I teach evidence, trial advocacy and civil procedure for my living. During semester breaks, I often walk from my house to the Winnebago County Courthouse to watch trials. It’s my version of a busman’s holiday. While it is a pleasure to see former students in action in the courtroom, it is also a check on whether what I am teaching remains relevant to real-world practice.

I ponder whether the customs of local practice are remembering the theoretical underpinnings of the law taught in law school.

The following are observations of where practice sometimes diverges from doctrine.

• Exhibits must be introduced into evidence before publication to the jury.

Often I see attorneys establish the foundation for an exhibit but not offer it into evidence until the end of trial. Exhibits should be admitted into evidence before a witness testifies about the exhibit or before it is published to the jury.

The purpose of offering an exhibit into evidence is for the judge to determine whether the jury may consider it. That is, has the proponent offered sufficient foundation for a reasonable jury to conclude the exhibit is what the proponent claims?

Only after that determination by the judge may the exhibit be shown to the jury. That also means that when the proponent is authenticating an exhibit, opposing counsel may object if the witness describes the exhibit or testifies about it before it is admitted into evidence.

• It is more persuasive to have a witness describe an exhibit before it is shown or handed to the witness.

When establishing the foundation for an exhibit, keep in mind the purpose is to both have it admitted and for the jury to believe it is what the proponent claims it to be. Therefore, the foundation for exhibits should be done with an eye on persuading the jury the exhibit is real or accurate.

It is more persuasive to show the jury that the witness remembers and can clearly describe the scene before the witness is handed a picture of it. It is more persuasive to have the witness describe the weapon used in an assault before showing the weapon to the witness. Who can’t describe what they are holding in their hand?

• An admitted exhibit may be used by the opposing side for any purpose.

Once admitted, an exhibit is part of the case and the opposing side may use it as they see fit. If the proponent has chosen to publish a portion of a written document, the opponent is not limited to the selected portion the proponent chose to publish. If the entire document is in evidence, the opponent is free to use any portion. They are not limited to the published portion.

If parts of the document are not relevant, contain inadmissible hearsay or the like, those portions should be redacted upon admission.

That avoids the awkward situation where the party who admitted a document into evidence later argues that portions of the document are inadmissible when the opposing party seeks to use them. Similarly, the admitted exhibit may be sent to the jury room in its entirety, not just the portion a party chose to publish.

• Admitting an exhibit into evidence means that the judge has decided the jury may consider it, not that the jury must accept the exhibit as authentic.

The admission into evidence of an exhibit does not mean the jury must accept that it is what the proponent claims. The foundation for an exhibit establishes that the judge has determined a reasonable jury could determine that exhibit is what its proponent has claimed.

The opponent remains free to argue to the jury that the exhibit should be disregarded.

For example, if the judge admits a text message finding sufficient foundation has been established, the opponent remains free to argue to the jury that while the message may have been sent from X’s phone, there is little to establish that X sent it, as opposed to someone else using X’s cellphone.

The admission of the text message is not a determination binding on the jury that it was sent by X. Instead, admission allows the jury to determine it was sent by X if they were convinced by the evidence and the attorneys.

On my busman’s holidays, I often observe attorneys going to great lengths to oppose the admission of an exhibit but not argue to the jury in closing that they should not consider it.

I will guess that the above practices stem from attorneys doing what they have seen others do. This leads to a question I often receive from my students: “The book says an exhibit can be published only after it has been admitted, but where I work they do it the other way — who is right?”

Of course, it is law school, and I can always answer, “What do you think?”

Though I do so with fingers crossed that the brightest will not follow up with, “So should I do what is right, or what everybody does?”

As tempted as I may be to say, “Do you want to end up with Ralph Kramer trying to drive your bus while on his holiday,” I accept generational differences and instead again reply, “What do you think?”