



Advanced Presentation Technology (Hi-Tech) and the Psychological Effects on Judges, Jurors, and Arbitrators

By

Dr. Richard Waites
Attorney* and Chief Trial Psychologist

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Despite all the intense rhetoric about the use of new technologies in the courtroom, there are two important questions that seem to be left out of the discussion. First, what effects do different types of trial presentations have on judges, juries, and arbitrators have of presentations that involve new technology? Second, how can a trial team design a trial presentation format that incorporates powerful psychological themes and a compelling case story that will have the best chance of motivating the fact finder to reach a favorable decision?

In other words, what turns a demonstrative aid or exhibit into a “winning” tool? Trial lawyers should explore all of these questions before deciding what types of technology and demonstratives to use to present his or her case to a fact finder.

Research and experience over the past 10 years indicate that regardless of the style of presentation, decision makers are primarily looking for the meaning, the themes, and the messages of each party’s case. They are trying to make sense out of the mountain of detail that is being presented to them. They want to know the facts, and even more they want to the meaning behind the facts and the story of the case.

There is a danger for counsel to get sidetracked with discussions about different types of presentation hardware and software. Too often in such discussions, the real meaning of the case gets lost. However, the real value in the use of new courtroom technology is its ability to clarify the story of the case and bring it to life in a way that touches the

* Board Certified – Civil Trial.

hearts and minds of the judge, jury and arbitration panel.

The courtroom of the future is now reality. The College of William & Mary and the National Center for State Courts have unveiled Courtroom 21, the most technologically advanced courtroom in the world. The display devices in Courtroom 21 include DOAR overhead camera presenters, flat screen monitors, a Pioneer large-screen plasma monitor, Samsung television-quality document camera, and special monitoring boards from Smart Technologies and Softboard Technologies that allow markings on graphic displays of exhibits and the ability to save them to a special computer file for later use in the trial. The courtroom also has software and hardware to allow for video-teleconferencing, conducting instant legal research, searching the Internet and electronic filings of pleadings. This experimental courtroom is likely to influence courts all over America to embrace new technology as a way of assisting judges and jurors in learning and understanding the complexities of cases more easily. This experimental courtroom is likely to influence courts all over America to embrace new technology as a way of assisting judges and jurors to learn and understand the complexities in cases more easily.

To many trial judges and lawyers, advances in courtroom technology are exciting and limitless. To others, the discussion is much ado about nothing. The general dialogue, however, has shifted from discussions about whether or not to consider high-tech presentations to whether to use one kind of display technology or another.

The hidden danger in the use of technology is that the meaning and the most persuasive story for a client will be lost in the maze of discussions about which method of presentation is best for the case. To avoid this danger, a trial team and trial consultant might focus on the psychological effects of the contents of the presentation, rather than the superficial aspects of the technologies themselves.

Even though technology changes every day, the core values, attitudes, and meaningful life experiences of judges, jurors, and arbitrators do not. In addition, the subtle learning characteristics of the contents and physical attributes of a high-tech presentation can either promote the psychological strength of a case and make persuasion easier, or can create obstacles that may not be obvious at first.

The Quest for Simplicity

Within every complicated fact pattern is a simple and powerful story struggling to be recognized. At the core of every story in every law suit, there are basic human motivations and characteristics of everyday life that led to the consequences which are at the heart of the dispute. Even in the most fact intensive cases, such as a patent case or a product liability case, judges, jurors, and arbitrators all reach their decisions based upon simple principles of everyday life.

One of the goals of a persuasive courtroom presentation is to help the fact finder to identify, and even visualize the case story from the view point of a trial lawyer and his or her client. This goal is most often achieved by creating a presentation that presents simple, yet powerful images and themes. Realizing that judges, jurors and arbitrators are searching for the simple truth of the case, oftentimes most of the work involved in developing the most persuasive visual aids comes in winnowing down the case to its most important parts from the viewpoint of the fact finder and then finding the right trial presentation technology to display it.

The Psychology Behind It

So what is the psychological effect of using new technology in presenting a case in court and what turns it into a "winning" tool? The answer is that the effect depends on how well the presentation clearly and simply relates a powerful and compelling story with persuasive themes (psychological messages). The effect can be subtle and

powerful, if the design of the presentation is based upon two considerations.

The first consideration is the extent to which the trial team and trial consultant work to develop a clear understanding about how judges, jurors, or arbitrators are likely to process the issues in the case. Every winning presentation takes the audience's state of mind into account. We cannot persuade judges, jurors, or arbitrators to accept ideas that conflict with their core beliefs. In addition, we know from research that people pay more attention to visual stimuli when it arouses their intellect and emotion (i.e. when something in the presentation motivates them or when they can relate to the information in a fundamental way).¹²

These days, there are many reliable and useful scientific tools to help us understand how judges, jurors, or arbitrators will process the issues in a case. Analysis of data from scientifically conducted focus groups, mock trials, mock bench trials, and mock arbitration hearings can provide useful answers to many of the important questions that might be answered in preparing a case for presentation. These questions relate to the development of a persuasive trial strategy.

Once the best themes and messages of a case are known from the decision maker research, the second consideration is the extent to which the trial team and trial consultant are willing to engage in a long process of experimentation. It is often necessary to test hundreds of alternative choices in the trial team's decision making process about software programs, slides, color images, order of presentation, and contents in creating presentations which are likely to enhance the persuasive power of the case. Success often requires a commitment to working through the small details of presentations so that at the end of the process, the presentations they have developed are seamless and powerful.

There are interesting psychological connections between demonstrative aids and persuasion. Demonstrative aids can reinforce key messages, improve lasting

memory recall, explain and simplify key concepts, improve accurate encoding of information to improve the accuracy of memory recall, motivate active involvement by the fact finder, create powerful contrasts and comparisons, add credibility, explain and simplify the context of the case, and create more enjoyment for the audience.

What Makes It A Success?

The presentation of the most successful cases includes components which are visual, auditory, and tangible. There is a compelling and comforting anchoring effect for judges, jurors, and arbitrators when the key themes and story of a case are subtly (and sometimes not-so-subtly) repeated throughout the evidence that they see, hear, and touch.

The most effective presentation systems (i.e. form and content) also motivate the judge, juror, or arbitrator to use their highest level of intellect and creativity in favor of accepting the trial lawyer's messages. Intellect is necessary to understand the facts of the case and to categorize the information into a coherent story. Creativity, on the other hand, is necessary to make connections between the facts and the meaning of the facts (from the viewpoint of the fact finder). Creativity involves both factual and emotional content. A juror's formation of perceptions in the case is a product of both intellectual and creative reasoning.

Courtroom presentations that successfully accomplish their goals should be tailored to the mental processes of the judge, jury, or arbitration panel that will be hearing the case. Generic presentation formats that relay only facts without powerful messages are only minimally helpful to a trial team and the client. These formats present information, but do not persuade.

Fortunately, there have been many new developments in the past 2 years in software and training for people who assist trial attorneys and trial consultants with the development of forceful and persuasive cases. The new software programs are sophisticated enough to provide trial teams

with many creative alternatives in the development of a presentation.

There are many compelling logistical and psychological reasons to consider multimedia presentations in the courtroom. With the latest developments in software and hardware, any presentation can be customized. In addition, the newer presentation systems make it a lot easier to coordinate different parts of the case presentation so that the themes and messages in the case are consistent. Consistency is an important factor in the persuasive process.

Case stories are more compelling with an integration of text, animation, and other visual images that is available in most multimedia systems. Presentations can be changed, updated, and improved with no appreciable loss of time or additional cost. They reduce the need for carrying around boxes of charts, boards, and oversized exhibits. They can bring information from the Internet directly to the courtroom.

Most importantly, multimedia presentations in the courtroom provide a flexible and responsive modality for both learning and persuasion that is unprecedented in history. There is not much debate these days about whether to use high tech means of presenting old fashion themes. Most courtroom experts believe that jurors are quite accustomed to simple and interesting images, regardless of how they are produced. However, with the introduction of the new "busy screen" format now in use by CNN Headline News, a new debate has arisen over how much information to toss at the audience at one time for the sake of keeping their interest.

However, the message to trial lawyers and trial consultants is clear. Judges, jurors and arbitrators can absorb information quickly and are bored easily. Therefore, it makes sense to present the most powerful messages in a simple, clear, and uncluttered way, but without belaboring the details.

Researchers are only now beginning to understand the psychological effects of the use of new technologies in the trial advocacy process. However,

future research findings are likely to provide indications as to why and how these presentation tools provide an effective means for trial teams to enhance the persuasive power of their cases.

Dr. Richard Waites is a board certified civil trial lawyer and is the chief trial psychologist and CEO for Advocacy Sciences, Inc. and The Advocates, a widely respected and innovative trial consulting firm serving law firm and corporate clients nationwide (www.theadvocates.com).

Over the past 20 years, he has assisted trial teams and corporations in some of the most high profile cases in the areas of products liability, complex business litigation, intellectual property, employment and most other areas of practice. He is a member of the American Bar Association, American Psychological Association, American Society of Trial Consultants, and the American Corporate Counsel Association. Dr. Waites is the author of the new book, ***Courtroom Psychology and Trial Advocacy***, published by American Lawyer Media. For questions about the subject of this article, he can be reached by email at rwaites@theadvocates.com or toll-free at 1.877.621.1098.

¹ Richard Mayer, Julie Heiser and Steve Lonn, "Cognitive Constraints on Multimedia Learning When Presenting More Material Results in Less Understanding," 93 J. Educ. Psychology 187-198 (2001); Roxana Moreno and Richard Mayer, "A Coherence Effect in Multimedia Learning: The Case for Minimizing Irrelevant Sounds in the Design of Multimedia Instructional Messages," 92 J. Educ. Psychology 117-125 (2000); Roxana Moreno and Richard Mayer, "Cognitive Principles of Multimedia Learning: The Role of Modality and Contiguity," 91 J. Educ. Psychology 358-368 (1999).

² Robert N. Bostrom, *Communicating in Public: Speaking and Listening* (1988).