; affects attention regulation
- ★ 3-5% of the population has some form of auditory processing disorder



HOW DO YOU WORK WITH
DEMONSTRATIVE EXHIBITS?

PRESENTING DEMONSTRATIVE EXHIBITS AT TRIAL

- 1) Determine whether the exhibit will be offered as evidence or merely used as a visual aid.
- 2) Consider preemptively disclosing the exhibit. If an expert is relying on it, you must disclose! (Rule 703)
- 3) Coordinate with the court if you will require technology or any set up.



MIRACLE ON 34TH STREET (1994)
Reenactment Demonstrative

PRESENTING DEMONSTRATIVE EXHIBITS AT TRIAL

- 1) Clearly explain *why* you are offering or using the exhibit.
 - a) Will it assist in the ascertainment of truth? (Rule 611)
 - b) Will it avoid needless consumption of time? (Rule 611)
- 2) Structure your argument around Rule 401 and 403:
 - a) Is it relevant?
 - b) Is it accurate and reliable?
 - c) Is it fair and complete?
 - d) Does its probative value outweigh any unfair prejudice?

PRESENTING DEMONSTRATIVE EXHIBITS AT TRIAL

- 1) If dealing with voluminous records, present a chart, summary, or calculation. (Rule 1006)
- 2) Don't include inadmissible hearsay statements or summaries of hearsay statements in your exhibit. (Rule 802)
- 3) Don't forget about the record!

MAKING THE RECORD AND PRESERVING ERROR

- 1) Be prepared to make a proffer if exhibit is excluded or not allowed to be used.
- 2) Be thoughtful in how the exhibit is marked.
- 3) If you're objecting to the use of an exhibit, note for the record any strong emotional reactions.



“It came without ribbons. It came without tags.” - The Grinch



MAKING YOUR EXHIBIT...
AND CHECKING IT TWICE

JORDAN FISCHER V. DUNCAN AVIATION, INC.

CASE NO. 4:17-CV-03110

Opening Statement of Duncan Aviation

By: Erin Ebeler Rolf
Woods & Aitken LLP
Lincoln, Nebraska

TIMELINE OF EVENTS: JULY 2015

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
					JF Scheduled (10 am-10:30 pm) JF notifies Duncan he will miss 7-3 & 7-5	
5	6	7	8	9	10	11
JF Scheduled (10 am-10:30 pm)					JF Scheduled (10 am-10:30 pm)	JF Scheduled (10 am-10:30 pm)
12	13	14	15	16	17	18
JF Scheduled (10 am-10:30 pm)					JF Scheduled (10 am-10:30 pm)	JF Scheduled (10 am-10:30 pm)
19	20	21	22	23	24	25
JF Scheduled (10 am-10:30 pm)	Meeting to Discuss Absences	Termination of Employment				
26	27	28	29	30	31	

Source: Stipulated Facts 5, 6, 7, 8, 9, and 10



DUNCAN
AVIATION

JORDAN FISCHER V. DUNCAN AVIATION, INC.

CASE NO. 4:17-CV-03110

Closing Statement of Duncan Aviation

By: Erin Ebeler Rolf
Woods & Aitken LLP
Lincoln, Nebraska



TIMELINE OF EVENTS: JULY 2015

Def. Ex. 116

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
					JF Scheduled (10 am-10:30 pm)	
					JF notifies Duncan he will miss 7-3 & 7-5	
5	6	7	8	9	10	11
JF Scheduled (10 am-10:30 pm)					JF Scheduled (10 am-10:30 pm)	JF Scheduled (10 am-10:30 pm)
12	13	14	15	16	17	18
JF Scheduled (10 am-10:30 pm)					JF Scheduled (10 am-10:30 pm)	JF Scheduled (10 am-10:30 pm)
19	20	21	22	23	24	25
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Source: Stipulated Facts 5, 6, 7, 8, 9, and 10



EVIDENCE TO WATCH FOR

■ Timeline of Events

- Ex 6 – Text Message Transcript
- Ex. 19 – Sveeggen’s Notes
- Ex. 23 – Lewandowski Summary of Events
- Ex. 20 – Key Incident Log
- Ex. 7 – Notice of Dismissal
- Ex. 116 – Calendar (with cited stipulations)



When you should have objected to the demonstrative....

CHALLENGING A DEMONSTRATIVE EXHIBIT

- 1) If you know about it before trial, file a Motion in Limine.
- 2) Review Pretrial Order to determine need to object before trial:

“All exhibits, depositions, and interrogatory and request to admit responses shall be admitted at trial when offered unless the opposing party indicates an objection to it in the Pretrial Order.” (example language requiring disclosure)

CHALLENGING A DEMONSTRATIVE EXHIBIT

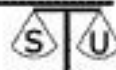
Objections:

- 1) Relevance
- 2) Unfair Prejudice
 - a) Cumulative
 - b) Unnecessary
- 3) Misleading/Incorrect Representation



CHALLENGING A DEMONSTRATIVE EXHIBIT

- 1) Ask for offering party to disclose the source or basic foundation of the exhibit.
- 2) Ask for a limiting instruction. Clearly define the limited purpose for the evidence. *State v. Pangborn*, 286 Neb. 363, 836 N.W.2d 790 (2013).



"Honey, our lawyer wishes us,
but in no way guarantees,
a Merry Christmas."