

# Demonstrative Evidence

Power Point Presentation

By Rachel Scott Decker

Ward Black Law

208 West Wendover Avenue

Greensboro, North Carolina 27401

**(336) 273-3812**

[www.wardblacklaw.com](http://www.wardblacklaw.com)

Written materials by Jonathan D. Sasser

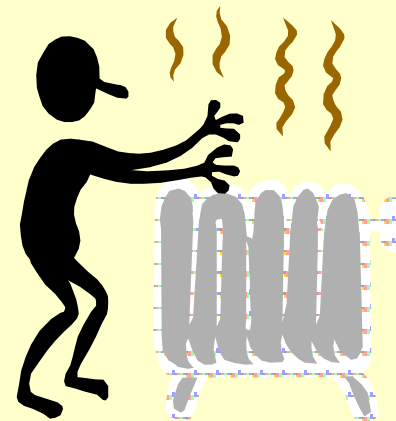
**“Since “seeing is believing,” and demonstrative evidence appeals directly to the senses of the trier of fact, it is today universally felt that this kind of evidence possesses an immediacy and reality which endow it with particularly persuasive effect.”**

**2 McCormick On Evidence § 214**

# **Real Evidence versus Demonstrative Evidence**

**Real evidence is that which is furnished by producing the thing itself for inspection instead of having it described by witnesses**

**For example, a defective heater in a products liability case**



**Demonstrative evidence  
helps to demonstrate a  
concept or a witness's  
testimony**

**For example, a drawing of a defective  
heater in a product's liability case**



# **Types of Demonstrative Evidence**

- **X-rays**
- **Medical Illustrations**
- **Day in the Life Videos**
- **Before and After Photographs**
- **Maps**
- **Video Demonstrations**

# **Practical Considerations**

- **Which exhibits have the greatest impact?**
- **How do you plan to use the exhibit? In examination? In argument?**
- **How can an expert witness help prepare the exhibit?**
- **Does this case warrant the financial costs associated with creating the exhibit?**
- **Who is going to prepare the exhibit?**
- **How is the exhibit going to get into evidence?**
- **Does the exhibit convey the intended message?**

# **Admissibility of Demonstrative Evidence**

**Rests in the trial court's discretion**



# **Generally admissible where:**

- **Sufficiently explains or illustrates relevant testimony**
- **Supplements the witness's spoken testimony and clarifies case issues**

# **Must establish that evidence is:**

- **Relevant**
- **Authenticated**
- **And where appropriate, an adequate foundation was laid for admissibility**



# Generally inadmissible where:

- Confuses the jury
- Raises collateral issues
- More prejudicial than probative



**Will Daubert v. Merrell Dow  
Pharmaceuticals, Inc., 509 U.S. 579 (1993)  
apply to the admissibility of demonstrative  
reenactment evidence used by my expert?**

**Maybe**

**Can I get the demonstrative reenactment evidence in under Federal Rule 703 which allows introduction into evidence of inadmissible data if relied upon by the expert?**

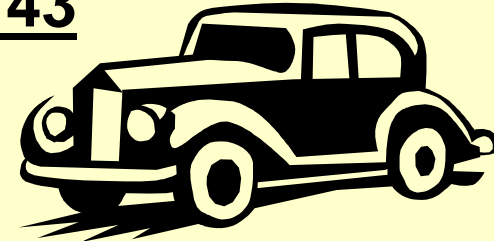
**Maybe**



# **Experts Use of Illustrative Demonstrative Evidence**

# Evidence is not required to possess a high degree of similarity with actual events

- Hinkle v. City of Clarksburg, 81 F.3d 416 (4<sup>th</sup> Cir. 1995)
- Gladhill v. General Motors Corp., 743 F.2d 1049 (4th Cir. 1984)
- Robinson v. Missouri Pacific Railroad Co., 16 F.3d 1083 (10th Cir. 1994)



# **What's the difference between reenactment and demonstrative evidence?**

**Experiments that are meant to recreate  
the incident constitute reenactment  
evidence while experiments that  
illustrate theories or scientific  
principles are illustrative**

# **Narrated Videos**

- **Raise hearsay problems**
- **Hearsay is not overcome by making the narrator or film person available for cross**
- **Video can be played without sound to overcome the objection**

**Samples of a substance to demonstrate condition, quality, or nature allowed if the sample:**

- **Is properly identified as to source**
- **Is in substantially the same condition as it was at the time the sample's condition became material to the issues**
- **Is fairly representative of the whole, where offered to show the condition of the substance as a whole**



# **Foundation Requirements**

- **Relevant and material**
- **It is what it purports to be**
- **In substantially the same condition as it was at time of incident**

# **Charts, drawings, and photos**

**Require a witness to lay a foundation that it is a substantially true, accurate, and faithful representation**

# Films and videos

## Require:

- a witness to lay a foundation that it depicts the events shown
- offering party to show that it is an accurate, faithful representation

# **Experiments and accident models**

**Require offering party to demonstrate that the experiment was conducted under conditions that were similar to those that existed at the time of the incident**



# Summaries of Voluminous Evidence (Rule 1006)

**Permits admission of only summary into evidence if:**

- Underlying documents are voluminous and not conveniently examinable in court
- Opposing party has had opportunity to examine the underlying documents
- The underlying documents would be admissible
- A witness familiar with information introduces the summary

# **Practical Considerations Regarding Questionable Exhibits**

- **Prepare different versions of the exhibit in anticipation of objections**
- **Move In Limine to address admissibility issues**
- **Preview the exhibits at the pretrial conference to flush out objections**
- **Use an expert to admit the exhibit**
- **Consider the use of a limiting instruction**