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Phone: 310.391.9661

The ASTC Conference 2009 – Update June 16, 2009

What a time it was – the American Society of Trial Consultants Conference in Atlanta June 3-6. First, I want to tell you what a pleasure it was to have Tom Boothe, an ACT client, workshop attendee and pal come and spend the whole conference with us and Ken Suggs and his wife Dottie, client and fellow presenter take up our invitation to join me in Atlanta. Second, I want to thank you for your questions about two very important issues:

- whether or not jurors' verdicts are affected by the economic downturn.
- where to place the video camera during a deposition.

There was an entire session that was devoted to the economic downturn issue. Beth Foley from Zagnoli, McEvoy and Foley was the major presenter and feels that she has gathered enough research to have a “from 10,000 feet” perspective. Generally, jurors who identify themselves as “optimistic” are finding for plaintiffs and/or awarding damages. Generally, jurors who identify themselves as “pessimistic” are finding for defendants and/or not awarding damages. You might notice that “optimistic” is an Obama term. You might think that these identifiers are the old “Democrat” and “Republican” demographics rehashed. However, pay close attention to the “pessimists” – they are now getting off for hardship these days. They used to be staying on. What this means is that there are more “optimists” than “pessimists” on juries, according to this very early research. The result as far as damages goes -- in other words, are those optimists creating run away juries? Beth says this is way too early to tell, but she feels that there is little difference pre and post the economic downturn at this point. If you want to follow Beth's research, you can do so at www.zmf.com.

There is fascinating new research being done on where to place a camera during a deposition by Debra Worthington who is a professor at Auburn University who does academic research on juries. Most trial consultants have been frustrated by the lack of research done in this area. There are very good studies done in a criminal setting – interrogation – that most attorneys quote to me when they insist on setting the camera in the corner of the room when I help them prep their witnesses in a civil setting. The research in a criminal setting shows that when the camera is set up so that it squarely faces the accused, that person appears to be guilty because so much emphasis is placed on him or her. This phenomenon is so well researched and documented that other governments – like that of New Zealand – have passed laws making it illegal to put a camera squarely pointing at the accused. Not our government, where all the research was

done, of course. Now – what Debra is finding is that you civil and criminal setting are different when it comes to cameras. Best for the witness is to be shot over the shoulder of the person taking the deposition. This “across the table” style, long called California Style all over the country, is what I have been using and recommending for years. The old method of only looking into the camera and not paying any attention to the person asking questions is no longer recommended by me. Very gratifying to hear Debra also say it is “out”. As to cameras in the corner of the room and the table, Debra said only if you truly don’t want anyone paying any attention to what the witness says in the Deposition should the room be set up this way. My guess is that if you have worked with me on a case prepping your witnesses, you now have a really great way of telling whether or not you should call me in on your next case. If you have a strong urge to insist opposing counsel sets up the camera in the corner, it may be time to give me a call. This witness needs some help!

For those of you who were wondering about the future of trial consulting, you need not fear. There were a whole glorious crop of “newbies” that I had the pleasure of teaching as I conducted Trial Consulting 101 with Bill Grimes of Zagnoli, McEvoy, Foley and Bernadette Grant of Grant and Associates. Bill is the chair of the Education Committee – I am board liaison to that committee as part of my duties on the Board of Directors of ASTC. This new, revamped overview of our profession is a part of the Education Committee’s plan to provide a comprehensive curriculum to new members. I also had a blast teaching “Stand Up And Act! Presentation Skills Workshop” to my fellow wizards as a part of the general sessions. My co-presenter was Joey Asher of Speechworks in Atlanta. Everyone came away with new and better ways of selling themselves and their services – and many with copies of Joey’s latest book, “How To Win A Pitch”.

The most amazing speaker from a “learning new skills” point of view for me was David Matsumoto from the Ekman Group. A whole session on reading micro-expressions on the face --- fleeting signs of concealed emotions that are often used to betray lies. Or just let you know that there is something more going on that a person hasn’t yet verbalized. Fascinating.

My favorite time in the conference was Saturday afternoon. What an honor to meet The Honorable Judith Chirlin and hear her talk about teaching judges in Iraq. She said that usually when she speaks about “how to’s” of being a judge internationally, most judges from other lands regard what she has to say as old hat. The “younger” Iraqi judges thought her ideas were preposterous. The “older” Iraqi judges, who have been out of the judging business because of the political climate for a number of years, stood up to the younger judges and said, “You don’t know what you are talking about. Her ideas are not new – she is giving us back our old system – the way things used to be done.”

Also, Alison Renteln who is an academic at USC is working on getting courts to recognize that the court system needs to take into account a person’s culture when judging that person’s behavior in terms of whether or not it is criminal. She is the author of “The Cultural Defense” – fascinating. Valerie Hans from Cornell, who is well known as a studier of jurors all over the world presented her research. I can’t wait to see what

happens in Japan this summer when six lay judges sit right next to the traditional three professional judges and start listening to cases. Fascinating observations on how to educate the Japanese people on what it is to serve on these panels of judges. “We now have twelve eyes, twelve ears and six voices in every room where justice is passed down,” one person declared. Really moving.

Most moving was Andy Sheldon, Beth Bonara, and DeAnn Sinrich’s presentation on their pro bono work on the Sixteenth Street Baptist Church Bombing in Birmingham. Yes, “those” cases are being tried after all these years and yes, trial consultants are making a difference in the fact that they are successful. Now, many of you know that I pro bono cases – mostly capital murder cases and, of course, I teach seminars for my pet pro bono group, Bet Tzedek. Andy Sheldon of Atlanta can sometimes put in 3 and 4 months of pro bono work on these cases. He is passionate about righting these wrongs. Two ways in which trial consultants made a difference amongst the many I’ll cite here. The focus groups showed that there were two huge hurdles to overcome: 1) “It happened so long ago” and 2) “They didn’t target those four little girls specifically”. For the “so long ago” they used the picture of a clock. This wasn’t any picture of any clock – it was the picture of the clock on the wall of the dry cleaning establishment across the street from the church that was owned by the uncle of one of the four little girls who was killed. The impact of the explosion stopped the clock at the moment those kids were killed. It allowed Doug Jones, who prosecuted the case to argue, “Time stood still. It stands still today...and will keep standing still until you give these families and this community justice.” For “they didn’t target those girls” it turns out that if you look back closely at that time, there were lots of children being organized to turn out and march for voting rights. One of the major places that they children were organized was the Sixteenth Street Church. In fact, that Sunday morning there was a special service – A children’s service – being held that day. When those little girls were killed, they were putting on the finishing touches on their new dresses as they were getting ready for that service. A compelling tale told through pictures that Andy arranged in a brilliant order made the “not those children specifically” a completely bogus thought. I felt so proud in that session to be a trial consultant. So proud of the work that we do and the difference we can make.

So...next summer I hope you’ll be able to join me in Minneapolis. We’ll be there June 17 – 20. As Tom and Ken can tell you, it is a great way to earn CLE’s – and learn from the top trial consulting minds in the country.