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Using video to establish visual perspective for sexual-assault and harassment cases

TO MAXIMIZE DAMAGES, USE DEMONSTRATIVE GRAPHICS TO MAKE YOUR AUDIENCE FEEL THE EMOTIONAL TRAUMA OF THE PLAYERS INVOLVED IN YOUR STORY

Conventionally, there are many types of visuals that are commonly used in civil personal-injury cases by plaintiff’s lawyers across the country. Day-in-the-life videos, security videos, animations, timeline graphics, and medical illustrations – are all legitimate forms of demonstratives and visual aids that can be used to present your evidence for mediations and in trial.

In other types of litigation practices, such as employment law, it is less common and less likely for attorneys to use demonstratives like day-in-the-life videos and animations. But using unconventional methods of presenting demonstrative evidence can often create a profound effect on your audience.

For more than 20 years, a growing number of law practices have become

accustomed to utilizing video production and graphic design as a means of presenting demonstrative evidence in pretrial settlement stages, and in trial. The results particularly for harassment cases have been time-tested and proven to be worth the investment.

There are three types of visuals worth noting – security camera enhancements, timeline graphics, and settlement videos, that have all been powerful visual presenter tools which help bring forth compelling verdicts and settlements.

As you delve into sexual-harassment cases, “*Think Video.*” One important type of evidence is to find surveillance video footage of the events that occurred in or around the location at the time of the assault, or in some cases a schedule of repeated assaults.

Security camera videos

Not all subpoenaed security camera footage is perfect. Though the evidentiary video may be admissible in court, it presents the issue of whether or not the video is going to be useable or useful. Some videos are too dark, some skip frames, and other recordings are out-of-frame or out-of-focus. This is usually the major culprit in making your evidence less valuable. With the help of creative video-restoration experts, hope is on the horizon. You can still use various techniques to restore your footage, edit, crop and highlight frames to get the most out of your demonstrative.

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Arguably, all demonstrative evidence can be objected to, especially if it's been edited from its original content. But with the proper supporting materials, and case law, your demonstrative evidence is admissible, as long as the original is not altered.

An experienced video company will be able to professionally help process the data for you, while keeping the integrity of the footage untouched. Once the editing is complete, the restored footage will clearly demonstrate an enhanced view of the evidence.

In *Janice H. v. 696 N. Robertson LLC*, surveillance video was edited together and used as demonstrative evidence in a civil jury trial. The case involved a woman who entered a Los Angeles bar and dance club and was sexually assaulted by a man in a unisex bathroom. The attorney-client provided security footage that consisted of 16 separate individual camera views, which was provided in four separate video files. The assault itself was not captured on the video, but between all the security cameras views, the images collectively captured the series of events that took place showing the perpetrator walking around in the scene preceding the assault, and the consequential reactions that unfolded after the incident.

Once the dozens of video clips were edited together and restored, the disjointed footage of the perpetrator's actions materialized into a linear story! All 16 camera clips were stitched together into one complete video. Then the edited video was used as demonstrative evidence in trial to show the clear view of the woman who appeared drunk, walking from the VIP room across the hall to the bar. The defendant had some sort of exchange with the woman. The woman then went to the bathroom, where she was followed by the defendant. The final shot showed the defendant coming out of the bathroom, and dancing on the dance floor, alone. After the rape crime was committed, the woman found blood stains on her dress and the defendant later got caught stealing at the same bar.

This case was tried several times as a criminal and civil case, where defense counsel appealed the case, and the plaintiff's attorneys went on to win the battle on appeal.

When producing surveillance-video assignments, there are two main objectives to check off for creating a useful and useable surveillance video:

Establish visual clarity

There are all sorts of issues when it comes to clarity of surveillance footage. Using video-editing software, a video-

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production specialist can take footage that drops frames and stick them together. Dropped frames can occur when the speed or frame rate at which the data recorder is capturing video frames, skips every other frame, or skips a combination of frames in order to save memory and storage space on the recording device.

There are a number of other ways video editors can clean up the original footage and enhance the footage in order to see the subject clearer. Zooming in, adjusting the contrast, as well as the tonal values, can actually improve visibility of the surveillance video.

One popular enhancement process is called 'Video-Color-Tracking,' a product my company created. Video Color Tracking is an innovative but tedious process, which involves frame-by-frame keying in order to isolate subjects in the video with a unique color code. This helps identify each subject further, helping to visually track the subjects in the video.

Establish visual perspective

In order for your opponents and jurors to better understand the sequence of events that took place during the scene of the crime, it is important to orient the viewer on the timing, location and whereabouts. This is achieved by editing your individual video clips of the scene into a single cohesive video. This gives viewers an immediate sense of 'visual perspective' and a better lay of the land. It's worth noting that all security footage is usually produced by multiple cameras, and it is unlikely for security systems (residential or commercial) to have only one camera. Usually all camera systems work with two or more angles. More camera angles mean more evidence to sort through and tie together. If you have disjointed footage in multiple formats, and separate files for each angle, talk to your local video production company to organize your footage, and string out the story in a single edited storyline.

When you establish a 'visual perspective' for viewers, what you're really

doing is letting the audience learn and identify the parameters of your story in their minds. You're turning the viewers' imagination of the scene, more visceral. (See Figure 2) Scientific studies indicate that visuals are processed 60,000 times faster in the brain than text, and it only takes about 1/4 second for the human

brain to process and attach meaning to a symbol.

As such, visual cues found in demonstratives like PowerPoints, timelines, and call-out graphics, help viewers follow along and keep track of the story in an immersive way.

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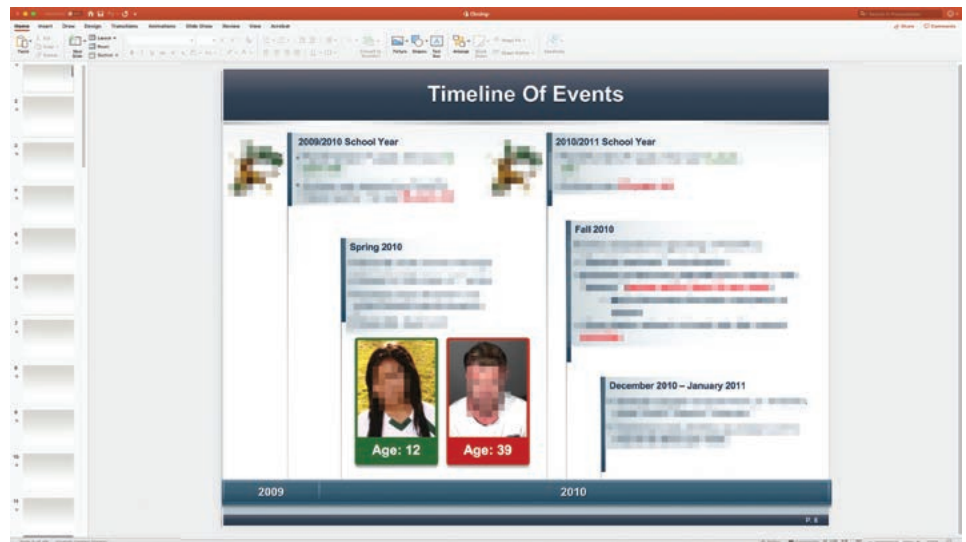


Figure 1

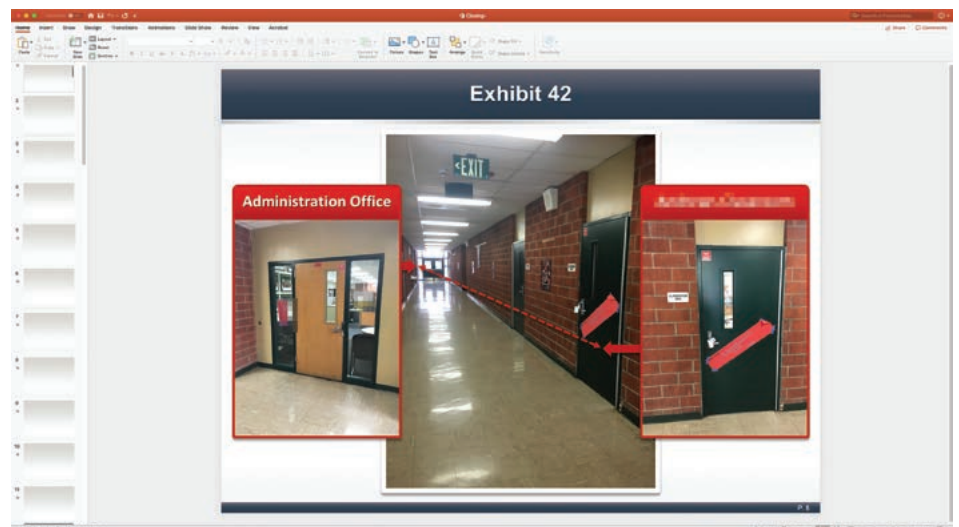


Figure 2

PowerPoint timelines, graphics and callouts

When preparing an effective PowerPoint timeline, you want to make sure your video deposition and transcripts are ready with highlighted pages and line designations to be inputted into the demonstrative. The excerpts you want to highlight, usually the deponent's testimony, will be made into larger graphic callouts on the timeline. When you isolate callout words from dozens of pages of text, you get more focused eyewitness testimony that draws your audience's attention on concentrated key facts of your case such as: *"As I opened the door he was alone again with her behind the locked gym door."*

The conscious mind automatically draws graphic depictions of the scene when you point out important sentences or phrases from witness testimony. Although demonstratives aren't used in employment law and sexual-harassment cases as often as they are in personal injury, visuals for harassment cases are utilized rather effectively to portray plaintiffs who suffer more obvious emotional trauma, rather than physical trauma.

In order to really maximize your damage claims using demonstrative graphics, your audience has to connect, and feel the emotional trauma of the players involved in your story. The graphic design should be planned out methodically to show the players, who they are, as well as their motives and aspirations.

A Powerpoint timeline was created for a sexual harassment case (*A.M. v. Pomona Unified School District*), involving a 14-year-old student who was repeatedly sexually abused by her eighth-grade teacher. On numerous occasions teachers and the school principal failed to adequately supervise defendant or contact Child Protection Services to report the situation. After one of defendant's co-teachers reported his inappropriate conduct, the principal assured the co-teacher that she and the district would take appropriate action, however, she

and the district did nothing, allowing the defendant to continue his predatory conduct toward the student.

The timeline consisted of the number of times throughout the course of her junior high school years that the plaintiff suffered multiple acts of sexual assault, and how long the abuse and neglect lasted.

Graphic images of the junior high school logo, along with pictures of the 14-year-old student, and the perpetrator, were shown at the start of the timeline. The ages of the perpetrator, age 40, and the plaintiff, age 14, were displayed below their photos, located at the lower-third of the image. At each occasion that the defendant lured her with text messages, gifts, free lunches, and special treatments, numerous flag-shaped graphics were used as markers to identify the multiple occurrences, along with places on the timeline showing dates, times, descriptions and testimony. At every assault, the timeline would be flagged with special emphasis such as the color red, indicating a negative act, or crime. (See Figure 1)

The PowerPoint timeline was effectively utilized throughout the trial and during closing arguments. The presentation comprehensively established the present and future emotional trauma of the junior high school student, and the continued psychological issues that ensued. Audio clip of the young girl's deposition testimony were added to the end of the timeline that showed her suicidal tendencies, and the social impact she felt. The jury unanimously held the school and perpetrator at fault.

Visual communication techniques are critical when preparing your demonstrative evidence for settlement or trial. Make sure you hire a professional graphic designer who can not only design your demonstratives for you, but who can also help visually organize your exhibits in an easy-to-understand graphic layout. Jurors will appreciate it and make better evaluations of your case.

In most PowerPoints, and demonstrative timelines, graphic

designers will always ensure that they do the following.

Identify the incident

The most effective demonstrative presentations are those that take the time to identify the incident by adding graphic markers, photos of your subjects, and scaled-up callouts of witness testimony. These are the fundamental visual elements in a sexual harassment case which help establish your players, keep track of the actions, and stay emotionally connected to your players.

Identify the fault

Displaying visuals in a demonstrative will help the viewers delineate between the characters in your story much faster than describing your case with mere words. Think of how an advertising agency will brand a product. When we think of, let's say, cheddar cheese, there are hundreds of brands of cheese. Well, there are brand identity techniques that creative directors use to characterize a label and stand out from all the noise in retail advertising market. Kraft for example, a dominant consumer product, may come to mind when you think of cheese. They have made a brand impression in our minds, and a brand recognition that's hard to reckon with. Similarly, graphic demonstratives can help "brand" your case and characterize the elements within your case. For example, using the brand identity and theme colors of the school or institution associated with the negligence in your claim, will help your audience quickly identify who the players are in your story, and leave an everlasting impression.

The third type of visual aid that is less often used in sexual-harassment cases is a settlement video for mediation. In most sexual-abuse and discrimination cases, it may seem counterproductive to record video footage of victims who've suffered mental and emotional trauma, without showing any visible or physical evidence of injuries. But many practicing attorneys in the field of employment law may be surprised to learn that videos can be used very effectively to prompt

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a settlement before even reaching the courtroom doorsteps.

Settlement videos

A well-produced settlement video showcases the plaintiff's injuries in a short and comprehensive way to include a narrated reporting of the components in your case such as liability theory, and the total loss. Similar to a mediation summary, a settlement video provides the unique opportunity to craft your message and send it to the other side. Designed to influence the decision-making process on the other side, settlement videos can move the disputed components of your case a long way toward settlement.

Mediation privilege vs. trial evidence

In California statutes, mediation-privileged material such as recorded interviews from a settlement video is protected from being discoverable. Content produced for mediation purposes such as client testimonies usually cannot be subpoenaed or admitted as evidence.

Except for limited exceptions created by the courts, nothing else said or written during or in the course of the mediation, or for the purpose of the mediation, can be received in evidence, compelled in discovery, or compelled as testimony in any proceeding. (Evid. Code, § 1119; 1121, 1123).

Settlement videos are not like day-in-the-life videos in the sense that they are not bound by demonstrative evidence laws. Both types of videos are treated as separate products and prepared for different purposes. Sometimes footage from a settlement video can be repurposed for a day-in-the-life video by editing out all interviews, music, and voice over narration.

The making of settlement videos

In sexual-harassment cases, video interviews of the plaintiff and participating family members, friends, and co-workers are conducted and included in the final edit. The content of the story is driven by eyewitness testimony

of the perpetrator, as well as supporting statements from loved ones describing the impact caused by the assault to the plaintiff and his or her surroundings.

During production stages, arrangements are made through the hired video company, to schedule the filming of the plaintiff's interviews. Key witnesses are also invited to participate in the filming. Usually your best on-screen witnesses are those who are relevant to your story and include those closest to the victim, such as family members, co-workers, and friends.

In *S.G. v. Parson* a settlement video was prepared to tell the story of the plaintiff, a post-anesthesia care nurse who was sexually harassed by her boss at a surgical center. Several years into her employment, the plaintiff started to be sexually harassed by the Medical Director of the facility, which included touching, kissing, and inappropriate comments. Despite the harasser eventually being asked to resign, the plaintiff suffered significant emotional distress at the hands of her employer.

In a case with purely emotional damages such as this one, the attorneys knew that it was crucial for the victim to be able to tell her story before trial. The settlement video made it possible for the plaintiff to "testify" and express her feelings on camera about her condition, as well as the harasser's abusive actions.

Once the video was filmed and edited, the final copy of the video was provided to the client to present to the defendants at mediation. The settlement video also provided the opportunity for other expert witnesses such as friends, co-workers, psychiatrists and family members to appear on camera to provide their testimony about how the plaintiff had been impacted socially, personally, and professionally. The culmination of all the video testimony interviews, along with compelling stories of the plaintiff's life prior to, during and after the assault gave the defendants a perspective on the type of emotional demonstrative evidence that supported the plaintiff's claim.

How to approach questions

In the making of every useful settlement video for sexual harassment cases, there are a number of key interview topics to include that address compensatory damages

- Mental Anguish (including depression, emotional distress, and hopelessness)
- Economic losses (including medical expenses, past and future earnings wages)
- Loss of quality enjoyment of life and opportunity

During the interview process the videographer should draft customized questions that reflect these key components in establishing any monetary value to your case.

A video company will usually have experienced videographers who can address the questions to the subjects in a sensitive and professional manner without being too intrusive.

When conducting interviews, settlement videos should not be treated like a deposition, where questions are being asked and answered in closed-ended questions. Asking open-ended questions will help the witness feel more natural and able to express their feelings and facts about the case. Here are some examples of open-ended sexual harassment questions:

- *How has the abuse affected your relationships socially?*
- *Tell me about the decline you've noticed in your grades?*

In some instances, lawyers hire medical experts like forensic psychiatrists to conduct video interviews of their clients. Results have shown that video interviews that are conducted by experts turn into a medical examination, which feels more mechanical and less inviting. A professional videographer will take a more candid approach in techniques to asking questions, which results in a more fluid interview performance. There are many methods and approaches to producing settlement videos that overwhelmingly affect the final look and feel of the video.

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Settlement videos not only help journal your client's life story but can also become a method of visual study so that you and your firm can analyze and learn from the reaction and responses of your clients. Watch the completed settlement video prior to turning it over in order to gain insights, reactions, and plan accordingly.

Here are two goals that video companies will be sure to capture when producing a settlement video for sexual harassment and abuse cases.

Speaking to the heart and soul

Every video should present your client's story in a way that speaks to the hearts and souls of the viewers. It is clear that when you put a face on your case your audience will automatically

characterize and understand who they are learning about, making your visuals much more powerful. Additionally, asking questions that get to the core of the damages is crucial in connecting with your audience and revealing the loss.

- *How has the abuse affected your faith and relationship at church?*
- *How have your dreams, goals and aspirations changed?*
- *How long since you've been in a long-term relationship, and why?*

Asking the right types of questions at the appropriate times, on camera can create a tremendous impact on your opponents and leave a bold impression.

Speaking to the story

In every settlement video there are conclusive facts told through the

witnesses, experts and plaintiffs, that establish key components of your story, and ultimately add value. Be sure to address important topics such as past goals, loss of earnings, trauma, emotional distress, and future concerns in order to stay on point, and keep the story focused on your client's damages claim.

Documentary filmmaker Vahe Garabedian is a founding partner at MotionLit Services. Mr. Garabedian received his Bachelor of Fine Arts major in Advertising at Art Center College of Design in Pasadena. He applies his knowledge and experience in catastrophic injury, products liability, and medical malpractice cases to help lawyers obtain the best outcomes. 