

PRAISE FOR *SHOW THE STORY*

Human beings are wired to absorb information through stories. Words alone are not enough. Visuals are the way we learn best. *Show the Story* provides an in-depth look at the strategy and psychology of presenting a case visually. Hundreds of images show you real cases and how to best communicate the story. It is a breakthrough book for today's attorneys.

—Lisa Blue, PhD, JD, forensic psychologist, named in the top 50 women lawyers by *National Law Journal*

If you ever questioned how to visually prepare your case, this book is the answer! In my years as a trial attorney and consultant, I have never seen a presentation that so brilliantly illustrates how to message the story of your case. The Bailey brothers lucidly demonstrate how visually communicating the story engenders the understanding necessary to be successful. A great read and reference.

—Gregory S. Cusimano, past president of the Alabama Association for Justice, Lifetime Achievement Award from the American Association for Justice

The lawyers who have used this visual format win and win big . . . an extremely authentic and original approach with a profound humanity and generosity of spirit.

—Joshua Karton, Communication Arts, Gerry Spence Trial Lawyers College, and California Western School of Law

The Bailey brothers are legal visionaries with a passion to help trial lawyers become better. This meticulous, fascinating work on the use of visuals to tell the story stands alone as the single best resource of its kind.

—Karen Koehler, *Best Lawyers in America* 2006–present, member of the American Board of Trial Advocates

This book has great insights into the art of visual storytelling. It teaches you how to transform your case from dry facts and a few exhibits to an engaging visual story that really comes to life. The Bailey brothers show you how to visually engage a jury and keep them engaged. A must read for every trial lawyer.

—Nancy La Vista, past president of the Palm Beach County Chapter of ABOTA

You've pioneered a radical way to look at our cases. This book shows not only how to make a winning visual story, but how to persuade through sequencing information properly. Your methods have helped us obtain millions in verdicts for our clients.

—Robert F. Linton, Jr., past president of the Cleveland Academy of Trial Attorneys, named an Ohio Super Lawyer 2007–2011

The Bailey brothers have written an encyclopedia of information about showing your clients story to the jury through visual presentations with clear instructions about how to do it correctly. It should be in every trial lawyer's library. It's a winner.

—Paul Luvera, past president of the Inner Circle of Advocates, member of the International Academy of Trial Lawyers

The Bailey brothers have made an invaluable contribution to the trial bar and those we serve. *Show the Story* is for those who aspire to be the very best.

—Tommy Malone, member of the International Society of Barristers, named in *Best Lawyers in America* 1989–present

A valuable roadmap that teaches us how to visually frame and sequence our trial and settlement presentations. The lessons of *Show the Story* will definitely enhance our likelihood of success.

—Mark Mandell, past president of the American Association for Justice

In this age when visual persuasion and storytelling are the hallmarks of successful litigation, William and Robert Bailey have captured the essence of the genre. This is a comprehensive and highly valuable book, rich with ideas, illustrations and superb content. It will benefit all trial lawyers, whether novice or experienced.

—Howard L. Nations, president of the National Trial Lawyers Association, Adjunct Law Professor at South Texas College of Law

If lawyers employ the sophisticated visual strategies presented in this book they will have a distinct advantage over those who do not. All will benefit greatly from this text. Bravo!

—Kathleen Flynn Peterson, fellow of the American College of Trial Lawyers, past president of the American Association for Justice

I highly recommend that practicing attorneys in the field of personal injury and wrongful death litigation read and use *Show the Story*. It explains how to use visual tools and techniques to tell the story of the case.

—Ron Rouda, Lifetime Achievement Award, American Board of Trial Advocates, 2011, and fellow of the International Academy of Trial Lawyers

This is one book that will be on my bookshelf and will be required reading for all lawyers in my firm. Accomplished trial lawyer William Bailey gives us all the tools we need to tell the visual story of the trial. Trial consultant Robert Bailey is the best visual trial storyteller in the country. Thank you for showing us the visual story.

—Paul Scoptur, co-chair of the National College of Advocacy Board of Trustees, Adjunct Professor of Law at Marquette University Law School

I love it! It is a classic. It will be bought by every real trial lawyer in the country. This is the Bible for using visuals in trial. Wow!

—Mike Wampold, Adjunct Professor at the University of Washington School of Law, National Institute of Trial Advocacy Instructor, 2003–present

Robert is a trial consultant with a film-director-like brilliance in presenting the story. William is one of those rare trial lawyers who understands how to use visual imagery to persuade. Together the Bailey brothers teach us how to transform our case into a winning visual story. Every trial lawyer needs this book!

—David A. Wenner, co-creator of the Jury Bias Model™

SHOW

THE STORY

The Power of Visual Advocacy

SHOW THE STORY

The Power of Visual Advocacy

by

William S. Bailey & Robert W. Bailey



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*I dedicate this book to my wife, Sylvia, who always has supported
me to follow my dreams, even when the going gets tough.*

—William S. Bailey

*For my lovely partner, Michaela.
Your love is a gift and I am forever grateful.*

—Robert W. Bailey

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The editors of *Trial* magazine have been my strong supporters and friends throughout the years. An article that appeared in *Trial* in August 1991, "Lessons From L.A. Law: Winning Through Cinematic Techniques" was the initial inspiration for doing this book; Professor Richard E. Mayer of the University of California at Santa Barbara, an authority on multimedia learning, was most generous with his time.

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ROBERT W. BAILEY

The idea for writing a book with my brother began a decade ago, but it wasn't until recent years that we actually began the work. I want to thank my brother, Bill Bailey, for all his hard work and dedication to making this book a reality. It required more to accomplish this dream than either one of us ever imagined and he gave it 100 percent.

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Finally, I want to acknowledge and thank Michaela McGivern. More than anyone, she knows what it took for me to write this book. I deeply appreciate all her editorial support, suggestions, and wise counsel.

AUTHORS' NOTE

This book includes illustrative examples drawn from actual cases. However, except where otherwise expressly stated, the names and certain other identifying details of all cases, litigants, witnesses, counsel, and other participants have been changed. For these reasons, any similarity between the fictionalized names, and other particulars in this book, and real individuals, companies, and cases is strictly coincidental.

PUBLISHER'S NOTE

This book is intended for practicing attorneys. This book does not offer legal or other professional advice and does not take the place of consultation with an attorney or other professional with appropriate expertise and experience.

Attorneys are strongly cautioned to evaluate the information, techniques, ideas, and opinions set forth in this book in light of their own research, experience, and judgment, to consult applicable rules, regulations, procedures, cases, and statutes (including those issued after the publication date of this book), and to make independent decisions about whether and how to apply such information, techniques, ideas, and opinions to a particular case.

Quotations from published works, cases, pleadings, discovery, and other sources are for illustrative purposes only and may not be suitable for use in litigation in any particular case.

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INTRODUCTION

This book provides a behind-the-scenes look at what it takes to become a visual storyteller. It explores the visual strategies used by successful writers, animators, and film directors and shows you how to apply similar techniques to create persuasive visual presentations for trial or settlement.

Hundreds of pictures reveal the step-by-step creative process. We analyze actual cases, displaying and explaining their visual constructions. You'll learn new ideas that will transform your cases into compelling visual stories that engage jurors, judges, insurance adjusters, and corporate decision makers. In short, this book provides a comprehensive picture of what it takes to become a visual advocate.

The contents are presented in four parts. Each part is self-contained and can be read independently.

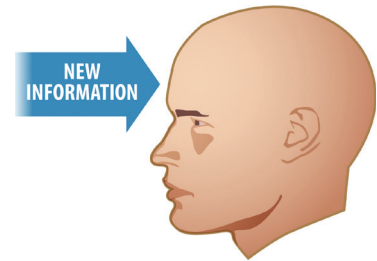
PART ONE: VISUAL LEARNING

The first part of the book surveys our visual world and explains how it has changed the communication techniques that you must use to be effective, both in and out of the courtroom. It explores the importance of using words and images to build multimedia messages that engage jurors, using the latest brain research from neurological science.

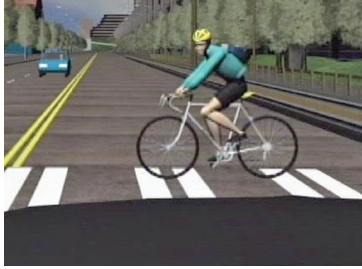
PART TWO: SHOW THE STORY

The second part contains practical information on how to show the story in opening statements and settlement presentations. It includes case profiles and easy-to-follow steps that reveal how to think like a film director, establish the story's settings, introduce the defendants, set up the conflict, show the standards,

The contents are presented in four parts. Each part is self-contained and can be read independently.



show the defendant's actions, build suspense, re-create climactic moments, and integrate the theme visually through the case. The strategies outlined in this section will enhance the visual presentation of any case.



PART THREE: VISUAL TOOLS AND TECHNIQUES

The third part discusses the use of specific visual tools including computer illustrations, animations, and video re-creations. We describe the process of creating better work-product through more successful partnerships with legal media consultants. We focus on actual cases, so you can apply the information to the cases you are handling.

PART FOUR: VISUAL FOUNDATION

The fourth part looks at the foundation, evidentiary, and ethical issues created by the use of modern-day visuals in the courtroom. We offer suggestions on how to get visual exhibits into evidence, as well as how to keep out those offered by your opponent.

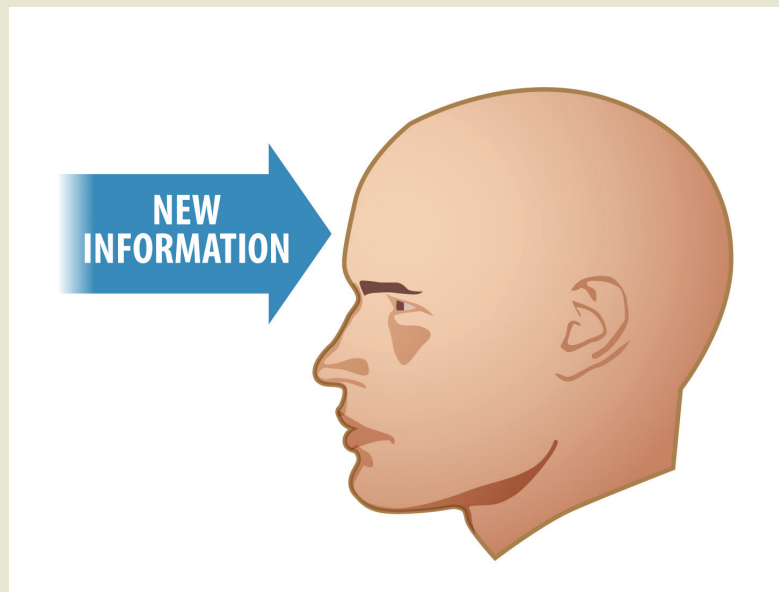
Individually and collectively, these parts cover a variety of techniques that modern trial attorneys need to master in order to become more effective visual communicators. Using the ideas and strategies presented will change how you prepare cases for trial or settlement.

APPENDICES

The defense communicates visually also. It is to your advantage to study your opponents' methods. The appendices briefly describe how the defense uses some of the techniques presented in this book. Using these appendices, you can begin to think visually about the defense's point of view and to anticipate what they may use against you.

PART
ONE

Visual Learning



1

OUR VISUAL WORLD

The digital revolution is far more significant than the invention of writing or even printing.

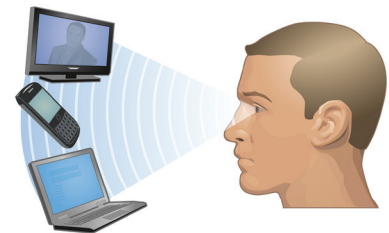
—Douglas Engelbart

In the twenty-first century, information must be visually interesting in order to effectively persuade an audience. Yet most lawyers lack the necessary training and experience to communicate visually.

PREDOMINANCE OF VISUAL IMAGERY

Communication in the modern world is shifting steadily toward a visual, nonverbal basis. People are much more visually sophisticated today than at any other time in history. We want and expect communication to include images; that's what fills the screens of our personal computers, televisions, and cell phones and dominates our popular culture.

Advertising and marketing bombard us every day, from the junk mail that comes to our houses, to computer solicitations that pop up on our screens, to commercials with glamour-filled



Modern Life is Visual



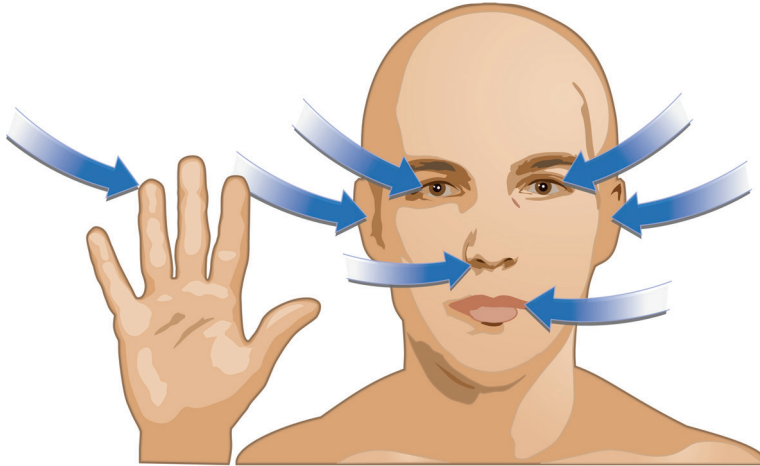
sequences of people and products on network television. The advertising industry spends billions of dollars each year in search of powerful symbolic images to stimulate and motivate us to buy things.

TELEVISION HAS FOREVER CHANGED COMMUNICATION

More than any other medium in modern life, television dominates our expectations on how information should be presented. Television requires that information be communicated in an informal, interesting, and compact form, with high entertainment and production values. Modern audiences have been conditioned by the fast pace and visual shorthand of television, resulting in shrinking attention spans and a demand that presenters get to the point quickly.



The average television news story lasts only about a minute and a half, with pictures flashing on the screen as the broadcast journalist narrates. Sound bites are in; long speeches are out.



Experience from senses

THE IMPORTANCE OF VISUALIZING LEGAL CASES

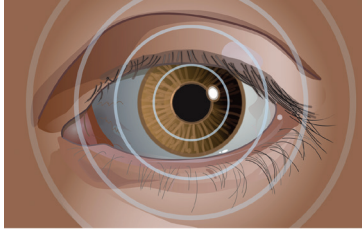
So how does all of this affect you when representing a client in the modern world?

Law is about not only critical thinking and problem solving but also effective communication. With so many competing points of view, if you can capture the attention and respect of a decision maker, you'll be the one who gets the best result for your client. Visual-communication strategies aren't just for the mass media; they offer many advantages to lawyers, too, including:

1. Showing things that language alone often cannot.
2. Increasing attention, comprehension, and retention.
3. Adding power, dramatic effect, and interest.
4. Shortening the time required to communicate.

THE PREDOMINANCE OF THE VISUAL

Our eyes are the windows into our brains, the pathways by which most new information arrives, allowing us to recognize patterns and make informed decisions. This is how we learn,



from the routine tasks of daily life to the most complicated new information. The information we get from our eyes is what we rely on most to make sense of the world.

Jurors have to quickly take in large quantities of new, unfamiliar information that lawyers in the case have spent years collecting. For this volume of new information to be understood and absorbed by the jury, a lawyer has to be an effective communicator. Saturation bombing of details will not work. How do good teachers educate their students? They write new information on the board or show it on a screen, so that it can be *seen*. They also draw analogies to what students already know. An effective lawyer has to be a good teacher, using the same techniques that work in the classroom. Alan Morrill recognized decades ago that jurors without visuals are likely to be clueless:

With anything more than a simple set of facts involving an intersection collision, it is probably safe to say that . . . [with] words alone, not one juror has a clear picture in his mind as to how the accident occurred.¹

BEYOND INFORMATION COLLECTING

Lawyers are proficient information collectors, using the rules of discovery to accumulate a large volume of documents and depositions filled with details. As the information piles up, it becomes harder and harder to know what to do with it. Where is the story buried within this mound of paper? Where are the themes that will be critical to the jury in sorting things out? Most lawyers find it difficult to create a compelling story out of the information they have collected. Yet that is exactly what the jury most wants and needs to hear and see—the story, not the details. As media advisor Roger Ailes once admonished President Ronald Reagan before a critical televised debate:

1. Alan E. Morrill, *Trial Diplomacy*, 2nd ed. (Chicago: Court Practice Institute, 1974).

You didn't get elected on details. You got elected on themes. Every time a question is asked, relate it to one of your themes.²

SALES RESISTANCE

Beyond the capacity of visuals to educate and inform, they bridge the persuasion gap between words and images. Jurors today are sophisticated, heavily filtering what they hear, knowing instinctively that you are advocating for a client's point of view. Words are the suspect agents of a sales pitch.

However, seeing is believing, and in that images are directed to our nonverbal subconscious minds, they are more resistant to juror skepticism than words. This is why modern advertising is much more focused on the images, with only minimal words.

JUDICIAL PERSPECTIVE: MAKE IT MORE VISUAL

While even experienced judges typically don't tell you how to try your cases, many of them are well informed on what jurors want. The judicial perspective on courtroom communication includes the need to make cases more visual, in the same way that teachers show things to make information come across better to a class. Without images to guide the message, many judges know that the traditional oral-advocacy approach is likely to lead to confusion, a view articulated by Judge Warren Wolfson of Chicago, Illinois:

[Often] the jury hasn't the slightest idea what the lawyer is talking about. Lawyers can't rely on words only. . . . Juries will retain best, and believe best, what they see and hear at the same time. Most lawyers just don't know how to do that.³

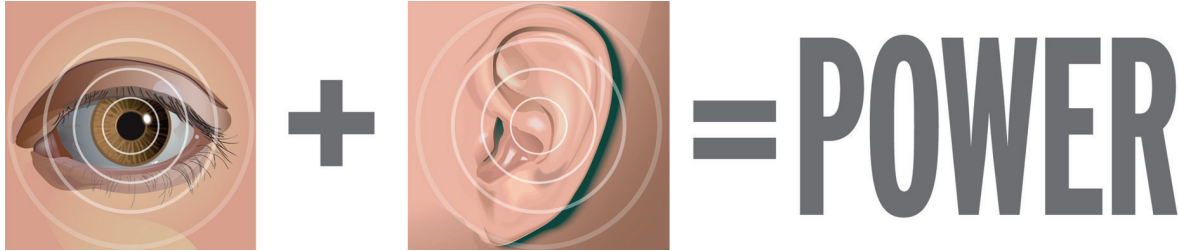


2. Roger Ailes, *You Are the Message* (Homewood, IL: Dow Jones-Irwin, 1988), 22.

3. "Interview with Judge Warren Wolfson, 'How to improve your courtroom performance,'" *Trial Diplomacy Journal*, Vol. 8, No. 3 (1985): 7.

VISUAL ADVOCACY—TWENTY-FIRST CENTURY PERSUASION

The multimedia approach of using words and images in communication is the modern way of persuasion. Visual advocacy puts the information of a legal case in the same visual-verbal format that judges and jurors are used to in the outside world.



Combining the traditional forms of oral advocacy with images results in a powerful, persuasive form of communication. Done correctly, visual advocacy can become the tipping point of any case, dramatically increasing audience attention and involvement. The ability to use visuals with skill and sophistication has become one of the emerging hallmarks of professionalism for attorneys. This book is dedicated to putting the tools of multimedia communication into your hands.