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Keeping the Human Side in Court



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By Noelle C. Nelson

Over a decade into the 21st century, one thing is amply clear: In many respects, technology rules our lives. The question becomes: How can attorneys best incorporate the wealth of forensic data and technology during trial and still appeal to the jurors' emotions by being effective storytellers?

1) Focus on Jurors Priorities, Not the Abundance of Available Information

With the use of instantly available computer comparisons and formulations of any subject, and the plethora of experts with increasingly specialized fields of expertise, virtually every aspect of evidence can now be analyzed and re-analyzed as attorneys get enamored with the incredible wealth of detail. They are tempted to present volume upon volume of information as if to convince jurors by the sheer quantity of data.

For example, how many of the same e-mail, in its forwarded, re-forwarded and copied versions can an attorney present to jurors until their eyes start to glass over? Just because you have the ability to show a piece of evidence 20 different ways doesn't mean you should. More doesn't always mean better, especially at trial.

Attorneys often lose sight of the jurors' number one priority: understanding the case. Jurors are not nearly as intrigued with the minutia of technical data as lawyers are. Jurors want just enough information to be able to decide the merits of the case.

With the jurors' priority in mind, attorneys should focus on extracting from the morass of available information those nuggets that speak most truly to their interpretation of the case. This is not to say that information should be ignored or denied, but that when presenting technical data or forensic information to jurors, attorneys must be able to speak clearly and simply about those pieces of information that support their argument.

Charts and graphs, models and any other appropriate visual aids that bring to the forefront the critical pieces of technical data and forensic information are very helpful to this process. Jurors are rarely dazzled

by technology, but when jurors can easily see how the technical data fits into the "what, where, who and how" of the case, they are more readily convinced by it.

2) The Importance of Case Themes and Straight Talking Experts

Technical data and forensic information is valueless unless it supports and reinforces case themes. An easy way to determine if certain information should be presented to the jurors is to ask, "How does it fit with a particular case theme?"

If the information is not clearly linked to a case theme, it just adds to the clutter that jurors will have to try to absorb. When such information is deliberately linked to a case theme, however, it becomes highly persuasive.

One practical way to do determine whether evidence is appropriate for presentation is for the attorney to prepare a rough chart for each case theme. Under each theme, the attorney lists the technical data and forensic information that fits with and supports that theme. Any information that does not should be seriously questioned. Such an approach helps the attorney see which information goes with a particular theme, and which information is truly valuable, instead of simply intriguing.

When it comes to jurors understanding complex evidence, experts can make or break a case. Experts must be able to explain detailed information in juror-friendly terms. The wise attorney will conduct sufficient role-play with the expert prior to trial to assure the expert's ability to communicate testimony simply and effectively.

Focus groups are also helpful to the attorney in deciding whether critical pieces of technical data and forensic information are being presented clearly and in ways the jurors will not have to struggle to understand.

3) Give Emotion Its Just Place

It is tempting, given the fascination for information, to think that technical data and forensic evidence will carry the day. Not so. Attorneys need to keep in mind that decision-making is a two-part process: it starts with emotion and is reinforced by the mind. Jurors do not make decisions based on logic alone. Credible, effective communication of emotion is still key to juror persuasion.

Technical data and forensic information must be presented by the attorney with appropriate emotion that ties it in to the overall interpretation of facts. For example, an impressive video showing how G-forces play a role in an injury from an accident should be presented by the plaintiff's attorney with an underlying emotional concern about what this means for the plaintiff. The video isn't enough. Without the emotion component, the value of the technical information is lost.

In fact, in this case, defense counsel could present information countering the plaintiff's claim with its own underlying emotional tone of consternation – how could so little force cause so much alleged damage?

Even as the use of technology and forensic evidence in the courtroom advances, the human element remains vital. We are still a people made up of varying emotions and personal experiences. These elements eventually lead to the ultimate decision in the deliberation room. For all the advances we have made and will continue to make in the sophisticated presentation of complex evidence, trial attorneys should never forget the need to present the human side of every case.

About the author: Noelle C. Nelson, Ph.D., is a trial consultant who provides trial/jury strategy, witness preparation and focus groups for attorneys. Her published works include "A Winning Case" (Prentice Hall), "Connecting With Your Client" (American Bar Association), "The Power of Appreciation in Business" (MindLab Publishing), and the booklet, "101 Winning Tips: How to Give a Good Deposition and Testify Well in Court." <http://www.dr.noellenelson.com>, e-mail: nnelson@dr.noellenelson.com.