

Computing Needs: Adapting to your audience

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Out of the numerous factors to consider when preparing communication strategies for trial, perhaps the most important is learning style. Our predominantly visual society fuels the common misconception that every salient point, piece of evidence or exhibit must be supported by a substantial amount of content.

Fortunately, this perception is not reality. In the social psychology world, the higher an individual's "cognitive load," or the total amount of mental activity imposed on working memory at an instance in time, the more challenging it is for him or her to process information. Thus, an individual is more likely to take mental shortcuts (e.g., deciding which expert is more credible based on credentials rather than testimony). Most jurors already experience a high cognitive load due to the stressful circumstances and expectations that are often associated with being impaneled. Increasing this load by using an overwhelming number of complicated graphics will only serve to make processing information more difficult.

Additionally, while most attorneys assume that judges understand the evidence better than juries, it still varies. It is safe to say that judges typically have a lower cognitive load than jurors because they are accustomed to the circumstances of trial and familiar with the process and procedure. If the subject matter is familiar terrain for a judge, his or her cognitive load may be even lower. However, if a judge has little exposure to the particular subject matter at issue, his or her cognitive load is higher and should be taken into consideration when presenting your case.

Practical considerations

Jury consultant

People have a limited ability to recall new information. Research shows individuals can recall no more than seven pieces or "chunks" of information at a time, and when information is brand-new, those chunks are very small. Each piece of information needs to be heard, processed, understood and encoded in their thought process in order for them to remember and use later - for instance, in deliberations. It is critical for counsel to present information in small, basic and easy-to-process nuggets of information. Providing context for the trier of fact is an effective method of communicating information in proper chunks.

Graphics consultant

In a practical sense, counsel should be advised to use demonstratives judiciously and be cautious about information overload when designing graphics. For instance, in a recent trade secret case, a macro timeline was created and displayed on a large poster board to serve as the anchor demonstrative for the opening statement. Initially, counsel attempted to include every event imaginable in addition to thumbnail scans of relevant exhibits that related to the events.

Ultimately, we advised against this strategy and worked with counsel to reduce the number of entries on the timeline by 25 percent. We also persuaded them to utilize a trial presentation system for the display of all the underlying exhibits that coincided with the timeline entries. By consolidating the media and limiting the timeline to only the most significant events, we probably lowered the jury's cognitive load, making it easier for them to process the information.

When consulting with trial teams on demonstratives, it is important to ask, "...compared to what?" in order to glean the proper context for the argument being made. Since nuggets of information can often seem like puzzle pieces, a

well-designed information graphic that provides the proper context will assist the judge or jury in putting the pieces of the puzzle together.

Technology consultant

We recently supported a trial team at a hearing for a motion to dismiss. Despite the fact that the judge mandated both sides to limit their presentation to 40 minutes, our side insisted on creating more than 50 text-driven slides. Against our recommendation, the team felt it was important to walk the judge through each point with a detailed supporting slide. Shortly into the presentation, the judge asked the team to stop reviewing the material and speak its points to the bench. At the conclusion of the hearing, the team was asked to submit its 15 best supporting slides to the court for additional review.

While it is common for judges and jurors to adapt to a presentation that exceeds their cognitive load, this example speaks to the fact that many viewers have difficulty processing information in this type of scenario. Oftentimes, they will reach their cognitive threshold and no longer process what is being presented. Therefore, adapting your presentation to meet your viewers' learning style is equally important to the material at issue.

Building a strong case thematically and having the evidence to support it does not always ensure a favorable outcome. The ability to effectively present the case to the trier of fact by catering to his or her learning style, as well as delivering information in concise, impactful elements, is absolutely critical to telling a credible and coherent story. Remember to be selective and strategic in designing and using demonstratives, because less is often more.

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