

Technology in the Courtroom: Does It Engage or Overwhelm Jurors?

By Dr. Noelle Nelson



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Your email is the first thing you check in the morning and the last thing you check at night. Texting is part of your daily routine. Then there is the endless stream of blog posts, alerts, and tech updates

that you must at least scan if you're to stay somewhere at the head of the pack—not to mention social media and the constant bar-

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rage from news and entertainment outlets. Information overwhelm is no longer for the few. Everyone, including your prospective jurors, is at risk of serious overload.

This massive access to information has

had an impact on preparing for trial. The challenge is, with all the latest technological and forensic material available to you, how can you choose those that can effectively help win your case?

— **FOUR RULES TO REMEMBER** —

**1. Focus on the Jurors' Priorities;
— Not on the Abundance —
of Information at Your Disposal**

With the use of instantly available computer comparisons and formulations of any subject, and the growing number of experts with increasingly specialized fields, virtually every aspect of evidence can now be analyzed and reanalyzed to the point that attorneys often get enamored with the incredible wealth of detail. There is a temptation to present reams of data as if it will persuade jurors by sheer quantity alone. In so doing, attorneys often lose sight of the jurors' number one priority: understanding the case. Jurors want just enough information to be able to decide the merits of the case.

With the jurors' priority in mind, focus on extracting from the wealth of available data those nuggets that speak most truly to your interpretation of the case. This is not to say that important details should be ignored or denied, but that when presenting complex information to jurors, use only those pieces that strongly support your argument. Avoid overkill. Jurors will appreciate the simplicity of your presentation.

— **2. Use Simple Analogies** —

When jurors easily can see how the technical data fits into the “who, what, when, where and how” of the case, they are more readily convinced.

For example, “Axonal shearing” (where the axonal ends of nerves in the brain are torn) is a term that means nothing to jurors unless the injury, how it happened, and what damage it caused are described in plain English—either verbally or visually (or, ideally, both).

If the information cannot be presented in

terms that a person with an average high school education can understand, then it is worthless. It is fine for attorneys to intro-

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duce new terms and concepts to jurors, but anything new is best understood when the new information is connected to already-familiar ideas in non-technical language.

Analogies are helpful in facilitating juror connection of the unknown to the known.

Axonal shearing, for example, can be likened to what happens to a bridge during a small earthquake—just enough of a separation in the bridge so that cars can no longer travel with the same ease as they did before. Presenting this analogy visually through animation is a simple way for jurors to understand the results of a serious injury.

— **3. Train Your Experts** —

Experts must be able to explain information in juror-friendly terms. A long list of impressive credentials is no guarantee that the expert is capable of such a feat.

In one case, an expert used the word “ambulate” instead of “walk” and “co-morbidity” instead of “pre-existing condition.” He lost jurors immediately. The wise attorney will conduct sufficient role-play with the expert to assure the expert’s ability to communicate effectively, and ensure fluidity in using visual aids to get a point across. The more complex the testimony, the more straightforward the charts, graphs, models and animation need to be.

Focus groups are helpful in deciding whether critical pieces of technological and forensic information are being presented clearly. If the focus group members are confused, jurors will be too.

— **4. Remember the Importance of Case Themes** —

Ask yourself, “How does the information I want to present to jurors fit with a case theme?” If the information is not clearly linked, it just adds to the clutter jurors have to manage.

One practical way to determine whether evidence is appropriate for presentation is to prepare a chart for each case theme. For plaintiffs in a medical malpractice case, case themes could include (1) key diagnostic tests were omitted, (2) consent was not informed, and (3) nurses failed to timely

alert the doctor of changes in the patient status. For the defense, the case themes may be (1) a non-compliant patient, (2) subjective complaints were not supported by objective diagnostics, and (3) prior history of accidents and surgeries.

Under each theme, list the evidence that supports that theme. This approach helps show which information is truly valuable instead of simply interesting.

— **5. Give Emotion Its Just Place** —

It is tempting to think that technological and forensic evidence will carry the day. Not so. Decisionmaking is a two-part process: it starts with emotion and is reinforced by the mind. Despite all the wonders of analytical detail, jurors do not make decisions based on logic alone. Emotion is still key to juror persuasion.

Present appropriate emotion that ties in to the overall interpretation of facts. For example, in a car accident case, plaintiff’s attorney could describe the technical aspects of G-forces as well as the emotional consequences of how the G-force impact affects the plaintiff’s quality of life. Defense counsel could present information countering the plaintiff’s claim with an underlying emotional tone that calls into question how the force of the impact could cause so much alleged damage.

Even as the use of technology and forensic evidence in the courtroom becomes more pervasive, the human element remains vital. Jurors are people made up of varying emotions and personal experiences. These elements eventually lead to the ultimate decision in the deliberation room. Counsel would be well-served by speaking to the human side of the equation.

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