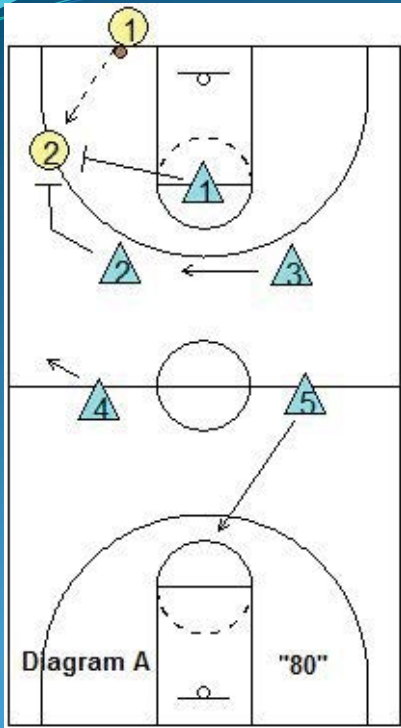




GETTING THE BALL TO THE GOAL

Using Demonstratives as
a Tool of Persuasion

Judge David R. Jones

36th Annual Jay L. Westbrook
Bankruptcy Conference
University of Texas
Advance Business
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Rule 8 – General Rules of Pleading

(a) **Claim for Relief.** A pleading that states a claim for relief must contain:

...

(2) a short and plain statement of the claim showing that the pleader is entitled to relief;

(d) **Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.**

(1) ***In General.*** Each allegation must be simple, concise, and direct. No technical form is required.

What is a Statement?

- Defined in Black's Dictionary as: “an allegation, a declaration of matters of fact. The term has come to be used [in] a variety of formal narratives of facts, required by law in various jurisdictions as the foundation of judicial or official proceedings and in a limited sense is a formal, exact, detailed presentation.”
- Fed. R. Evid. 801. “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

What is a Demonstrative?

- Defined Black's Dictionary: “Evidence addressed directly to the senses without intervention of testimony May include maps, diagrams, photographs, models, charts”
- Jones Definition: Something that provides context, makes your case more interesting and easier to understand.

Can you describe this in a paragraph?



Does it really matter?

- What if I told you in a pleading that a lender's collateral was a multi-story residential building . . .

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