

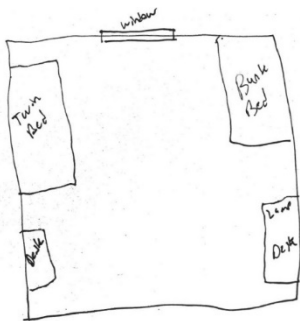
Bridging the Gap: Describing the Where – 8 Nov 2019

Judge Rob Shuck

Circuit Judge, 4th Judicial Circuit

Counsel: What did the barracks room look like at the time?

Witness: "I remember it had a bunk bed on the right hand side as you walked and a twin bed on the left. There was a desk on each side of the room. The desk on the right side had a lamp on it."



Crude drawing, but not to scale.



Photograph

A picture may speak a thousand words, but in my experience counsel are much more comfortable with only witnesses doing the speaking. You have the ability to transport factfinders to a scene with words, drawings, pictures, videos, etc. Sometimes the best evidence is not spoken. Especially when dealing with a physical location.

As a military judge, I have tried numerous judge alone and panel trials where the alleged crime scene was in a barracks room similar to the one picture above. Most of the time, witnesses are left to describe the room from memory. Other times, counsel have a witness make a quick (often barely legible) sketch while testifying. Rarely are photographs offered. Why is this the case? During "Bridging the Gap" sessions I resort to asking, "Has digital film become too expensive?"

Factfinders want to see where events happened in a case, but they are instructed by judges to not do so out their own. Yet, panel members remain hungry for this information. In one case, a court martial panel asked more than 20 questions about the precise locations of individuals around an alleged crime scene. All the panel members had to assist them at the time was testimony augmented by a drawing similar to my own masterpiece above. Worse, counsel placed that drawing several feet away against the opposite side of the courtroom.

Ask yourself whether testimony alone is the best manner to convey your information. Have the courage to get out of your comfort zone. Visit a scene (better still with the witness where he/she witnessed), take pictures, and lay the proper foundation. Finally, remember to publish this information in an effective manner.

Witness testimony may not be the most effective evidence. Think outside the witness stand. In doing so, you will likely ask fewer questions, but convey more information.