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The Persuader's Real Rules of Exhibits (Continued)

The first article in this series sets out the "The Persuader's Real Rules of Exhibits " 1 through 4 - the use of exhibits during your opening statement to the jury.

This is the second article in the series. It deals with the showing your exhibits in an effective way during a trial; so that the jurors' long-term memory holds your exhibit.

Rule No 5: Respect the limits of the prefrontal cortex and short-term memory.

This rule could be phrased as: "(A) Eight second show; (B) Simplify to seven characteristics; and (C) Rehearse it by sound or sight." In concrete terms, here is what this rule is:

A. Exhibit the exhibit to the jurors' senses, for at least eight (8) full seconds.

B. Simplify an important exhibit so there are only seven "characteristics" for the short term memory to hold in mind. For example, for the juror's short-term memory to hold remember that the exhibit is a contract page with a clause that says the ABC company will deliver 600 widgets by June 4, 2007, the mind has to remember at least seven "characteristics." That is, the juror's mind has to be able to pull out of memory that your exhibit is (characteristic #1) a piece of letter sized paper. (#2) That piece of pager is one page of a contract between the ABC

Company and XYZ Cleaning Inc. (#3) That there is an important sentence on that page that says “(#4) that ABC Company (#5) will deliver 600 widgets (#6) on June 4, 2007.”

C. As quickly as possible after showing the exhibit, give the jurors a sensory break to give their minds the needed time to rehearse the critical information. E.g., Say, now Mr. Witness, so the printed record of what we are looking at is clear, I want you to read aloud the sentence I have highlighted in yellow on this exhibit. Then I'll ask you some questions about that specific sentence.” [Witness then states it, which allows the jurors' minds to rehearse the total exhibit.]

It is no good showing or reading an exhibit to the jury if as a matter of neurological science their brains are not going to recall it easily in the jury room. Therefore you need to know something about the neurology of the brain. And that science will help you understand this Rule No. 5 on persuasively using exhibits.

[We will simplify this neurology, even though academic scientists may cringe at our saying such things as “eight seconds”, instead of telling you a range of time and giving you all sorts of qualifiers on what the brain is doing.]

- 1. Always show an important exhibit or at least eight seconds if you want it to go from sensory memory into short term memory.** [The converse of that is true, to wit: If you are trying to confuse an adverse witness by showing them items they will not remember, don't show them anything for more than four seconds.]

Everything within sight, sound, touch, smell, and taste – everything -- and everything is a tremendous amount of information – is transmitted by the sensory nerves to the brain every split second. The brain has to decide to what it will pay attention (e.g., the exhibit you are holding or the how hot it is in the courtroom, or what the witness is saying about the exhibit, or the state of the juror's hunger.) All this tremendous amount of incoming sensory information has to be sorted and decided upon multiple times a second. These bits of sensory stimuli are held only for a fraction of a second in the sensory memory, and then sensory memory is again reloaded with incoming new information. Unless an individual pays attention latches on – and holds – a particular sensory image for about eight uninterrupted seconds, that sensory image is not sent over to the short-term memory of the brain. The sensory information not sent to short term memory is lost.

To summarize: (A) the mind must keep sorted out of the sensory flood incoming multiple times a second a particular sensory input for about eight uninterrupted seconds for it to be sent to short term memory. Therefore (B) you must show the jury the exhibit for eight seconds for it to “sink into short term memory.”.

This gets us to the short term memory and the executive center of the brain known as the prefrontal cortex.

- 2. The prefrontal cortex, faced with an unfamiliar object, is trying to grasp only an average of seven characteristics of an item** before it makes an executive decision — in eight seconds — whether the information is going to be sent into long term memory or discarded.

Unfamiliar events, such as seeing a new object (your exhibit), stimulate the executive center of the brain known as the prefrontal cortex. Short-term memory is the brain's system for remembering information "in use right now" by the executive center of the

brain. The prefrontal cortex uses tremendous amounts of energy compared to the rest of the brain, but compared to the rest of the brain, the prefrontal cortex holds very little information that it is working with “right now.” Some people compare the amount short term memory holds to what the rest of the brain holds to a cup of water compared to all the water in the ocean.) Most people can only hold five to nine items in their short-term memory at any one time.

The short-term memory is over-saturated very quickly, so very quickly the prefrontal cortex “dumps” what it has in short-term memory, and starts to process new incoming sensory information into short term memory. If in that “memory dump” the information in the prefrontal cortex is not encoded into long-term memory the information is lost to memory.

The memory of the short-term memory might be imagined as a electronic tape loop that takes about eight seconds to complete. Once the information is completely through the eight second loop three things can happen:

1. The short-term memory’s seven items of information about the object or situation are sent into long-term memory, and the prefrontal cortex starts to focus on something else, or
2. The information is completely “dumped”; i.e., the memory is discarded, and the prefrontal cortex starts to focus on something else, or
3. The information is rehearsed (repeated visually or repeated silently or aloud) to send the information through the short term memory loop again, for a second chance to “remember or lose it.” So, if you want to give a juror’s mind the time it wants to rehearse the information, give the critical information a second time immediately, although perhaps in a different form.

Three Point Executive Summary
(This is our exhibit of what you need to remember):

- (A) Eight second show;
- (B) Simplify the exhibit to seven characteristics; and
- (C) Rehearse the critical characteristic, right away, by sound or sight.

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