



Trial Technology – Presenting Evidence to Today’s Jury

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Trial Technology – Presenting Evidence to Today’s Jury.

Our theme is focused on effectively presenting evidence to the different generations of jurors that you may encounter.

We live in a world of media and information overload. Movies, news programs and the inundation of electronic information have forced all of us – jurors included – to develop ever shorter attention spans. But you as trial attorneys are also dealing with generational differences on how information is most effectively presented.

You need to be technology variant in your approach to address the differences in how these generational divergent groups receive and absorb the data you are teaching them. The jury pool has less and less Baby Boomers and more Generation Y and Generation X participants.

You have a blended jury, so you need blended technology.

Jurors across the board have become increasingly sophisticated in understanding the technological changes to visual media and expect visuals. Just as an example, my dad was 87-years old, watched ESPN with its snippets of game highlights, transitioning every few seconds, scrolling scoreboards, but still reads the daily newspaper. His newspaper is yesterday’s news, but he has been accustomed to receiving information in this format, so it is the most effective way to reach him.

Thinking about presentation in this way, you need to blend your technologies to make it simple, manageable and not so robotic. The use of foam boards interweaved with large screen presentations, animations and just plain paper keeps the jurors focus on you, the storyteller. You want to go visual early, but you will want to mix up the visuals through the different mediums. Perhaps in your opening, you use an 8 ½ X 11 photo that you are holding up to the jury as you speak. You could have had this up on a large screen or even blown up on a foam board, but by using the handheld photo, you are able to keep the eyes of all of the jurors on you, listening to every word you are saying. This gives you the opportunity to see if you are losing a juror right from the beginning.

The commonsense conclusion that demonstrative evidence makes a presentation memorable is supported by science. For example, McGraw-Hill published the **Weiss-McGrath study**, which was designed to evaluate information retention. The study compared retention of information presented in three different formats: (1) orally only, (2) visually only and (3) visually and orally. In simple terms, individuals presented with both visual and oral information retain the information much longer – three to six times longer. In a short trial, using the above statistics, after 72 hour hours, only 10% of the information is retained when presented orally only, 20% when presented visually only,

but 65% when presented both orally and visually. A picture is really worth a thousand words.

Let's talk now about how we are conditioned by the media, meaning the broadcast news; social media, such as Facebook, Twitter, LinkedIn and YouTube; and how we are connected 24/7/365 by our handheld devices, iPhones, Androids, iPads, Phablets, other tablets and now we have even ventured into the world of "Dick Tracey," with the iWatch.

TV commercials when I was young used to be 60 seconds long. Now, 15-second commercial spots are commonplace. The U.S mail, also known today as "snailmail," has given way to email, text messaging and tweets. Now we have Instagrams, short 15-second video clips that are uploaded and shared immediately via your mobile device. The public is being conditioned to receive data in high-impact video bites, sound bites, vingettes, clips.

The world is changing. The way information is received is changing. The immediacy of information, instantly displayed for consumption by the masses is becoming a norm amongst the younger generations. You need to be able to address this with your jury pool. The urgency to publish information immediately also carries with it its own problems. I am sure that we have all heard of someone who immediately texted or emailed something that they were sorry about because they did not take the time to think about the consequences. The electronic data has a footprint. It's not like the words coming out of your mouth that are not recorded somewhere. Take for instance the Richie Incognito situation with the Miami Dolphins. There were over 1100 text messages between the parties. Remember, once you put it out there, it never goes away.

Speed at a trial does not always play to your advantage, either. It is great to be able to have an exhibit brought up within seconds of the request, but you may want that exhibit to linger. You may want to have your top three exhibits on foam core boards sitting on easels in the courtroom on display during the trial so that the jury can glance at them during the testimony.

There has been trending towards what has become known as the "CSI Effect." Jurors are watching TV programs that are displaying forensic science solutions and they expect that you will provide them with the same visuals. Juries expect it.

Judges are more accepting of electronic presentation of data than ever before. The Federal Judicial Center's publication on electronic evidence display encourages the bench to use electronic evidence because of the amount of time it saves in trial. The FJC has promoted the idea that a judge will save 30% in trial time. That's an incredibly large amount of time for a judge to be able to save. If you think about a trial that is

scheduled to run for three weeks, the judge will cut the trial time by almost a full week. There is a movement towards the use of high-tech courtrooms.

Paperless? Unless you are forced into a courtroom where the Court will not allow physical documents to be used, such as photos, boards, paper – hard copy files – you should blend your mediums. There are times that paperless trials are absolutely the best way to go, in high volume document cases, where you are comparing one document to another, you are able to put the documents on the screen side by side. Due to the complexity and volume of documents, electronic presentation can best help the jury understand the issues and your position.

You need to look at your case early on and size up what it is that you need to present to your jury so that they will best understand your client's case, the points you want to make and how that is to be presented. By doing so, you are able to set in motion what steps will be necessary to take to develop your case for the jury's eyes. A great trial attorney once said to me, "Everything that goes on in the courtroom, from the way the attorneys are dressed, the organization of their desks, how prepared they are, how people from their respective law offices who enter the courtroom conduct themselves, how counsel interact with the Judge's staff, the Judge and how they carry themselves is all being viewed by the jury and becomes a part of their overall experience as a juror that they take into the deliberation room with them." The courtroom is a stage. You are the actor, the teacher, the storyteller. The audience is the jury or students in your classroom. The jurors look at the whole courtroom, not just the evidence being displayed. Silent Advocacy is part and parcel of your entire presentation.

Knowing the Judge, the Judge's Courtroom and Scoring Silent Advocacy Points. If you are going to use a trial presenter for your electronic evidence or if you are using someone from your office to display the electronic evidence at trial, there are a number of things that should be taken into consideration.

Using an outside trial presentation firm. Provide the trial presenter with the contact information for the assigned judge for your case. Have the trial presenter contact the judge's law clerk or court clerk to find out if the judge requires a demonstration of some of the trial presentation files, especially if the courthouse has a DEPS or EPS system (Digital Evidence Presentation System or Evidence Presentation System.) If the courthouse has such an evidence presentation system, they will want to be assured that the presenter knows how to use the system and that the presentation works with the courthouse's system. This is also a great time to score Silent Advocacy points. By meeting with the judge's law clerk or court clerk, you have an opportunity to become friendly and learn from them what the judge's likes and dislikes are. You also have the opportunity to score points with the judge's court reporter. Provide the court reporter with a digital copy of the depositions done in the case or a master word list of all of the

witnesses or particular words that may be used. The court reporter will then be able to take the testimony during your cross examination of the other side's expert without stopping for spellings, et cetera. By scoring points with the judge's staff, the jury sees that staff are accepting of you. This works to your benefit. You are projecting your Ethos. The acknowledgement of the court staff adds credence to your credibility, which rolls over to your client's benefit.

If your presenter is dressing the courtroom with monitors, sound system and other necessary equipment, it is best that the presenter speak to the judge's staff to find out if the judge has a preference for where the equipment is set up. You do not want the judge to come out on the bench, see the equipment in a place where he/she does not like or expect. This also carries over to the jury.

The high-tech courtroom rules can vary with each courthouse and with each judge in a particular courthouse. It is best to find out early. Some judges may or may not want you to exchange your digital files. If you have to exchange your digital files, be sure that your presenter only provides the files in their raw state, without markings or annotations. The only exception to this would be if the Court wants the documents to have an electronic exhibit stamp.

Presenting your electronic evidence to the jury.

Keep it simple. Do not overcrowd your screen. You will lose the jury.

Sometimes use multi-media to vary your presentation; sometimes use the physical exhibit, at other times combine these tools. Jurors are accustomed to media-rich sources and may often need different techniques to stay engaged.

Blend the technologies that are available to you. You may want to use an iPad in direct examination, presenting the documents you wish to present directly. You may want to have flash animation done of a particular accident scenario. There are many tips that can be discussed.

A Note of Caution - Be Careful in your presentation to not create what we call the "**David vs Goliath**" effect, where you look as if you are trying to overpower your opponent with the use of technology.

In conclusion, there are many avenues that you can take in your presentation. Each case is ad hoc as to what it needs. Some cases may require the use of 3D animations, some the use of 3D printing of parts so they jury can see how the parts interact with each other. Many times the use of flash animation will be used for demonstratives or clips of depositions with the scrolling text, otherwise known as a videosynch'd depositions. You may also want your witness to use an interactive Smartboard to

demonstrate in front of the jury their opinions, or on the other hand, you may want to use an interactive Smartboard to lock in the opinions of an adversary's expert.

I hope that the information provided gives you food for thought.

Thank you,

Tom Oakes