

# THE RECORDER

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By Paul Roberts | July 20, 2011

## Engaging the Jury: Lessons From a Museum

Every other Saturday I volunteer as a docent at a local aquarium and science museum. A significant portion of the docent training is dedicated to techniques to engage visitors during their visits. Museum visitors are “voluntary” learners. While they come to the museum for a variety of reasons, almost all want to be engaged while learning something new from their visit.

During my training, I was always struck by how many of the theories and concepts of visitor engagement could apply just as easily to jurors as to museum-goers. While jurors might not be quite as eager in their “voluntary-ness,” they do share a lot of characteristics with museum visitors. If you make an effort to engage them during the presentation of your case, they are both willing and capable of learning new, complex information. Your success in imparting that information can be the crucial ingredient to succeeding at trial, especially in complex technology cases where verdicts hinge on the jury’s understanding of the nuances of a patent or cutting edge product. So what can we learn from the approach museums use with visitors and how can we apply those techniques at trial?

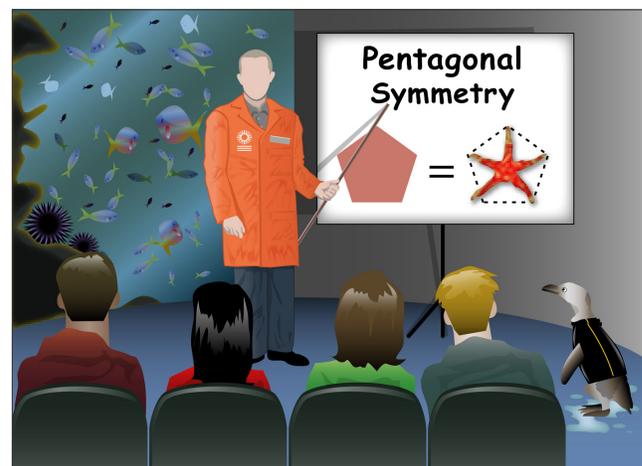
### *Respect your audience*

One mantra of museum education would also serve you well at trial. Never *overestimate* a visitor’s knowledge nor *underestimate* their intelligence. While explaining a new, complex technology to a jury might feel daunting

at first, having faith in your jury’s ability to understand it is a critical starting point.

At the museum we always try to build on the knowledge and experience visitors already bring with them on their visit. This approach to education is referred to as constructivist theory. It posits that a person is able to best construct new meaning by building on prior knowledge. Similarly, while every juror brings their own set of information and attitudes to the courtroom, by starting with a foundation of the common and familiar you give your jurors a “toehold” to grasp the new material.

A helpful technique in this regard is to use a metaphor or analogy to liken the new information to something jurors (or visitors) are already familiar with. Don’t worry if the analogy isn’t perfect—it is just a starting



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point from which to build. Part of what you might then teach is how the new subject matter differs from that familiar analogy. But by starting with the accessible, you enable your jurors to map the new information in their brains in relation to the similar information. Most importantly, this will make the information easier to locate in their minds and recall when it comes time for deliberations.

My firm has worked on a variety of semiconductor IP cases. We commonly describe semiconductors as mini on/off switches that control the flow of current in microprocessor chips. When we first introduce patent diagrams showing semiconductors we often show them side by side with a light switch, and illustrate how each looks when “On” or “off.” It is a simple analogy that introduces a very unfamiliar concept in a way that is tangible and memorable.

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### *Make it relevant*

Visitors to science museums can easily be overwhelmed with the amount of information being presented to them. In order to better connect with our visitors at the museum we try to make our content relevant to their lives, anticipating the question “Why does this matter to me?” To achieve this goal the docents always try to address a topic on three levels: the tangible, the intangible and the universal.

Tangibles are the physical and material objects we present—a penguin feather or an abalone shell. Visitors perceive these objects through their senses. Intangibles are the meanings and associations being presented through the objects—the theoretical or conceptual ideas. At the museum these might include concepts such as conservation or adaptation. A universal concept is a type of intangible that transcends individual experiences and cultures. These are the concepts that everyone recognizes—e.g. hunger, survival, family, etc.

The key is to frame what visitors are seeing and experiencing within an over-arching theme that touches on universally meaningful concepts. When you present

on all three of these levels you make your subject relevant and personal to each visitor. How do we apply this to jury presentations?

In a trial, the tangible represents the evidence—e.g. documents, testimony, patent diagrams and other physical evidence. If you focus on just the hard evidence your presentation will be sterile and lack impact. On the intangible level you will want to identify and present broader themes that help give your jurors perspective. A recent intellectual property case we worked on focused on the theme of trespassing, comparing the other side’s use of our patents to hopping a fence and illegally coming onto our property. The final step to maximize the power and appeal of your presentation will be to tie your evidence and themes to some universal concepts—fairness, truth, or greed. This can often come in the form of explaining motive in your case, even if it is not an element you need to prove by law. A presentation that is effective on all three of these levels ensures you are reaching the broadest possible audience with a message that has both depth and importance to each juror.

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### *Maintain their interest*

Old science museums used to consist of a collection of objects on display with signage containing lengthy text explanations of the objects. As you might imagine, this approach has fallen out of favor as museum audiences’ expectations and attention spans have evolved. New museums consciously employ a variety of different approaches to engage our visitors. There is text to read, audio presentations, physical objects to touch and hold, interactive video presentations, and question and answer sessions with museum staff just to name a few. Even with all of these different approaches, we still expect that we will only hold our visitors’ interest for a limited amount of time.

Now imagine that instead of a couple hours in a museum, you are sitting in a jury box for weeks on end listening to people just talk and talk for hours each day. If you were on that jury, wouldn’t you appreciate

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a presentation that employed the same approach to learning that a modern museum uses?

The following are some ways to apply museum techniques to help enliven your presentations.

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### *The power of objects*

Any museum docent can testify about the power of objects: they attract visitors and inspire a deeper level of curiosity than purely oral presentations. Yet in the courtroom, attorneys often rely too much on solely oral presentations (which included talking over text-based PowerPoint slides).

Presentations that take advantage of various types of media are instantly more engaging. Having a printed board on an easel or a physical model are two great strategies to get you away from lecturing at a podium and awaken your audience's attention.

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### *Why ask questions?*

Another way to add variety to your presentation is to pose questions to the jury. Philosophers who use the Socratic method have known for centuries that asking targeted questions can help stimulate critical thinking in an audience. Telling someone what you know is not as effective as inspiring someone to reach that knowledge on their own. We often utilize guided questions at the museum to encourage our visitors to arrive on their own at the theme or concept we are teaching.

Structuring your presentation around questions is a great way to pique jurors' interest and help them make connections to your case themes and evidence. Make a list of questions in your opening statement that you intend to answer during the trial to help frame the issues for the jurors. Ask questions out loud that might be occurring to the jurors, such as "What should the Defendants have done?" When done effectively, you can have your jurors mouthing the answers to your questions before you even give them the punchline.

While I am still waiting for a case that will one day draw upon my detailed knowledge of sea urchins or penguins, it is easy to see how these more general lessons from my museum experience have everyday applications to improving juror education approaches at trial.

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