

ATLADOCKET

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*How
to Conduct
Your First
Jury Trial*

Show the Brief by William S. Bailey

Review by Tim Watson, Jr., Esquire

It is a bold move to open a legal practice text with a discussion on the unknowable nature of Truth, but that is exactly how William S. Bailey introduces us to his book, *SHOW THE BRIEF*. With a reference to Akira Kurosawa's 1950 film, *Rashoman*, Mr. Bailey muses on the inevitability that different tellers will tell the same story differently, and places that observation squarely in the context of Federal Rule of Evidence 102, which defines "ascertaining the truth and securing a just determination" as the end goal of the entire legal process. In our attempts to tell our client's story to judges who are overwhelmed with words, Mr. Bailey suggests that images might play an important role.

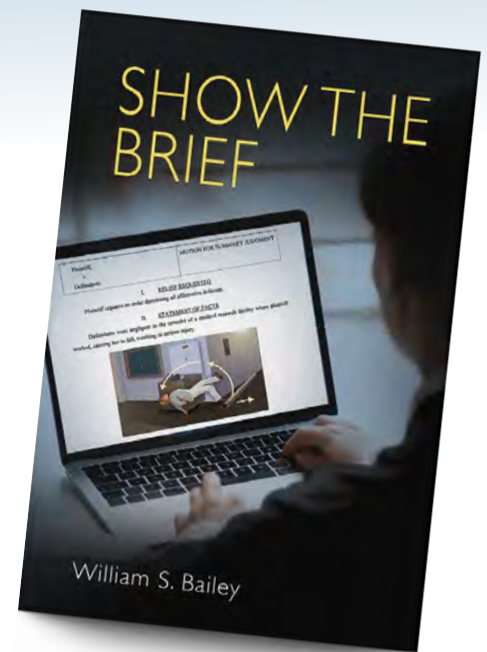
Motion practice has become more important than it used to be. The ability to teach and persuade a judge with our briefs is integral to effective advocacy for our clients. Bailey likens the modern attorney to Tevye from *Fiddler on the Roof* in the dogged insistence that our legal briefs must be produced in the same way they have always been produced ("Tradition!"). Never mind that judges are forced to read through stacks of these briefs, word after word, working diligently to create a mental image of the facts described and interpret the authors' varying arguments for the application of the law to those facts. For illustration, most of us include attachments that are referenced as an index to the back of the brief, which require the judge to flip back and forth in an attempt to create a comprehensive understanding. The result, argues Bailey, is a heightened risk of reader fatigue in getting even a basic understanding of the facts well before the judge attempts to apply the law.

Bailey suggests that adding visuals

to our briefs (and he means all briefs, from complaints to discovery motions to motions for summary judgment) is a much more effective tool to help the judge gain almost immediate orientation to the temporal, spatial and sensorial. True to its theme, *SHOW THE BRIEF* is full of visuals and illustrations that serve both as examples of the method for which Bailey is advocating, but also demonstrate the deeper lesson that Bailey seeks to offer; our minds are influenced by images in a way that they are not by words. Bailey cites scientific research (often) for his proposition that we tune in to information conveyed by images in a different way than information conveyed by words, and in some ways the response we have to images is a much more powerful tool for persuasion. Bailey challenges us to employ "the other half" of our reader's brains, not just as a teaching tool, but for the impact that simple, vivid images have in persuading our reader of the truth we are trying to convey.

For example, in a case involving the collision of a van with a bicyclist, a written description of the crosswalk, the location of the other drivers in relation to the parties, and the point of impact will be not only much longer, but will be fundamentally harder to understand than simply including one or two reconstructed aerial images. The benefit of an image is not just in the immediate way the judge can orient him or herself to the location of all involved and (with the use of arrows and short text) the direction of movement, but also in the impression that an image of a van colliding with a bicyclist will create in the mind of the reader.

Bailey does not just offer theory but gets extraordinarily specific in the nuts and bolts of how and where his



method might be employed. *SHOW THE BRIEF* is complete with an index of examples of briefs in which Mr. Bailey and other attorneys he has worked with employ illustration successfully, up to and including a complaint completely produced in the style of a comic book (an actual comic book, which voice and thought bubbles used to convey the basic facts and claims for relief).

The book offers a radical departure from traditional practice that, I have to assume, might not be for all practitioners. Regardless of any attorney's comfort level, *SHOW THE BRIEF* is both thorough and engaging, and (at least as legal practice texts go) is fun to read. I doubt that I will be drafting a comic book complaint any time soon, but I have already started reviewing my cases (and my judges) to see which ones might benefit from the inclusion of a well-placed image and I intend to rely on Mr. Bailey's book as a guide for that exploratory act. Ultimately, the better we can assist judges in "ascertaining the truth and securing a just determination", the better off our clients will be, and as Mr. Bailey argues, we should leave no stone unturned in that quest. •