



The Use of Technology in Complex Cases: Courtroom Tools for a Visual Culture

Daniel Wolfe, J.D., Ph.D.

Today's society is bombarded with visual stimuli. We are surrounded by competing messages on billboards, in magazines, on the Internet, and on television that seek to influence us on a variety of levels. Messages may appeal to us as consumers, as citizens, or to our ideologies. Each of us, whether we are conscious of it or not, filters these messages, incorporating some into our mindsets and discarding others. In short, we are all subject to visual stimuli in what can be called visual learning. Nowhere is this more evident than with the medium of television.

We are accustomed to receiving important information via our sense of sight. According to a recent study, the average American household watches 7 ½ hours of television per day. By the time a student graduates from high school, he or she has spent 11,000 hours in classrooms, and in that same time an average of 15,000 hours in front of a television. Obviously, television is a medium with which we are quite familiar.

A crucial aspect of the visual learning process is retention – we retain more information when visuals are used. While statistics vary slightly, 83% of what the average person learns and remembers comes from sight, but only 11% from hearing. Material presented orally with visual backup is far better retained than material presented only orally. The advantage of the oral/visual combination increases over time; three-day retention of material presented orally with visuals is six times greater than information without visuals.

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1941 Greenspring Dr.
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Tel: (410) 560-7949

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Editor:

Teresa Rosado, Ph.D.

Associate Editor:

Kevin Stirling, M.B.A.

Copy Editor:

Elise Christenson

Marketing Director:

Ralph Mongeluzo, Esq.

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Finally, visuals help to hold the audience's attention. This is especially important in the presentation of dry or complex information. They punctuate a presentation by drawing attention to key ideas and information. The use of a visual to communicate a specific point is a powerful signal to your audience that a particular issue is important. The message is clear: "The speaker wants you to remember this."

These facts are not revelations to most of us. We are well aware that other industries, such as advertising, use these concepts to their advantage and profit. The uses for visual learning, however, are clearly not limited to other fields. In short, the visual age has come to the courtroom.

As a litigation tool, the benefits of visual aids are nearly limitless. Litigation professionals across the country recognize that the strategic use of visual aids to teach, clarify and persuade judges and juries do more than just that. They increase the likelihood that the message will be understood, remembered and believed as well as reinforce key themes, facts and testimonies. The bottom line: Visual aids help win cases.

Every case, whether it is a medical malpractice matter or an antitrust lawsuit, contains key information that can be conveyed in visual form. Common visual tools include the time line – a juror's road map – to show a sequence of events; diagrams to show relationships; insets to highlight critical testimony; and terminology charts to define uncommon terms.

Multimedia Presentation Systems

Trials today are often characterized by multimedia presentations designed to communicate visually through the use of computers. It is not uncommon for both parties in complex litigation to use high-tech presentation systems. These systems can also be used for mediations, arbitration and settlement negotiations, as well as any type of formal presentation.

To display documents and photos electronically with a trial presentation system, they must first be scanned into an electronic file format. Documents and photos can either be stored on the computer hard drive or on CD. CD-ROM technology has made it possible to store up to 15,000 document images on one CD. Most software packages can display a variety of file formats, the most popular of which are standard TIFF files. Compatibility will ensure a smooth transition

from trial preparation to presentation. Videotaped segments converted to digital information on a hard drive or CD-ROM allow for instantaneous retrieval and display,

eliminating the need to fast-forward or rewind.

Most trial presentation systems retrieve exhibits with a bar code reader, which in effect mimics computer keystrokes. Bar code labels are printed for each document page, graphic, photo, video clip or computer animation. Exhibit binders are created and indexed to client/case needs. Additional labels are printed so that the attorney can affix the proper exhibit label to the trial outline.

During trial, the attorney simply waves the bar code reader across the bar code and the exhibit selected instantly appears on monitors in the courtroom. Scanned documents, video deposition clips, photographs, graphics, and computer animation can be presented in any

The use of a visual to communicate a specific point is a powerful signal to your audience that a particular issue is important.

combination with instant, easy access to any exhibit. For example, one attorney referred to an exhibit so frequently during the course of trial that he affixed a label to his coffee mug and swiped the mug when displaying that exhibit.

Even on large, high-resolution monitors, it may be difficult to read a full document page on the screen. By using a light pen to outline the relevant text, a word, sentence, or paragraph can be enlarged instantly. The pen can also be used to write on the screen, chalkboard-style, in a variety of colors for additional emphasis. Key documents can also be pretreated graphically.

The attorney is in complete control of the presentation environment with the ability to access any exhibit, start, stop and pause any video or computer animation with a wave of the bar code reader.

Videotaped depositions, which are increasingly prevalent, allow the jury to experience the personality of the witness more fully than is possible when deposition testimony is merely read into the record. A compelling way to impeach a witness on the stand is to quickly access and display a deposition clip that contradicts live testimony.

Computer-generated 2-D and 3-D animation or live-action video segments can be combined into powerful communication tools. These demonstrative aids can be played uninterrupted as a summary of several days of complex testimony, or used by the expert to walk through information with instant stop, start and pause capabilities – without the distortion encountered when using a VCR. Animation is especially useful to explain concepts or processes not easily understood, or objects not readily seen by the naked eye.

Benefits

There are five principal benefits obtained through use of a multimedia trial presentation system:

1. Time Savings

Judges have indicated that use of such systems cuts trial time from 25-50%. In post trial interviews, judges and juries alike have provided positive feedback for the system's ability to streamline and shorten the trial process. The system eliminates playing hunt-and-peek through boxes of documents and the frantic search by remote for a specific video clip.

2. Cost-Effectiveness

Hand in hand with saving time goes saving dollars. Manpower and paper trails can be cut significantly. In addition, both parties can share the cost of display monitors.

3. Flexibility

Use of a trial presentation system enables revisions to existing files as well as the addition of new documents or graphics by simply loading the updated files on the system by disk. The database can also be easily revised to delete any exhibits objected to by opposing counsel.

4. Interactive Capabilities

The ability to enlarge, annotate, start and stop instantly, and “build” information through graphic sequences contributes to the increased interaction between presenter and audience, making for a more interesting and persuasive presentation.

5. Control/Ease of Use

User-friendly computer tools allow attorneys to successfully orchestrate the presentation of a broad array of media options while remaining focused on the strategic issues of the case.

Videotaped depositions allow the jury to experience the personality of the witness more fully than is possible when deposition testimony is merely read into the record.

Keys to Effective Visuals

A common error in using visuals is to present too much information at one time. It is important to limit each exhibit to one message for effective communication. Below are additional guidelines for developing visuals that are memorable and persuasive:

1. If the jury only needs to know the time, don't teach them to build a watch.

Carefully evaluate just how much the jury needs to understand. For example, if the present value discount rate used is not in dispute, there is probably not a need for more than a cursory explanation of the concept. If the discount rate is a major source of disagreement, further explanation on how the discount rate varies with risk may be advisable. Graphics can make the cursory or in-depth explanation easier to understand.

2. Walk before you run.

When a difficult concept must be thoroughly explained, develop it one step at a time, with one idea per graphic.

We are accustomed to receiving important information via our sense of sight.

3. Give the jury "permission to believe."

Perhaps a difficult concept does not require complete explanation, but it does require enough detail to allow the jury to accept your expert's viewpoint. Graphics can help give the expert credibility on complex issues without causing the jury to tune out.

4. Educate, don't decorate.

Your objective is not to create art, but to persuade a jury. That is why there is value to employing an expert with skill in communications as well as design, preferably with litigation as a specialty. The result will be persuasive, admissible demonstrative evidence designed for courtroom viewing.

5. Eschew obfuscation

Say it plainly. Boil issues down to the bare essentials, and use terminology your jury will understand.

6. The mother-in-law test.

Show your exhibits to someone unfamiliar with the case. What unintended messages might be received from the exhibit?

7. The Doberman test.

Will this exhibit "come back to bite you"? How might your opposition turn this exhibit to his/her advantage?

8. Use your exhibits well.

Don't reveal an exhibit until it will be used. Orient your jury to the exhibit. Allow them to view the exhibit long enough to absorb its meaning, but not so long that it becomes stale or a distraction. Keep in mind that words and visuals should be in sync. When the words no longer match (the witness is testifying on a new subject), the visual should be removed.

Current Obstacles

While computer use continues to increase, admissibility and cost concerns have presented barriers to more widespread use of trial presentation systems. With respect to admissibility, the technology is simply a medium used to present evidence. As long as the information being displayed is admissible, the system should be permitted to present that information in a fast and efficient manner. We highly recommend notifying both the judge and opposing counsel of your intention to use such a system well in advance.

The costs for use of trial presentation systems continue to decline. Factors affecting cost include the types and volume of material you wish to display, the number of monitors needed, and the estimated length of the trial.

Preparing a Budget Estimate

Multimedia presentation hardware and software can be purchased or leased. Leasing is a common option. Cost estimates for programming and bar code generation are dependent upon the quantity and type of demonstrative exhibits to be incorporated into the system. To develop a detailed budget estimate for use of the system in a specific case, it is helpful to think about the following questions and talk with consultants who have experience in the creation of multimedia presentations for the courtroom.

1. Approximately how many pages of documents will be randomly accessed during the courtroom presentation? Have the documents been imaged/scanned? If so, at what resolution?
2. What percentage of the total document pages will require enhancement or treatment?
3. How many hours of source video depositions will have been taken? What is your best estimate of the number of edited minutes/hours, from the source videotapes, that you will need to access?
 - a) How many total tapes are there?
 - b) What format are the tapes (VHS, Beta)?
 - c) Are they visibly time-stamped?
4. If there is other video footage to be used in the presentation besides deposition testimony, the above questions should also be applied.

Visual aids provide counsel, judges and clients with valuable tools to manage the limited commodities of time and money, while increasing the salience of arguments for juries.

5. Will there be a need to design and produce demonstrative exhibits for presentation on the system (i.e., charts and graphs, video, computer animation, etc.)?
6. Will there be a need to incorporate any additional visual elements such as photographs or other already-completed visual items not including documents? If so, approximately how many frames/pages?
7. To determine system hardware requirements (e.g., the number and size of monitors), is this a jury trial, bench trial, arbitration panel or public hearing?
8. How long will the trial/presentation run (estimated number of weeks)? Will a system be required for pretrial preparation?

In sum, the enormous benefits that multimedia presentation systems can provide to the litigation process are clear to see. Visual aids provide counsel, judges and clients with valuable tools to manage the limited commodities of time and money, while increasing the salience of arguments for juries. This combination of factors has proved successful in courtrooms across the United States. In the increasingly competitive arena of the courtroom, who can afford to be without the option of such powerful weapons?

Portions of this article originally appeared in Legal Tech News. Dr. Daniel Wolfe is a Senior Trial Consultant with TrialGraphix, a full-service litigation consulting firm that provides exhibits, technologies, and trial consulting to clients nationwide. He may be reached at 800-444-6766, or by e-mail at dwolfe@trialgraphix.com. TrialGraphix locations include Miami, Atlanta, Chicago, New York, Los Angeles, and Washington, D.C. www.trialgraphix.com

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Lies, Damned Lies, and Statistics

By: Edahn Small

According to researchers, the average person tells one to two lies per day.¹ It's safe to assume that lying also occurs inside the courtroom. What factors can you use to spot a liar? What factors shouldn't you use?

In 2003, researchers from the University of Virginia and the University of Missouri² conducted a meta-analysis (a study of studies) of 120 experiments on deception, examining 158 deception "cues," or clues that people use to identify deceivers. The lies, generally told by college students, were about attitudes, personal facts, opinions and transgressions. Below is a summary of that study and signs you should look for to detect deception.

Generally, deceivers tend to repeat words and phrases more often than truth tellers.

1. The story they tell

Not surprisingly, the stories liars tell are viewed as making less sense and are viewed as less plausible and less believable. The researchers found that the stories are less likely to be structured logically than truthful stories and more likely to be internally inconsistent and appear to be more ambivalent.

Because liars consciously alter their presentation to sound more convincing, they exhibit fewer spontaneous corrections to their statements. Compared to truth tellers they are less likely to admit an inability to remember something. They tend to stick closely to the key fabricated elements of the story and rarely develop the

context of an event. There is some indication that they include less unusual detail in their stories as well. In contrast, liars are *more likely* to mention relationships or events that are peripheral to the lie.

2. The way the story is delivered

The researchers found that liars provide less detail than truth tellers and tend to spend less time talking. Liars spend more time with their lips pressed together. They also use fewer hand gestures to express themselves.

Liars dedicate less time discussing personal experiences or describing events in a personal or revealing way. On the whole, they sound more evasive, unclear and impersonal. The language they use tends to create "distance" between the deceiver and the listener, or the deceiver and the lie. For example, truth tellers will use the present tense, speaking in active voice, while liars will speak in other tenses in passive voice. And you thought you'd never have to worry about passive voice after college.

3. Facial cues

Eyes

Many people believe that eye contact can be used to detect lies and have developed elaborate systems for decoding eye movements. According to this set of researchers, however, there is no significant correlation between lying and eye contact. On the whole, liars don't stare more often, nor do they avert their gaze more often.

There is one interesting twist, though. When the researchers teased apart those studies that gave their liars incentive to lie from those studies that didn't, they found that motivated liars make less eye contact when lying than

¹ DePaulo, B.M., & Kashy, D.A. (1998). Everyday lies in close and casual relationships. *Journal of Personality and Social Psychology*, 74, 63-79. Their study gave participants diaries and asked them to record their daily lies.

² DePaulo, B.M., Malone, B., Lindsay, J., Muhlenbruck, L., Charlton, K., & Cooper, H. (2003). Cues to Deception. *Psychological Bulletin*, 129, 74-118.

when telling the truth. When not motivated to lie, they tend to make slightly *more* eye contact than when telling the truth, but the difference was not statistically significant.

Finally, the researchers found that the pupils of liars dilate significantly more than those of truth tellers.

Other facial cues

This study also suggested that liars tend to raise their chins more often than truth tellers. Interestingly, the researchers note that people in conflict who raise their chin, make eye contact and raise their eyebrows are more likely to prevail than individuals who lower their chin, avert their gaze and pinch their eyebrows.³ It's hypothesized that raising the chin serves to signal certainty to others.

John Keats said "Beauty is truth, truth beauty, that is all Ye know on earth."⁴ The reverse might be true too, though, as liars' faces appear less pleasant to people. Liars smile less than truth tellers and are more likely to show fake smiles (i.e., smiles sans squinting) than genuine smiles to convey positive feelings.

4. Nervous behavior

The study suggests that, overall, liars fidget more than truth tellers. In what way do they fidget more? Liars show slightly more facial fidgeting (face-rubbing, hair-playing) than truth tellers, but slightly *less* object fidgeting (tapping a pencil or straightening a paperclip) and *less* self-fidgeting (scratching, picking at fingernails).

Liars also tend to be more vocally tense and, when given incentive to lie, speak in a higher pitched voice. Here's an easy test: check and see

whether the court reporter looks more upset than usual.

5. Speech disturbances

Researchers classify spontaneous speech disturbances into two categories. The first category is *filled pauses*, which includes "ah," "er," "hmmm," "uh," and "um." These disturbances are common when there are multiple ways of expressing something. The second is *non-ah disturbances* such as stopping a sentence midway to start a new sentence or repeating words or phrases. This type of disturbance is said to indicate anxiety.

When attorneys learn how to listen for the client's themes and metaphors, they are able to bring out the truth and not just the facts.

The researchers found that generally, deceivers tend to repeat words and phrases more often than truth tellers. Furthermore, when incentives are

provided, liars will actually show slightly *fewer* non-ah disturbances and filled pauses, one explanation being that liars will rehearse what they say before they say it and therefore make fewer mistakes in delivery. Interestingly, when incentives were removed, the reverse was true! Liars had *more* non-ah disturbances and filled pauses.

Although they use no more ritualized speech than truth tellers ("you know", "really," "I mean," "well...") deceivers are more likely to make negative statements and complain.

Accuracy

As it turns out, those who are best at detecting lies use a combination of verbal *and* non-verbal cues. That was the explanation given by U.S. Secret Service agents in an experiment conducted in 1991.⁵ In that experiment, only the Secret Service scored better than chance at detecting liars, while FBI, CIA, NSA, and DEA agents, as well as California police,

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³ Zivin, G. (1982). Watching the sands shift: Conceptualizing the development of nonverbal mastery. In R.S. Feldman (Ed.) *Development of nonverbal behavior in children* (pp. 63-98). New York: Springer-Verlag. Referring to the first face as a *plus face*, the second as a *minus face*.

⁴ Keats, J. (1970). Ode on a Grecian Urn. In M. Allott (Ed.) *The Poems of John Keats*, London: Longman.

⁵ Ekman, P., & O'Sullivan, M. (1991). Who can Catch a Liar? *American Psychologist*, 46, 913-920.

judges, psychiatrists, college students and working adults, who relied predominantly on verbal cues, all failed to score better than chance. Also, the study found that there was no correlation between confidence and accuracy.

Now that you're aware of both the verbal and non-verbal cues to deception, you're in the best position to catch a liar in his or her tracks. Catching a liar involves listening to what the person is saying, how they're saying it, and examining their body language. It's as, um – it's as easy as, uh... as 1-2-um... 3.

Edahn Small received his B.A. in Psychology from U.C.L.A. and is currently a J.D. candidate (2006) at U.C. Davis School of Law. He plans to enter the fields of litigation consulting and research upon graduation. He may be reached at (818) 357-8225 or by e-mail at edahn.small@gmail.com.

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The Jury Expert!

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Quick Courtroom Tips

By
Bob Gerchen

Make Your Movement Have Meaning

Standing behind a podium is visually boring. So (in state court, anyway), a lot of attorneys like to get out and move around a little. That's good.

But many of them tend to wander aimlessly, back and forth in front of the jurors. "Picketing the jury," I've heard it called. That's bad.

Movement needs to have three things:

- Motivation
- Destination
- Coordination

Motivation. Have a reason for going somewhere. It simply may be to draw jurors' focus to your client, or to the other party. It may be to reach an exhibit. It may be just to change the visual landscape. But without a reason, you're just wandering.

Destination. Go somewhere and stop. If you want to move around during argument, pick three spots—near the podium, near one side of the jury box, near the other side of the jury box and alternate where you go. But once you get there, stop! Stand still for a while. Without somewhere to go, you're just wandering.

Coordination. Talking fast? Move fast. Making a strong point? Make a strong movement.

Bob Gerchen is the Director of the St. Louis office of Litigation Insights. He may be reached at (314) 863-0909 or by e-mail at rgerchen@litigationinsights.com.

For more information on Bob Gerchen's book, 101 Quick Courtroom Tips for Busy Trial Lawyers, visit www.CourtroomPresentationTips.com.

A Trial Lawyer's Guide to Communicating with a TV Legal Commentator

By Sherjuana A. Davis

As the public becomes more interested in high-profile cases, television shows featuring legal commentators and trial lawyers serve as a common form of entertainment. In years past, news programs about court cases were present only on cable stations. Now, local stations often invite attorneys on the air to discuss their cases and other legal topics. Tension between commentators and attorneys serves as the main source of drama.

An attorney's demeanor and statements determine whether members of the public are empathetic or outraged. To avoid having a case negatively prejudged, it is important for criminal and civil litigators to have a strategy for handling legal commentators. After carefully analyzing attorneys' media appearances on television programs, I was able to isolate the characteristics that distinguished lawyers who were able to express their viewpoints from those who allowed commentators to drive the conversation. Based on these observations, a cluster of themes emerged. I designed a six-step approach for managing television legal commentators known as C.A.M.E.R.A.

C – Identify Counter Arguments

Identifying counterarguments allows attorneys to discredit a critic's reasoning. This task involves not only knowing general contrasting points of view, but also predicting those specifically held by legal commentators appearing on the television show. Achieving this feat requires studying past arguments. They will provide a framework of that person's perspective for the current case. For example, if the critic is

usually sympathetic toward prosecutors, the individual is likely to view a criminal case from the victim's standpoint. Once a litigator is aware of the person's past viewpoints, predicting counterarguments becomes easier.

In addition, it is beneficial for a litigator to study past tapes of the critic's verbal and nonverbal forms of delivering their counterarguments. For example, if a critic tends to interrupt guests, an attorney needs to use short sentences when making legal points. In cases where commentators try to reduce clients' arguments through one-liners and jokes, the attorney will need to

know what triggered them in order to either avoid a topic or have a quick follow-up comment. Most television stations offer transcripts of their news programs. Studying

past episodes will help you detect argument patterns.

A – Acknowledge the Commentator's View

Reducing the effectiveness of legal critics requires acknowledging their viewpoints. Acknowledgement does not equate to abdicating your position. Instead, it merely allows you to demonstrate a full understanding of the counterargument. By doing this, you can point out weaknesses found in the commentator's reasoning. For instance, if the legal analyst provides a theory about why a criminal attorney's client committed a murder, acknowledging that theory and then dissecting it for weakness will diminish the argument.

M – Mirror Your Case

Before entering a studio, it is important that lawyers practice their presentation style in front of a mirror. Unlike a courtroom, where litigators can walk around and make dramatic gestures, television has less flexibility. On most shows that discuss legal issues, attorneys are sitting down. With this in mind, practice delivering your statements at a table. Find out which angles work best for you. If you have

Although you are having a conversation with a legal critic, your target audience remains the viewers.

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a video recorder, use that device to evaluate your capabilities. Try not to wear items that will distract from your points. For example, if you are on a conservative program, wear dark browns, blues, grays and blacks. On channels that capture a less traditional audience, brighter colors are permissible.

Similar to an opening argument, the ability to summarize salient points of a case is also vital on television. The key to communicating your points is choosing no more than three main issues. Making additional points will only create confusion. Finding the demographics of people who watch a show will help in determining which facts to highlight. You can learn about the audience composition by simply contacting a station's sales department. Since their job is to sell advertising, they can provide you with a detailed demographic report.

E – Use *Everyday Language*

When presenting case law on television, remember to make things simple. The public may not have knowledge about the steps of an appeals process or the burden of proof required for cases. However, making things easy is not synonymous with providing detailed explanations. There is not enough time for detail within the confines of a television show. Instead, use words that are common in everyday language to describe events.

Provide the audience with specific examples from your case rather than using legalese. For instance, it is not necessary for an attorney to list details of the *Miranda vs. Arizona* landmark case to inform viewers that police officers failed to inform a client that there was no obligation to talk during the interrogation process. Remember, although you are having a conversation with a legal critic, your target audience remains the viewers.

R – Repeat Your Position

Repetition plays a critical role in an attorney's ability to communicate with legal commentators

persuasively. The key to influencing public opinion is presenting a credible position that people understand and can articulate. Since there are many items competing for viewers' attention, reiterating points allows them to remember your message. When viewers know the facts, they can share them with family and friends during discussions. Smart legal commentators will recognize that you are repeating the same points more than once and try to attack them. This is the reason having a thorough understanding of counterarguments is important: it allows you to prepare for the critic's response.

A – Advocate for the Client

The key to having a strong camera presence is not through arguments but advocacy. When a litigator tries to argue, the television critic is in control. Since a trial lawyer ultimately wants to articulate their perspective with viewers, expressing a position without succumbing to the distractions of a legal critic's arguments is more beneficial. This technique requires emphasizing the human side of a case.

For example, a plaintiff's attorney may want viewers to understand the poor working conditions that caused an employee's injury. To do this, the attorney can say, "Like so many other hard-working people, Jill Doe is a mother of three who worked tirelessly in a steel mill for 12 hours each day. Despite this dedication, Jill's employer did not keep conditions safe and those unsafe conditions resulted in her injury." Personalizing the client and linking her experience with others allows viewers to empathize with the client. Afterwards, each time a legal critic tries to dispute a point, they are not only challenging your client but also viewers who identify with the person. This minimizes the critic's impact.

In conclusion, persuasive communication does not start or end in the courtroom. For litigators, it involves a continuous process of contextualizing

Similar to an opening argument, the ability to summarize salient points of a case is also vital on television.

facts about their case. Legal commentators on television shows can hinder attorneys' abilities to share their viewpoints with the public. By using the C.A.M.E.R.A. approach, lawyers can clearly present their cases even when confronted by hostile legal critics.

Sherjuana A. Davis lives near Atlanta, GA and is an Industrial/Organizational Psychology doctoral student. Her areas of research interest include case presentations, jury selection and decision-making. She also holds an M.B.A. with a specialization in marketing, and is a member of the American Society of Trial Consultants. She may be reached by e-mail at sdavisarticle@yahoo.com.

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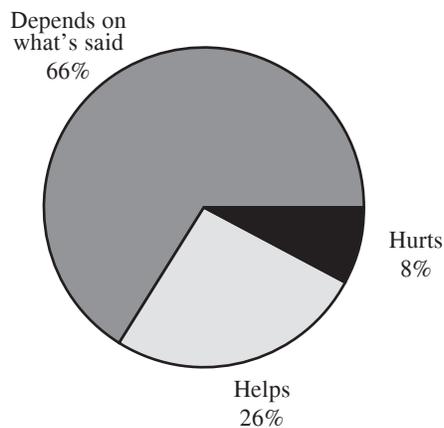
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Public Apologies Poll:

"I'm sorry" can be two of the hardest words ever to get out of your mouth.

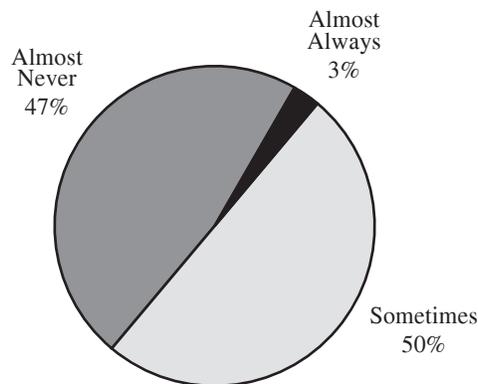
Now imagine apologizing in front of the whole country — or world, for that matter. Many have faced this daunting task. But do you ever wonder if they really meant it, or if their apologies even worked?

Does a public apology usually help or hurt a person's image?¹



Total Votes: 7,362

How often do you find a public apology to be genuine?¹



Total Votes: 7,359

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¹ Source: AOL's Subscribers Poll Results as of 4:15 PM Jan 18, 2006. Poll results are not scientific and reflect the opinions of only those users who chose to participate.

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Teresa Rosado, Ph.D., Editor trosado@juriscomm.com

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