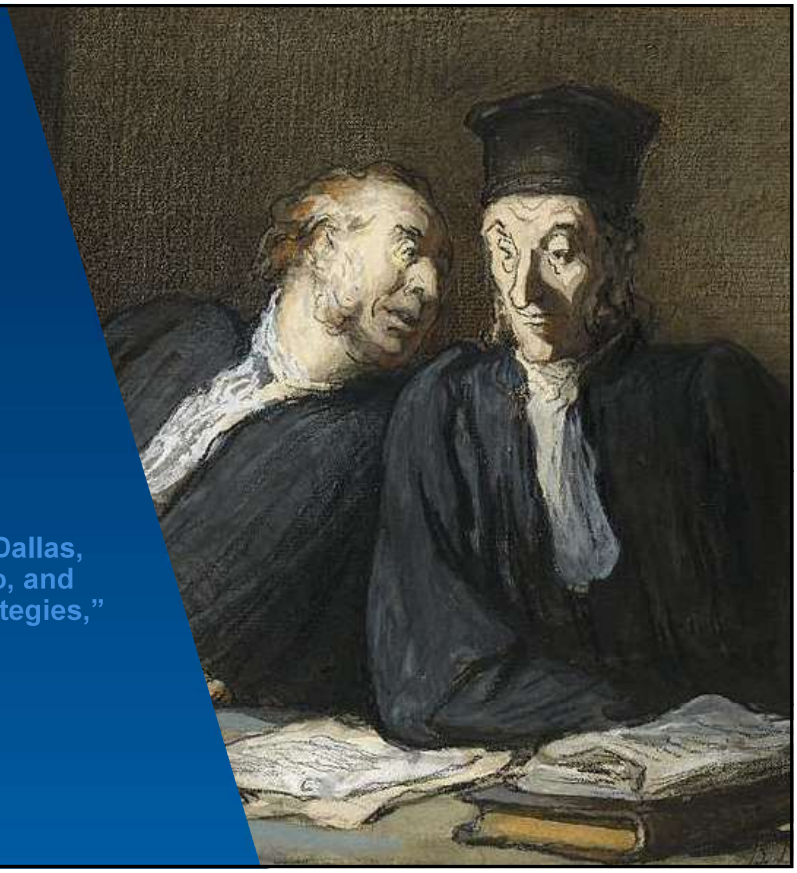
Preparing Demonstrative Evidence

Persuasion, Use of Technology, and Ethical Boundaries

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Based upon a Presentation by Stephen Malouf - Dallas, US District Judge Xavier Rodriguez - San Antonio, and Thomas Riney - Amarillo, at "Advanced Trial Strategies," presented by the State Bar of Texas.

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What we will cover

- Definitions – is it “evidence” or an “aid”?
- Types of Demonstrative Evidence
- Demonstrations and Simulations
- Themes and Scripts
- Story boards and
- Inexpensive Techniques
- Closing Argument
- Learning styles (domains)

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Definitions

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What is it? Demonstrative Evidence or Simply a Demonstrative Aid?

Although the phrases "demonstrative evidence" and "demonstrative aid" do not generally appear in the Rules of Evidence, an understanding of the distinction is, nevertheless, important.

Demonstrative Evidence is admitted into evidence and presented to the Jury;

Demonstrative aids are not usually admitted into evidence, and include items which assist understanding, including items which:

- summarize, explain, correlate and compare,
- but do not meet the tests of the exclusionary rules as they do not *prove* facts

"Props which counsel uses in trying his case." 2 Ray. Texas Law of Evidence §1465 (3rd Edition, 1980)

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Substantive or Demonstrative?

What is the Difference?

Two classes of Evidence: Substantive and Demonstrative

Substantive evidence consists of three types: testimonial, documentary, and real (e.g., the defective product, etc.).

For substantive evidence to be admissible, it must make a fact of consequence more or less probable than it would be without the evidence. *See* Fed. R. Evid. 401

Demonstrative evidence is defined by its purpose: to explain or illustrate substantive evidence. Unlike substantive evidence, demonstrative evidence does not make a fact more or less probable but is used to explain or to illustrate the substantive evidence admitted in the case.

- Handbook of Fed. Evid. § 401:2 (8th ed.)

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