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By Jeff Dahm | March 2017

View from the Hot Seat—Five Winning Courtroom Tips From a Trial Technician’s Vantage Point

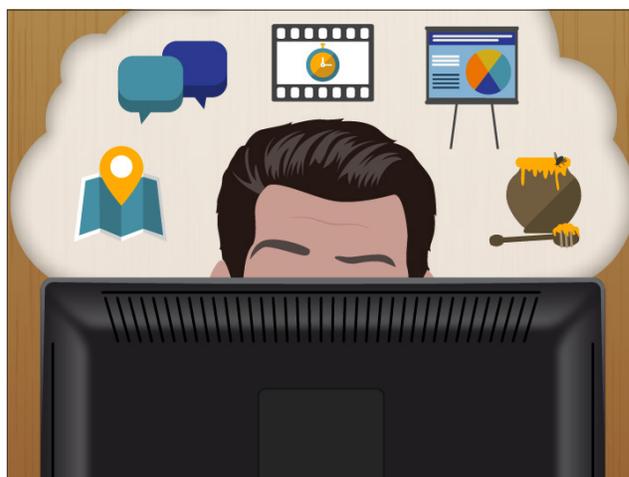
The role of the trial technician—sometimes referred to as a courtroom technology specialist, trial consultant, or hot seat operator—is to quickly find and display documents and video, thus enabling seamless presentation by the trial counsel. But good trial technicians do a lot more. A hot seat operator who is particularly adept at performing these duties melds into the courtroom background. He or she diverts the fact-finders’ attention away from the *mechanics* of the presentation, and encourages their attention to be focused on the *content* of the presentation.

Having spent 20 years in the courtroom, and having worked on over 200 trials, I have learned to become the 13th juror, albeit a silent one. I, too, form opinions about the trial and the verdict outcome. And having seen more trials than probably anyone in the courtroom, excepting the judge, I most definitely possess knowledge as to how a presentation could be made more persuasive. Here are five courtroom techniques that prove successful.

1. *Hold Fast to Your Theme*

Just like with any good book or movie, a court case must have a theme. The theme is the core message of a client’s case, his or her most basic position. It will serve as the over-arching lens through which jurors will view the evidence in the trial.

Right out of the gate, in the opening statement, an



attorney should make this theme known. For instance, “This is a case about a careless driver.” In a medical malpractice suit, a defendant’s theme might be, “Life is unpredictable, even when a doctor goes beyond the call of duty.” In an employment case: “All she wanted was to perform her job well; instead, she had to combat sexual harassment.”

In both direct examination and cross-examination, each witness should be asked questions that tie to, and substantiate, that theme. For example, if the theme is, “This is a case about an employer who just didn’t care about employee safety,” the attorney will want to elicit examples from each witness of workplace hazards that the employer chose to ignore. Of course, the theme must be reiterated during closing, so that the fact-finders, during deliberations, will use their own powers of reasoning and emotion to consider

whether the evidence served as reinforcement of that theme.

While this advice may sound like mantra from any “Introduction to Trial Advocacy” course, it is remarkable how often I observe attorneys swerve from this basic trial tenet. Litigators sometimes get hung up trying to convey, through a witness, a point irrelevant to the theme, but this is time ill-spent. Such derailment of juror focus accomplishes nothing, at best, and could potentially sabotage the case.

Having a clear theme is particularly important in a complex financial action. Figures and data may confuse and overwhelm fact-finders, but the theme of the story will stick; it is the answer every time the jurors or lawyers need to remind themselves about what are the really important points to take away. The theme will help them organize complex information. It will enable them to quickly set aside insignificant details, and to instead focus on the facts that engender the story’s theme.

2. *Talk to the Jury!*

It is another elementary trial tenet, but one I see so often ignored: it is the jurors, the ultimate decision-makers in the case, that an attorney needs to address. I have seen more than my share of attorneys in high-profile actions arguing their cases to the media, which only serves to sour juror interest.

Not only should the attorney communicate his or her argument to the jury, the witnesses should do so as well. An astute litigator gently reminds witnesses to do this by beginning some questions with, “Please explain to the jury...”

Bear in mind that the jury is communicating, too. Attentiveness to the jurors informs an attorney whether the presentation is effective, and enables

counsel to make adjustments accordingly. At which points in the trial are jurors rapidly taking notes? Are heads nodding in agreement? Are heads shaking in disapproval? Are some people falling asleep? All of these are important clues to garner from the jury when presenting your case.

3. *Video Deposition Testimony—Keep It Short and Sweet*

Speaking of jurors sleeping, a good rule of thumb with a witness deposition video is to keep the total length of video depo under 15 minutes. Play only that segment that conveys the intended message. Otherwise jurors tune out, or worse, become irritated.

Video impeachment should be brisk, tight, and relevant. Playing just those few important sentences that expose the contradiction will pack that poignant smack that resounds with jurors. It goes back to the concept of theme. If you stray too far from the purpose of the impeachment, the whole point will get lost.

4. *An Image Is Mightier Than the Word*

During my many trials, I have witnessed the potency of pictures over and over. Pictures have the power to rouse an apathetic jury into one that is engaged. Images often convey the story with more clarity and utility than words ever could. Consider the effect of describing the shape of a square versus drawing one. Imagine how many words would be needed to describe a person. No matter how lengthy and detailed that description, the listener would only form a vaguely accurate mental image of the actual person.

Visual images are more likely to remain in the viewer’s long-term memory. This tendency is called the Picture Superiority Effect.¹ A reason for people’s

1. Defetyer, M. A., Russo, R., McPartlin, P. L. (2009). The picture superiority effect in recognition memory: A developmental study using the response signal procedure. *Cognitive Development*, 24, 265-273. doi: 10.1016/j.cogdev.2009.05.002.

superlative ability to recall pictures is that the meaning of visual stimuli is made manifest more directly than words. According to Dr. Lynell Burmark, a leader in the education field, it is not that words don't matter, but they do have more mental sticking power when they are associated with a picture. She said, "The words get velcroed to the image."²

When reading a book or listening to a speaker, an actively engaged person often creates an image in his "mind's eye," which then helps the information stick. This task requires additional mental effort, so that, after even a short time, the individual tends to "zone out." Everyone who has been on the receiving end of a long-winded conversationalist knows how tiresome it can be. Armed with an arsenal of images, an attorney can quickly and effectively produce the visual stimulation that will captivate, rather than fatigue, the fact-finder. Interest level will beef up, not peter out.

Most attorneys have heard about the power of pictures before, so what is confounding to me is how many stellar opportunities for using visuals are lost. In a case where the time progression of events is important, for instance, why does counsel so often neglect to create a visual timeline? A graphic display of the timing of events has such great mental sticking power that jurors will continuously refer back to it.

Photos, slides, diagrams, graphs, models, video presentation, and computer animation are all very effective ways to transmit demonstrative evidence. Even low tech is good tech for rousing interest in the jurors. It is compelling to simply have a witness

stand up and draw a picture on a poster board. It adds a human factor to the case that my slick multimedia presentations cannot capture nearly as well. This hand-drawn display can be marked as an exhibit, then used when referring to other witnesses, as well as during closing argument.

5. *Mind Your Manners*

The old adage, "You catch more flies with honey than with vinegar," is sound advice for an attorney in the courtroom. The jury is absolutely watching every move counsel makes. Therefore, it is very important to treat everyone with the utmost respect, not just judge and jury, but paralegals, associates, and court staff. And the instruction to "play nice" does not contravene the charge to provide hearty advocacy on behalf of your client. The most effective arguments are those fueled not by ferociousness, but by skill and by strong points conveyed in a composed, respectful manner. An attorney and his or her client are inextricably tied together, so if the people in the jury box like the litigator, it is highly likely they will like his or her client.

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2. Schaffhauser, Dian, (2012) Picture perfect: Teaching visual literacy. Thejournal.com, <https://thejournal.com/articles/2012/12/19/picture-perfect-teaching-to-visual-literacy.aspx>. Retrieved on 02/27/2017.