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COMMENTARY

## Defeating Runaway Verdicts: The Use of Technology In and Out of the Courtroom



Unfortunately, the epidemic of runaway verdicts has not slowed down and the number of verdicts has continued to rise since my last article. However, attorneys are not defenseless in preventing runaway verdicts.



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Board of Contributors

By Jerry Hamilton | May 19, 2023 at 09:53 AM



This is the final article in a series of articles regarding runaway verdicts. Over the past few months, I have discussed various strategies defense attorneys must utilize to prevent runaway verdicts. That is verdicts, which are disproportionate or outrageous given the factual circumstances of a case. Unfortunately, the epidemic of runaway verdicts has not slowed down and the number of verdicts has continued to rise since my last article. However, attorneys are not defenseless in preventing runaway verdicts. There are various strategies defense attorneys can employ to prevent a runaway verdict such as those discussed in my previous articles:

- Taking accountability and giving the jury a specific and reasonable damages number;
- Developing and arguing reasonable numbers and theories relating to pain and suffering;
- Humanizing the corporate defendant and defeating the reptile theory; and
- Ensuring that your closing statements addresses all the points above so you can reach a fair and just verdict.

However, all of the advice above is all for nothing if the jury is not engaged and listening to what you are saying. While communication is key, the method and manner of how you communicate and deliver the message is as equally important. In this social media age where attention spans are waning, what technology do you bring to the courtroom to engage jurors? How do you keep jurors focused on the important issues? How do you meet their need to learn and understand in this visual age? This final article will discuss the use of technology and storytelling to prevent runaway verdicts.

### The Importance of Technology in the Courtroom

The Florida bar, like many other state bars, requires that attorneys “keep abreast of changes in the law and its practice ... including an understanding of the benefits and risks associated with the use of technology.” One Florida court recently stated and cited to Rules Regulating the Florida Bar stating:

Rules Regulating the Florida Bar do not require technological expertise, but they do require technological competence. Comments to rule 4-1.1, concerning the duty to provide competent representation state:

Competent representation may also involve the association or retention of a nonlawyer adviser of established technological competence in the field in question. Competent representation also involves safeguarding confidential information relating to the representation, including, but not limited to, electronic transmissions and communications.

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education, including an understanding of the benefits and risks associated with the use of technology, and comply with all continuing legal education requirements to which the lawyer is subject.

Since the COVID pandemic, technology has had an increasingly important role in the courtroom. Knowing how to simply use a computer is not enough. Attorneys must be knowledgeable about the various resources available and the benefits and risks associated with these resources.

## **Today's Jury Pool**

The jury pool is changing. Millennials (born from 1981-1996) make up 21.75% of the population and Gen Z (born from 1997-2012) make up 20.6% of the population. As these generations grow older, their presence in the jury pool has grown.

Unlike Generation X and Baby Boomers, millennials and Gen Z grew up with access to the internet, smartphones and social media. These groups prefer content that is convenient, engaging, and easy to consume. Many studies show that Gen Z have an attention span as short as only eight seconds and millennials have an attention span as short as only 12 seconds. This has changed the dynamic of the courtroom, as millennials and Gen Z have different responses to how evidence is presented compared to the generations before them. By understanding how these groups think and process information, lawyers can present their case in a more compelling and effective way, and in turn, prevent runaway verdicts.

## **Pretrial Technology**

The use of technology does not begin in the courtroom; but rather before a case even goes to trial. Many successful attorneys test their cases through online focus groups way before the case ever makes it to a courtroom. These groups allow attorneys to evaluate the weaknesses and strengths of their case and how potential jurors will assess their arguments. Based on this feedback, attorneys can develop the best and most effective strategies, not only in their case, but in the use of technology.

## **Visual Evidence**

Unfortunately, we all have terrible memories. Within a week, most humans forget about 90% of new information learned. This can cause lots of issues for trials lasting days or weeks where new information is being given to jurors for hours at a time. Many jurors are visual learners and process visuals faster and easier than text. Visuals assist jurors (especially millennials and Gen Z) with understanding and remembering the information presented. Impactful visuals can create strong, memorable, and lasting impressions.

For example, animations which show a parties version of the events and bridges the gap between physical evidence and eyewitness testimony is always going to be necessary. The use of animations within a courtroom has become increasingly common. Most recently, actress Gwyneth Paltrow won her lawsuit involving a ski accident in part by using an animation to depict the accident and her expert's testimony.

It is necessary, as always, to establish a proper foundation to ensure that the animation is admissible into evidence. It is best practice to create your animation and establish its foundation early. Attorneys should have witnesses testify to the accuracy of the animation within their depositions.

PowerPoint presentations can also be an effective and a powerful tool, if used correctly. We have all been in situations where we were forced to sit through a monotonous and dull PowerPoint presentation where the presenter is reading of the slides. You find yourself counting down the seconds until the presentation is finally over. Never-ending PowerPoints with only words are boring and ineffective. However, simple PowerPoints with minimal words and large pictures are effective in captivating a jurors' attention.

The use of a PowerPoint during your opening statement can be especially effective and will engage and motivate the jurors from the beginning of the case. Presenting visuals from the onset will ensure better retention and a better understanding of the key issues.

However, do not let PowerPoints overpower you. An attorney must know how to effectively use PowerPoints while also staying connected with the jury. Ensure you are comfortable enough to both interact with the jury while flipping through the slides.

## **Further Tips on Technology**

### **Dropbox or Sharefile Account**

The use of a Dropbox or sharefile account is essential to your pretrial preparations as it allows your team to work off of 1 set of trial documents. Further it allows you easy access to all your devices in the courtroom so that they can be brought up relatively quickly when needed

### **Trial Presentation Apps**

Trial presentation applications allow you to focus the jury on the evidence that it is important. It allows you to highlight documents, do call outs, create visuals to keep the jurors engaged. Trialpad, Summation, and others have full suites for under \$500. For more sophisticated trials the use of a trial technician is a must.

### **A Mouse That Works on Glass**

I found that not a lot of folks know that a mouse may not work well on glass. Hence it's essential to get one that does in the event you're in the courtroom that has glass on a table

### **A Wireless Hotspot**

Never depend on the wireless Internet connections in the courtroom. It is always good to bring a wireless hotspot to ensure that you always have connectivity

### **Prepare for the Unexpected**

Trials often take a life of their own. More often than not, a trial will not go precisely as planned and unexpected issues will likely arise. Therefore, all attorneys should have multiple devices with internet access, which have accessible and organized filings, exhibits, and case law compiled. Having access to these documents allows an attorney to easily and quickly search for these documents, instead of flipping through hundred or even thousands of pages of text.

## Final Thoughts

Our legal system is supposed to be just and equitable to all. However, runaway verdicts are neither just nor equitable. Runaway verdicts have severe effects on real business and people. Defense attorneys cannot back down and must fight back against runaway verdicts. Over these past months, I have provided various tips, which are essential in preventing or mitigating against a runaway verdict. I hope that in some small part these will assist in helping to obtain reasonable and fair verdicts and not ones that are driven by passion, anger and sympathy. Utilize these tips and tricks while preparing for and during your next trial.

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