

Thought Leadership

Psychology, Technology, and the Art of Expert Witness Persuasion in the Internet Age

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Jurors are accustomed to receiving information through media-rich sources, and as a result, jurors often require multimedia communications to stay engaged. Jurors, like all of us, are also influenced by psychological factors. Therefore, today more than ever, lawyers and expert witnesses should do more than simply present their evidence. To be persuasive, lawyers and expert witnesses should (1) understand the psychology of juries and (2) effectively use technology to communicate their intended message to juries.

INTRODUCTION

Jurors' increasingly sophisticated use of technology in their everyday lives affects their approach to a trial, and particularly to a complex trial, in many ways. For example, most jurors today prefer visual versus oral modes of communication and learning; they want to hear memorable sound bites. And, they want to be entertained as they are by the stimulus-rich websites they frequent and the video games at which they point their Wii controllers.

Jurors' tolerance for dry verbiage is low, and as such, a trial can be a tedious proposition for them. Their need for quick-moving, multicolor, multidimensional pictures and models is high. Jurors prefer expediency over depth of presentation, and they need drama and emotion to stay engaged.

Jurors already know about technology. Lawyers (and sometimes experts), on the other hand, may have some catching up to do. Trained in an oral tradition that is slow to change, resistance to using demonstratives or any type of multimedia is also often based on fears that they will lose control over their presentations and the courtroom.¹

Many seasoned senior lawyers are not technologically savvy. Therefore, the use of presentation technology means relying on someone else to develop and/or to display an opening or closing statement.

Attorneys frequently refer to graphics and technology as “bells and whistles” or “laser light shows.” These references reveal a misunderstanding of both the audience and of what makes an effective presentation.

However, the resistance to using technology often runs deeper—it is based on a bit of snobbery, if the truth be told. Law school creates attorneys who live in a world of analysis, procedures, and tradition, whereas jurors live in a world of emotion, motives, and instantaneous communication.

Experts, on the other hand, are often more tech-savvy. This is because they are often scientists, and they have had to grapple with various forms of technology in their respective fields. Forensic experts, engineers, and epidemiologists, for example, have had to work with various databases, modeling systems, and computer programs regularly in their work.

However, experts may have blocks to effective courtroom persuasion due to a resistance to use “shortcuts” in their explanations. The “devil is in the details” with regard to their analysis, and thoroughness is typically the name of the game in expert testimony. Many experts also want to talk to jurors with that level of detail and have trouble “cutting to the chase” when it comes to providing their opinions.



As a result, expert testimony may be boring or tedious, and it may test the patience of even the most interested juror. Jurors have expectations for experts that are rarely met: Will you explain to me how this happened in a way that I can understand it? Can you show me the diagram that will illuminate the realities of the case?

Experts often feel bound by the oral tradition and tend to use jargon and detailed explanations to try to persuade jurors to their perspective—only to be “cancelled out” by the opinion of the other side’s expert. Many experts have yet to master the art of getting to the bottom line—particularly by using tutorials, strategic graphics, and simple visuals to persuade the jury.

Lawyers, experts, and the courts have failed to adjust their courtroom teaching techniques to match the population of jurors who enter the courtroom. We would be remiss, however, if we didn’t also acknowledge and, indeed, highlight that these jurors, sophisticated in technology or not, get in their own way psychologically when they learn.

Like all human beings, jurors’ experience psychological barriers that are not decreased by their tech-savvy, but in fact, may be increased. These human “mental handcuffs” prevent them from listening to, understanding, encoding, and remembering evidence and argument without bias. Therefore, complex cases present a challenge to the expert witnesses who work in the traditional arena of the courtroom.

The more complex the matter, the more difficulty jurors have in navigating the courtroom environment. The purpose of this discussion is to elucidate the psychology of jurors at the intersection of:

1. the “instant information age” in which they live and

2. the legal world in which they will live as jurors, particularly in complex matters.

What can experts do to make the complex cases more navigable?

The New Courtroom: A Note about Social Media and Jurors

As noted above, jurors (and the majority of Americans) function in an electronic world that involves phones, computers, and other technologies that provide them with a vast informational arsenal at their fingertips. One of the biggest struggles for jurors is letting go of their own ability to stay connected with the world: no tweeting, no googling, and no facebooking for these folks.

There is no generational issue here: older cohorts are using the Internet almost as much as their younger counterparts. A 2010 study by the Pew Research Center found that while 95 percent of the population aged 18-29 were Internet users, 78 percent of those 50-64 years of age also used the Internet—and 42 percent of those over 65 were online!

Jurors are obtaining vast amounts of information from websites such as Wikipedia, and many of them are doing these things from a hand-held device—a cell phone, Blackberry, or iPhone. Jurors of today do all of these things on a daily basis. Jurors don’t expect to stop when they enter the courtroom. And, they really don’t understand the rationale for these constraints—after all, what is the court (plaintiff, defendant, expert) trying to hide?

The Psychology of Decision Making in the Internet Age

The reality is that the fragility of the prefrontal cortex (the front of the brain—the thinking part) means that jurors have to be extremely vigilant about paying attention to (or more correctly not paying attention to) unnecessary information.² Various psychological effects—for example the anchoring effect—demonstrate how a single additional fact can systematically distort the reasoning process.

An anchor is a number, often objectively irrelevant, that affects evaluations of another number or numbers. Instead of focusing on the important variable—how much a sale item is really worth, we get distracted by some meaningless number—for example, the original price. And, as a result, we spend too much money.

It is, therefore, important that the anchor number is one that sticks, or that we at least acknowledge as

the point of reference if offering an alternate number. These kinds of psychological orientations are important to know and understand in order to deal with all the “noise” that is present in any decision-making process.

Importantly, this cortical flaw has been exacerbated by modernity.³ As noted above, we live in a culture that’s awash in information; it’s the age of Google, cable news, and online encyclopedias. Jurors, like everyone else, get anxious whenever they are cut off from all this knowledge, as if it’s impossible for anyone to make a decision without a search engine.

But, this abundance comes with some hidden costs. The main problem is that the human brain wasn’t designed to deal with such a surfeit of data.

As a result, we are constantly exceeding the capacity of our prefrontal cortex, feeding it more facts and figures than it can handle. It’s like trying to run a new computer program on an old machine; the antique microchips try to keep up, but eventually they fizzle out.

What Are the Limitations to This Ability to Think About and Use Technology?

Are jurors prepared for highly technical trials? Does a high level of technical sophistication translate to greater ease in understanding complex information? As noted above, not necessarily. What this technical edge often means is that jurors require a certain amount of visual or technological sophistication on the part of the presenter for them to pay attention to and/or retain information.

In addition, the more complex the trial, the more sophisticated graphics and technology will assist in this attention, retention, and understanding. And it will, importantly, create reference points or anchors that will simplify the process for the tired cortex.

There has been much written about the desire of many in the legal profession to remove jurors as fact-finders and to substitute bench trials and special masters in their place. On the flip side, much has also been written to support that it is the communication process that is lacking—in other words, the teachers who fail to teach the students about what is important in the trial.

This latter perspective appeals in part because there is something so basic, so fundamental in our jurisprudence that ordinary people have the power to make decisions—decisions not only about criminal matters of life and death, but also about complex business or intellectual property cases that have

similar themes of truth or falsehood, right or wrong, trespass or no trespass.

We agree with the premise that a jury is exactly the right sort of group to make such decisions. However, we assume that to appeal to the “ordinary man/woman,” it is necessary to take extraordinary (and that means visual and technical) means to communicate what is essential, what is memorable, and what is crucial to understand, in order for the jury to favorably decide the case.

PSYCHOLOGY OF JURIES

What Is Involved in Communicating Effectively to a Jury?

Help Jurors to Comprehend the Information

Well before jurors can make a decision about a case, they need to understand what the case is about and the major issues that divide the litigants. Jurors are often fearful of complex cases. This is because they know nothing about the subject matter in dispute (in fact, if they had such knowledge during the jury selection process, they would most likely have been struck).

And jurors often believe they would not be qualified to sit on a jury panel for a complex or highly technical trial. This is because they lack the necessary education and background to be able to understand the new material.

Educators know that complex information must be broken down and made meaningful to students. That way, the students are able to understand the new material.

A large-scale concept can be broken into smaller, digestible pieces for jurors to learn one at a time. However, it’s important to keep in mind that jurors do not need to be given every-minute detail in order to understand a more global concept.

Jurors expect that the experts have spent days parsing through the details. And, jurors typically want to see the end results that point to what really happened.

Help Jurors Retain the Information

Remember cramming for an exam in college or law school? You probably used techniques similar to those that jurors use to retain information at trial. Did you rehearse definitions over and over again? Did you use acronyms? Did you make meaning out of the information so that you would retain it?

Information retention requires jurors to have cognitively encoded information they obtain during the trial, store the information, and be able to retrieve it later. Information that has been made meaningful and salient during trial is easily encoded, stored, and retrieved later.

Further, at trial, the expert witness's job is to effectively use memory cues such as repetition and concepts such as primacy and recency so that jurors remember the meaningful message days or weeks later during deliberations.

Help Jurors Hear the “Expert Story” Within the Story

The unique perspective from which jurors will view a case requires that the expert provide them with an understandable framework to organize the evidence that they will hear. Jury research bears out the old adage passed on from senior counsel to junior counsel that the most common framework used by jurors, and by most people in the world hearing new information, is a story.

An expert witness should fit his or her themes within the case themes. The expert should support the main story and offer the foundation for the claims that are being made or being countered. Themes are not basic timeliness or chronologies, although these structures are infinitely helpful to jurors in understanding the events in the case. Themes are the means by which jurors will determine the facts and assess the motivations of the characters in the story—the way that they will decide “what really happened.”

Help Jurors Fill in the Gaps

If jurors have questions about the case, they will fill in the answers with their own stories or experiences. Jurors often are very concerned about the motives of the players in a lawsuit. If jurors aren't told why people did the things they did, they will come up with their own theories or motives that fit the story they believe is true.

Jurors will evaluate the evidence and will fit the evidence into the story—not the other way around. They often fall prey to conspiracy theories or stories that involve betrayal and deceit. By using themes and strategic graphics to provide a framework for the evidence, expert witnesses show jurors how the evidence should be interpreted and the way in which it makes the most sense.

What Are the Psychological Barriers to Communicating with Jurors?

Jurors have a number of specific cognitive biases that challenge their abilities to remain fair and

impartial, even if the attorney helps them comprehend, retain, and create a reasonable story (without gaps).

It is well known that the more complex the information, the more jurors will rely on:

1. the superficial characteristics of the witnesses (attractiveness, clothing, demeanor, delivery) and
2. the simple and easily digestible themes of the case.

There are many cognitive processes that have been studied that prevent jurors from hearing the expert's story. We will review a few that are particularly relevant to trial work. We will first consider one type of psychological block or “mental handcuffs”—heuristics.

Psychologists have learned that human beings rely on mental shortcuts, known in the field as “heuristics,” to make complex decisions. Reliance on these heuristics facilitates good judgment much of the time, and helps people deal with what would often be overwhelming amounts of information. But, heuristics can also produce systematic errors in judgment.

Just as certain patterns of visual stimuli can fool people's eyesight—leading them to see things that are not really there—certain fact patterns can fool people's judgment, leading them to believe things that are not really true. Reliance on heuristics can sometimes create cognitive illusions that produce erroneous judgments.

Several of the most important heuristics are as follows:

1. Hindsight bias—People overstate their own ability to predict events that occurred in the past and believe that others should have been able to predict past events better than was possible. Psychologists call this tendency for people to overestimate the predictability of past events “hindsight bias.”

It occurs because learning an outcome causes people to update their beliefs about the world. People then rely on these new beliefs to generate estimates of what was predictable, but they ignore the change in their beliefs that resulted from learning the outcome. Few judgments in ordinary life require people to assess the predictability of past outcomes, but such judgments are pervasive in the law.

This bias frequently operates against defendants because jurors tend to overestimate the likelihood that bad outcomes

could have been foreseen (the defendant being blamed for the bad outcome).

However, hindsight bias can also work against plaintiffs in situations where jurors believe that contributory negligence is a consideration in the plaintiff's injury.

2. **Anchoring**—As mentioned earlier, when people make numerical estimates (e.g., the market value of a house), they commonly rely on the initial value available to them (e.g., the list price). That initial value tends to “anchor” their final estimates.

In many situations, reliance on an anchor is reasonable because many anchors convey relevant information about the actual value of an item. The problem, however, is that anchors that do not provide any information about the actual value of an item also influence judgment.

Anchors affect judgment by changing the standard of reference that people use when making numeric judgments. Even when people conclude that an anchor provides no useful information, mentally testing the validity of the anchor causes people to adjust their estimates upward or downward toward that anchor.

As a consequence, even extreme, wholly absurd anchors can affect judgment.

Other psychological concepts relate to the “instantaneous nature” of what is communicated to us. These psychological concepts have been described in recent articles and books. We start with the idea of thin slicing,⁴ which is defined as “a critical part of rapid cognition” that “refers to the ability of our unconscious to find patterns in situations and behavior based on very narrow slices of experience.”

Next, we discuss “embodied cognition,” which is the notion that the brain circuits responsible for abstract thinking are closely tied to those circuits that analyze and process sensory experiences—and its role in how we think and feel about our world.

These processes will relate specifically to the importance of capturing jurors' attention, and indeed, their emotions from the beginning of trial.

Thin-Slicing

Jurors often make snap judgments and initial decisions. Time is short, they are used to sound bites, and they have little patience to integrate the evidence. Indeed, while there are certain psychological processes that may have been a part of our decision-

making all along, the everyday use of “fingertip information” and the exposure to intense visuals (such as in video games, on television and movies), suggest that these psychological processes are even more important today than in the past.

Malcolm Gladwell describes people in a vast array of circumstances who “just knew” something without being able to explain how they knew it. Gladwell describes (1) a long-time top tennis coach who could predict with almost 100 percent accuracy whether a tennis player would double-fault when serving, (2) a psychologist who could predict with 95 percent accuracy whether a couple would still be married after 15 years by watching them converse on a topic important to their marriage for just one hour, and (3) the many art experts who warned the J. Paul Getty Museum in California that a sculpture the museum had spent millions to purchase was a fake, without being able to provide anything more than their gut reactions as the reason for their respective conclusions.

The importance of these stories “lies with the psychology underlying the manner in which the people made these so-called ‘snap’ decisions.”⁵

While “snap” decisions may appear to be made instantaneously, researchers believe that they are based on an unconscious ability to perceive patterns and behavior based on past experiences and to act on those perceptions long before our conscious state is aware of the pattern. Importantly, these patterns can be created and prompted in research subjects.

In one such experiment, students were asked to create a grammatical four-word sentence out of five-word sets. The sets were peppered with words such as “old,” “worried,” “Florida,” “people,” “gray,” “bingo,” and “wrinkle.” At the end of the test, observers noted that the students took longer to walk down the corridor leading from the test room than they had taken when walking to the test room.

Without consciously knowing that they were being primed to think about being old, the students' adaptive unconscious picked up on a pattern carried through the word sets and unconsciously began thinking about the “state of being old,” such that after the test, the students began acting old by walking more slowly than they had before taking the test.

Priming experiments demonstrate that people perceive words, images, and actions, and based on these perceptions, they reach conclusions that affect their behavior without being consciously aware that the process is happening.

Embodied Cognition

Researchers are also studying a relatively new concept called “embodied cognition.” We used to think of our

thoughts and our behaviors as independent processes that required conscious control and effort for one to influence the other. For example, most smokers are aware of the health risks of smoking, but smoking cessation requires more than this knowledge.

“Embodied cognition” refers to the idea that there may be an automatic or unconscious link between our cognitions and our behavior. Barbara Isanski and Catherine West⁶ describe several groundbreaking studies that have found evidence of an automatic, reciprocal relationship between our cognitions and our behaviors.

For example, in a study of the relationship between temperature and social relationships, participants were asked either to remember a time when they felt socially rejected or to remember a time when they felt socially included. Following this task, all participants were asked to describe the temperature in the room. The study’s results showed that participants who were primed with (in other words, prompted to think about) social exclusion described the room as colder than participants who were primed with social inclusion.

This study provided evidence for the automatic influence of our thoughts about social relationships on our physical perceptions of temperature.⁷

In a different study, researchers found that our felt emotions can be automatically influenced by the emotions we perceive in other people. Participants viewed photographs of ambiguous facial expressions labeled as either “happy” or “angry.” Later, these participants were asked to identify the photos while experimenters were analyzing their facial movements.

The participants who identified an ambiguous facial expression as “angry” showed more facial signs of anger than those who identified the same expression as “happy.”⁸ These empirical studies support two conclusions: (1) humans process information automatically, and (2) the valence of our initial thoughts influences our subsequent behaviors even without our awareness.

What About Psychological Blocks Set up by the Legal System?

Our legal system is based on assumptions about human decision making, some of which have been demonstrated to be invalid. For example, the legal system assumes that jurors can disregard inadmissible information when instructed to do so, even though this is psychologically impossible. Indeed, the fact that such information gets pointed out for special attention has been shown to actually increase its impact on juror decision making in some circumstances.

A partial listing of aspects of the legal system, varying wildly from place to place, that makes jurors’ jobs difficult (some of which are being addressed in some jurisdictions) include the following:

- Not being told the applicable law until near the end of the process
- Not being able to read a written copy of the applicable law
- Not being given legal instructions in words that have meaning for laypeople
- Not being able to ask questions
- Not being able to take notes
- Verdict questions that are sometimes constructed with no thought as to the difficulty they might pose to laypeople
- Distinguishing between questions and statements of attorneys as nonevidence versus witness’s answers, admitted exhibits, and other stipulations that are evidence

Simply put, being a juror is a difficult job. Moreover, the rules of the task (while created for sound legal reasons) frequently add to its difficulty. Indeed, our interviews with actual jurors post-trial show that they have often been confused about some of the most basic principles, (e.g., that the answers given from the witness stand are evidence). We have asked jurors what they made of testimony and whether it was important to their decision, only to hear, “They were just saying that.” For such jurors, if there is not written material backing up the testimony, it does not count as evidence, even though those verbal answers are at the heart of what constitutes evidence.

Do Complex Cases Involve More “Mental Handcuffs”?

Complex cases pose more challenges to jurors in terms of comprehension and retention of the material. Depending on the case, complex cases may prompt more mental handcuffs. In many complex cases, the jury must learn three different languages:

1. Language dealing with the law in general (nature of evidence for example, standard of proof)
2. Language that describes the type of case (medical terminology, patent terminology, antitrust terminology, securities terminology)
3. Language dealing with the specifics of the subject matter (a particular medical procedure, such as a kidney stent in a medical malpractice case, a sunglass holder design in the case of a patent trial, a design of light fixtures in an antitrust case, etc.)

And, there may be additional complications to the psychological biases in complex cases. For example, in a trade secret case when an employee of one company has moved to another company, and that company is accused of producing products utilizing trade secrets, it is very difficult for jurors to believe that information wasn't stolen from the original company and used at the new company.

Jurors are primed for conspiracies and will be suspicious of the employee's motives. In other words, because of the complexity of the case, the jurors use their own "gut reactions" (which in some cases can be "thin-slicing") to make decisions about what has happened. And, jurors often ignore the lack of proof of stealing intellectual property required by law.

Other "handcuffs" may also take over. Take hindsight logic for example. In a case involving shareholders who are suing because the value of their stock has declined after they have invested in a company, hindsight can be helpful, but for the defendant it is deadly.

Jurors struggle to understand the defense case involving the various market forces that can affect the stock price. Despite some understanding of the volatility of the market, they revert to hindsight logic—if the stock price dropped (the bad event happened), then someone most likely would have been able to predict the loss of value (the seller who knew the company).

Facts that support that the seller "knew" something (e.g., the sale was rushed, the Prospectus was flawed, bad press was out), lead the jurors to believe that the loss in value was expected. This is "Monday morning quarterbacking" at its best.

And, in complex cases, there may be complicated legal "handcuffs." For example, in a patent case, jurors are told that they should only compare the "claims" at issue with the alleged infringing part or product. It is only natural that they want to compare the patented "product" with the infringing product.

However, depending on the case, the judge may or may not allow pictures or models of the patented invention to be compared to the infringing invention. This is because it is not the legal question at hand. It is also because such pictures may prejudice one party or the other if the comparison becomes "Does it look the same?" rather than comparing the claim language to the alleged infringing item.

While this procedure makes sense in legal terms, it does not make sense to jurors. It is just one more reason that jurors have to tune out during a trial.

HOW GRAPHICS AND TECHNOLOGY HELP

How Are Graphics Likely to Affect Cognitions?

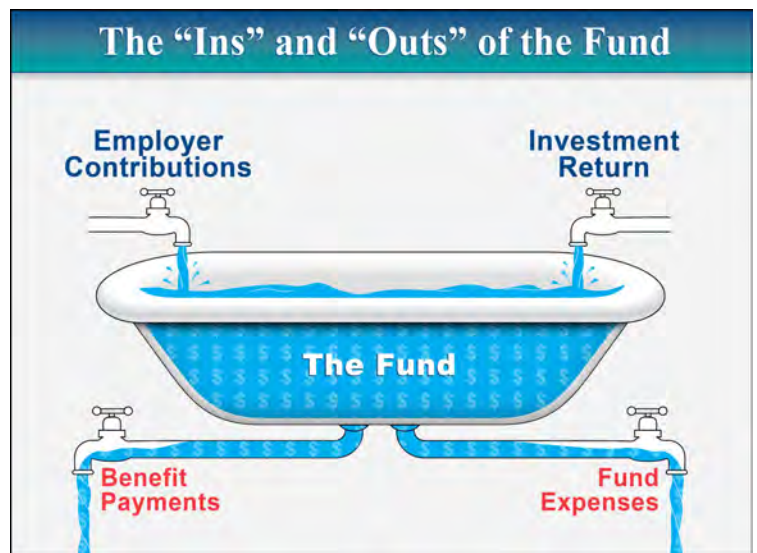
The reality is that well-developed graphics can help avoid the kinds of psychological biases and barriers that prevent comprehension and retention. They can even lead to "snap" decisions and the thin-slicing and emotional connection that is positive for the case.

In post-trial interviews, actual jurors have reported that effective trial attorneys showed a sincere interest in educating the jury through their streamlined use of various modes of courtroom graphics and other visual aids. Below is an example of such a visual aid.

For all types of cases, simple but straightforward graphics (including thematic illustrations, photos, animations, diagrams and charts) assist in educating jurors through visual modes of communication.

The choice of "medium" or type of technology is important in this process. Technology (which includes both hardware and software decisions involving creation and display of materials) may include a software presentation system like Trial Director, a large screen, individual monitors, types of animation, and so on.

Once the attorney has found the core of his or her case, it is important to determine how best to convey it so that it is meaningful to the jury. For example, would a 2-D animation convey the timeline in such a way that jurors could understand both (1) the length of time over which the transactions



Developed by DecisionQuest.

took place and (2) the changing story of the executive (conveyed in video links)?

Is it possible to find a way to show jurors how the banks involved in a fraud have boards of directors that overlap, for example, through a players' chart that uses pictures and titles? The attorney should select the medium that will best deliver the message.

What Are More Specific Ways that Graphics and Technology Can Help an Expert in the Courtroom?

Graphics Reduce Boredom and Increase Interest

At a very basic level, graphics engage jurors and keep them interested in the material. If jurors are “zoning out” (as they often do), using a visual will prompt them to pay attention to the testimony. A visual can improve jurors' retention of the information. Attention equals a greater chance that jurors will remember the expert testimony. Graphics can punctuate key points or liven up a dry damages spreadsheet.

Displaying a series of supporting documents helps to establish an expert's case, but more illustrative graphics can be dispersed throughout to break up the tedium. Graphic representations of the case themes are especially important in complex matters where jurors will be relying on the expert not only to educate them but to entertain them as well.

Graphics Can Make the Theme Simple and Easy to Understand

Charts and diagrams are very useful for relaying the case themes to jurors. For example, in insurance cases, companies are often accused of bad faith.

Based on research and experience in bad faith cases, jurors' notions that insurance companies collect premiums but avoid paying claims can be anticipated, and a chart can be created that shows the number of times claims adjusters corresponded with the plaintiff and even made settlement offers to the plaintiff and the number of times the plaintiff rejected the offers.

This type of chart underscores the theme that the insurance company acted in good faith and allows jurors to consider that the plaintiff was motivated by greed.

Interactive Graphics Can Facilitate Juror Comprehension

A simple checklist that is read to jurors as checkmarks are placed in the boxes next to each item,

one at a time, can send a powerful message to jurors about what the opposing side failed to do or what the client did correctly.

This strategy worked well in an antitrust case involving major league soccer. The defense expert got up off the witness stand and proceeded to make checkmarks indicating all the leagues in which the MLS players had the option of playing. Jurors later told the Associated Press that “they were impressed by the testimony of former deputy commissioner Sunil Gulati, who compiled a chart noting that, “MLS players had come from and gone to professional leagues in dozens of other countries.”

When jurors (1) are able to understand the themes of the case from the expert's perspective and (2) have a clear sense of what the expert is trying to tell them, they are more likely to remember the expert's main arguments.

Seeing Is Believing—and Remembering

Jurors will remember the expert's theme if it is presented to them both orally and visually. Mock jurors are always reporting that they want to see the evidence for themselves. They want to see the e-mails, memos, phone logs, files, and so forth. They want the expert to graphically and visually explain the issues to them.

As it is often said, “A picture is worth a thousand words.” Any time the expert witness can present information visually for jurors, they are more likely and better able to encode and store that information and then retrieve it later when it is most critical—during deliberations.

Graphics and Technology Help Jurors to Hear the Expert's Story

Jurors crave information that will support their view of the case developed during opening arguments. They want to know who was involved, what they did, and why they did it. They want to see the actual diagrams of the properties in question, the examples of the patented invention, and the flow of money during the securities sale.

What was known when? What did it look like when the inventor came up with the idea? Various graphics (timelines, witness lists, tutorials) will help tell the story to win the case.

Graphics and Technology Allow Jurors to Thin-Slice More Easily

Jurors are already coming up with their own snap judgments of the case based on their experience. Therefore, why not show them a picture of the movement of money from one bank to another

in a fraud case? Why not show them the lab and notebook in which the inventor came up with the idea for the widget and provide a tutorial on what the patent is supposed to do? Why not help them to see the pattern of changes in pricing for each company as they accomplished their agreed upon price increases in a price-fixing case? Why not show jurors that the time the workers have spent on the line is paid time in a class-action employment case? Why not help jurors to see and feel the pace of Wall Street trading in a white-collar crime case? Why not show the list of cautions offered in the Prospectus that was sent to all potential investors in the company? Why not show how the damages the client suffered really reflect what that company or individual is owed—along with the bottom-line number jurors should remember? Graphics and technology can do just that.

Interact with the Technology

There is a fear that using technology or multimedia, whether it's the demonstrative exhibits themselves or the actual hardware (e.g., screens, monitors) will detract from the presenter or will be distracting. Nothing could be further from the truth.

While it should be clear throughout this discussion that the story and themes are the most important elements of the trial strategy, the use of multimedia has been shown to improve proceedings. The main issue is that experts need to work interactively with that technology.

The expert can use an interactive computer screen that lets him draw on the diagram while on the stand. Or, the expert can get out of the witness box and manipulate the physical model, then show the animation on the screen. The expert can start and stop the demonstration to be able to draw attention back to herself as expert, and then tell the jury to look at the screen again.

These are presentation skills that can be learned, and they are essential in making the technology come alive. Technology can offer experts the opportunity to create “good theater” in the courtroom.

SUMMARY AND CONCLUSION

Given the visual nature of our society, the psychological frameworks within which jurors as human beings work, and the world's technological evolution, jurors require more than boring verbiage at trial in order to understand and retain expert findings. In addition to understanding the “mental handcuffs” that block jurors' integration of key points, experts need to utilize graphics and technology to decrease boredom and increase interest, and

to help jurors to visualize concepts often difficult to articulate in words.

Importantly, graphics and technology assist in penetrating, minimizing, or even destroying the psychological barriers that may distract jurors from the pertinent facts of the case. The ability to help jurors to “thin-slice” favorably, or even to underline the emotions involved in the case as cognitive embodiments, is what graphics (and the technology that allows them to be displayed) are all about.

Though the use of technology and visuals is misunderstood and feared by experts who worry about distracting jurors from themselves or their story, this is not the reality. Seeing is believing when it comes to being a better courtroom expert.

Notes:

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