

LITIGATION TECHNOLOGY UPDATE

PRESENTED BY



TRIAL TECHNOLOGIES, INC.
AND
JAMES DECRESCENZO REPORTING, LLC



Martin Zinkel

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Martin has successfully navigated the hot seat in trial for over 3 years.

During the openings of a recent trial where I was in the "hot seat," the plaintiff's attorney asked me to show the jury a video segment created from video deposition clips intercut with quotes summarizing the content of the video clip that followed, resulting in a video reminiscent in some ways of an effective campaign commercial. The plaintiff's attorney was able to frame her argument using the words of the Defendant, essentially spoken by the Defendant to the Jury.

The deponent in these video clips was the operator of a piece of machinery that struck the plaintiff on construction job site where they both were working, resulting in a career ending injury for the plaintiff. As the deponent explained his actions, he said all the right words describing his expectations of behavior on a construction site. In his mind, I'm sure he was presenting himself as an experienced professional. However, in the context of the case, the way he said these words using body language and visual cues indicated how he may have "really" felt about the plaintiff. Clearly, they did not have a warm relationship. The deponent suggested that the plaintiff did not want to be on the job, and did not give the machine operator the "respect" he expected due to his years of experience and self proclaimed importance.

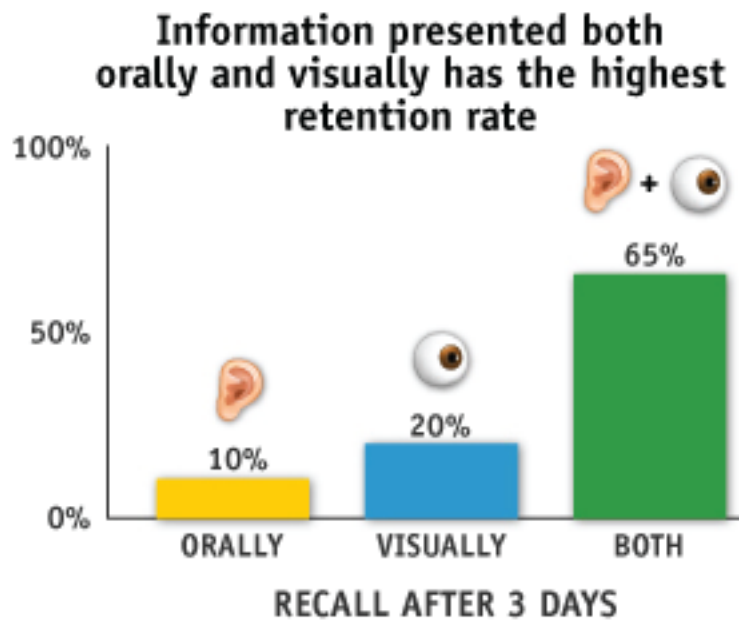
The deponent's visible annoyance, regarding the plaintiff as generally a "pain in the butt," though not directly stated in words, brought doubt into the courtroom about whether the operator was actually concerned about the plaintiff's safety. The defense team may have picked up on this development, and soon after openings, the case settled.

Using video is but one example of visually communicating with jurors, and increasingly more attorneys are realizing the positive impact that technology can bring to their case in the courtroom.

In the past, technology and attorneys have been like oil and water - they don't mix. As a result, a common misconception is that using technology with a jury should only be reserved for high profile, large liability cases involving giant corporations and thousands of documents. The reality is that the benefits of using technology can be realized in any case and here are just a few reasons why;

1) The number one relationship that the attorney wants to cultivate in the courtroom is with the jury. Adding visuals to your presentation brings another dimension to your argument, enriching your message to the jury. Not all jurors are created equally, and not all jurors learn the same way. By showing them the documents/people/concepts you are talking about on the big screen, you are being considerate of all learning styles and including more of your audience in the conversation. You aren't expecting jurors to memorize all of the important facts by just listening; in fact, you are reinforcing the retention of your argument by presenting it in multiple ways.

Here's a link to an explanation of various learning styles from my Alma mater, Penn State University:
Accounting for Learning Styles - Penn State University,
www.personal.psu.edu/scs15/idweb/learningstyles.htm



2) You are bringing your viewpoint to life...in 2011.

We are living in an age of multimedia, and every day your potential jurors are exposed to increasingly more dynamic ways of presenting and consuming information. For example, take a look at the explosion in popularity of smartphones, defined as cell phones that can be used to access the internet. A report released in June 2011, by ComScore, Inc. shows that roughly 74.6 million people in the US own smartphones, and this number is up roughly 70 percent from the previous year.

June 2011 ComScore, Inc. Report on smartphone use:

www.comscore.com/Press_Events/Press_Releases/2011/8/comScore_Reports_July_2011_U.S._Mobile_Subscriber_Market_Share

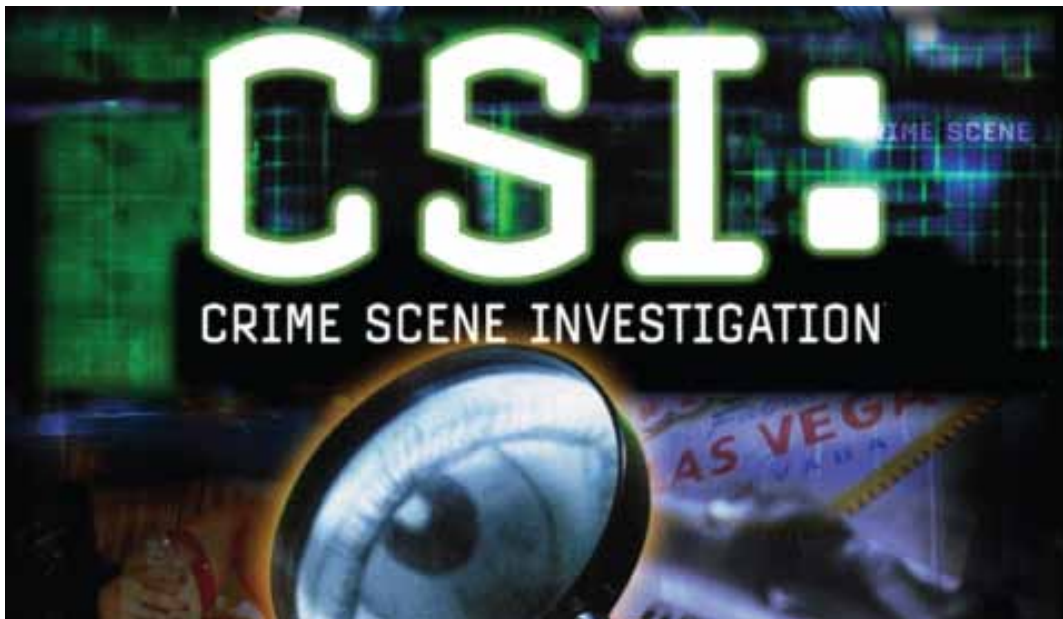


As technology advances, these numbers will only continue going up. In the process of accepting new modes of communication, jurors become more comfortable with technology, use it themselves, and indeed the more they come to expect it. By using varied methods of communication, you are perceived as using all methods at your disposal to communicate with the jury, and not taking anything for granted. Judges may look upon this with favor, especially when it speeds up a trial.

3) Of course, while we all know you are a tremendously captivating speaker, don't be quick to discount the "keeping the jury awake" factor.

4) "The CSI effect." For those who know of this widely quoted phenomena in the legal world, skip to the next one. In a nutshell, because of the proliferation and popularity of Detective/Crime shows on television, the typical juror is more likely to expect some kind of technology in the courtroom. It may be an erroneous assumption, but many jurors may feel like they are not getting the whole story without a dynamic presentation using technology.

Check this link out from the National Institute of Justice for more information: National Institute of Justice - "The CSI Effect" - www.nij.gov/journals/259/csi-effect.htm



5) While these thoughts are based on personal experience, don't just take my word for it! Follow the link below to a post-trial video interview of actual jurors (from Arkansas), where they talk about how technology helped them to understand and follow the trial. Thanks to fellow hot seat trial tech, Robb Helt of Litigation Resource Group, LLC for posting this informative video:



www.youtube.com/watch?v=-KGg1U1S90

Well, I hope this article has been enlightening for readers, and remember to consider all of the tools you can have at your disposal the next time you are preparing for trial.

Sincerely,
Martin Zinkel
Trial Tech
Trial Technologies, Inc

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