

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2008

PHILADELPHIA, JUNE 13, 2008

An **ALM** Publication

Making Magic in the Courtroom: Pulling Presentation Skills Out of a Hat

BY MARK J. LEWINTER

Of the Legal Staff

Can trial lawyers learn how to better connect with jurors by taking a few magic lessons?

A trial lawyer for more than 25 years, I am also an amateur magician, a student of close-up magic. My experience in both has convinced me that while the magician and lawyer have different audiences, forums and goals, the presentation skill set and dynamics are remarkably similar. The purpose of this article is not to transform lawyers into magicians but to show them that they can learn much from the masters of magic, their performance skills and presentation excellence.

THE MESSAGE: KISS REVISITED

The primary focus of a trial lawyer should be on refining and simplifying the message. While Keep It Simple Stupid (KISS) is always emphasized in trial advocacy, world famous magician Michael Ammar uses and adapts the acronym to emphasize the importance of theme. He urges magicians to Keep It Slogan Simple. Widely acknowledged as one of the finest teachers of magic theory, Ammar instructs magicians to keep their presentations themed. Likewise, effective advocacy requires a trial lawyer to simplify his/her message to a "slogan memorable" message, which effectively serves as a paradigm, or filter through which the jury receives and evaluates evidence.

In a recent workplace safety case, a general contractor was sued for its failure to ensure that OSHA-required fall protection devices were used. The defendant contended it was not liable, as the workers chose not to use the safety devices and should be responsible for their own actions. The theme successfully advanced by the plaintiff was that industry practice reveals many workers choose to work without safety devices unless required,

as they believe they can work faster and more comfortably. The theme used to undermine the defense was that workers needed to be protected from themselves.

CRAFTING THE MESSAGE: ONE SENTENCE

Magician and screenwriter Pete McCabe, in his book "Scripting Magic," notes the importance of theme when scripting and referencing the methods of famous playwrights, including Arthur Miller. When Miller wrote a play, he first decided what the play was really about, the true essence. He would not begin to write until he could simplify the play to a single sentence. After he figured out that sentence, he would tape it to his typewriter and make certain every line of dialogue, blocking, set description, props, everything would build on/communicate that essence. For truly effective advocacy, trial lawyers should follow the same practice. The trial should be built on and resonate a central simple theme. Just as Miller would never begin writing a play until he could reduce it to one sentence, a trial lawyer should not begin trial preparation without doing the same.

THE MESSENGER: MANAGING ATTENTION

World-renowned Spanish magician Juan Tamariz has authored one of the shortest yet most informative books on presentation skills. In "The Five Points of Magic" he covers the importance of mastering the use of eyes, voice, body, hands and feet. While Tamariz's intended audience is magicians, every trial lawyer can learn from the simplicity of the book and its applicability in the courtroom.

EYE CONTACT

If a magician does not make eye contact, the spectator feels unconnected. The magician loses the ability and opportunity to direct the spectator's attention to where he wants it. In

his book, Tamariz suggests that magicians visualize invisible threads with each spectator. The trial lawyer, when facing a jury, should likewise imagine there are threads connecting his eyes to the eyes of every juror. Whenever the threads are broken, the lawyer should make an effort to reconnect them, making eye contact with each juror. How this connection is made is crucial. When a lawyer scans the jury box without focusing on a specific juror, he does not connect with all jurors. He connects with none. The better approach is to develop skills in quality eye contact with only one juror at a time for intervals of less than 10 seconds. Practice speaking and making eye contact with one juror. During that time, articulate one complete thought, then pause briefly and move to the next juror. In selecting the next juror, it is helpful to move to the other end of the box, crisscrossing to add movement and anticipation.

Practice shifting eye contact after completing short statements or thoughts. Do not linger on any one juror, since keeping eye contact for more than 10 seconds could result in making him/her uncomfortable. Establishing eye contact for only a couple of seconds could be interpreted as insincere and superficial. If you make steady, meaningful eye contact for the right amount of time, all members of the jury will feel connected with you, and whether they agree or not, they will at least feel your sincerity and believe you are addressing them. Media and communication consultants can help train lawyers who wish to develop these skills.

DIRECTING ATTENTION

In the courtroom, the lawyer should seek to control the jury's attention and focus. In "Magic and Showmanship" by T. Nelson Downs, one of the most famous manipulative magicians, we learn that the source of information is what we want the audience to watch. The center of interest is, however,

what the audience wants to watch. In a perfect world the two coincide. But often, this doesn't happen during the course of a trial. The lawyer must appreciate the distinction between the two and, when appropriate, use techniques to control the source of information.

Given the circumstances of any trial or strategy, the lawyer may or may not want the jury focus to be the witness, the lawyer speaking or the exhibit being displayed. In the courtroom, if we display two sources of information simultaneously, neither can make its point properly and both together will receive less attention than either alone. If, for example, the lawyer or a witness is speaking at the same time the jurors are focused on a PowerPoint slide or an exhibit, there will be two sources of information with the center of interest likely to be and remain the visual.

When the lawyer or witness seeks to make a point and wants to be the sole focus of the jury, something must be done to subordinate the visual source of information so that the speaker will have the jury's attention and become the sole source of information. Depending on the circumstances and geography of the particular courtroom, there are many techniques or methods to accomplish this. However, two basic means are the use of one's voice and eyes. Simply by pausing, a jury's attention will return to the speaker until he or she continues. Another method is through the use of eye contact. John Ramsay, a famous magician taught, "If you want the audience to look at you, look at them. If you want them to look at something, look at it yourself." The spectator will look where the magician is looking. The trial lawyer can likewise assist in directing the jury's attention.

VOICE, BODY, HANDS AND FEET

The skilled magician's "effect" or "illusion" is the result of much thought, scripting, timing and practice. Similarly, the trial lawyer's desired "effect" requires that careful attention be paid to not only what is being, said but how it is being said. Tamariz stresses the importance of the performer being aware of his voice, volume, tone, inflection and how it adds to the desired effect. The trial lawyer should do the same. During any given communication the actual words account for only 7 percent of the communication taking

place, while 38 percent is attributed to tone, inflection and volume. The remaining 55 percent is from body language, eye contact and facial expression. Devoting significant time to what amounts to 93 percent of the communication dynamic is critical in effective advocacy.

INVOLVING THE JURY

Skilled close-up magicians are especially adept at keeping a spectator or small audience involved in the performance. In a courtroom, the lawyer should also keep the jury involved. Be aware of the manner in which the lawyer references the jury. If for example, a physician is on the stand and the lawyer seeks to have the physician explain a medical term to the jury, the lawyer often will ask, "Doctor, would you please explain to the jury . . ." This phrasing, "explain to the jury," could be viewed by many jurors as condescending, as it infers that the court and the opposing lawyers are much smarter than the jury. A better approach is one which makes the jury feel as though they are part of the process along with the lawyer. By changing the phrasing to, "Doctor, will you please explain to us . . ." the jury becomes involved in the process along with the lawyer, opposing counsel and the court.

MISDIRECTION METAPHOR

Lawyers often seek metaphors during summation so that a jury will better understand the facts/theory being advanced. A skilled magician will create an effect by employing various types of misdirection, which essentially focuses the audience's attention where he wants it and away from where he doesn't. The misdirection metaphor can successfully be used by the trial lawyer during closing to uncover the weaknesses in the adversary's case by explaining that he/she has attempted (like a magician) to create courtroom illusions, but has failed, thereby debunking the illusion and revealing the methods used by the lawyer to create it.

NO INTENT TO DECEIVE

While it would be extremely foolish and futile to attempt to deceive or fool a jury, and no sane or competent lawyer would do so, the skills and magic theory which make magic highly entertaining and absorbing can be successfully transferred to the courtroom

to enhance the advocate's impact and rapport with jurors.

Mark J. LeWinter is a trial lawyer with more than 25 years experience in handling catastrophic injury cases. He is also an amateur magician and a volunteer at the Children's Hospital of Philadelphia where he has performed for oncology patients over the past 15 years.