



Why Work With Persuadius?

Litigation Graphics
Jury Consulting
Trial Technology
Visual Persuasion



Introduction to Persuadius

At Persuadius, our primary mission is to help you communicate your message in its most persuasive form. Often, this involves helping to explain difficult concepts to judges and jurors through the use of visual design and technology -- collectively called litigation graphics. Our litigation graphics are designed to speak to a specific narrative. Our industry-leading litigation and jury consultants are experts in the development and enhancement of narratives for trial – what we call, Winning, by Design.

Persuadius' headquarters is in Washington, DC and it has personnel or a presence in New York, Miami, Houston, Chicago, Los Angeles, San Francisco and many other cities around the world. Since 1995, Persuadius has worked with litigators from 100% of top law firms on more than 10,000 cases with trillions of dollars cumulatively at stake.

Persuadius was recently voted Best Demonstrative Evidence Provider and Best Jury Consultants by the readers of LegalTimes and a Best Demonstrative Evidence Provider by the readers of the National Law Journal.

Litigation Graphics

- Demonstratives for Litigation and ADR
- Sophisticated PowerPoint Presentations
- Document Call-outs
- Printed Large Format Boards
- 2D and 3D Animations
- Physical Models

Jury Consulting

- Mock Trials and Focus Groups
- Witness Preparation
- Juror Questionnaires
- Jury Selection
- Post-trial Interviews
- Opening and Closing Statements

Trial Technology

- Hot-Seat Personnel
- Trial Software
- Video Encoding
- Document Coding
- Equipment Rental and Setup
- Video Synchronization
- Provide DVD, Flash Drive, or iPad

Visual Persuasion

- Corporate Presentations
- Social Media Messaging
- Lobbying Visuals

E-Briefs

- Scanning and Coding
- Configure Database
- Citations and Hyperlinking
- Digitally Convert Paper Briefs



Thank you for downloading – Enjoy your Persuadius eBook

This book is designed to help you when you, a trial team, or corporate in-house counsel are considering the hiring of a litigation consulting team to help you prepare an opening presentation, design an effective mock trial, hire a jury consultant, get technology support in the courtroom, develop a technical computer animation, prepare a witness, help an expert create a more understandable PowerPoint presentation or a long list of other things Persuadius does.

Since the mid-1990s, Persuadius has been at the top of the litigation consulting and litigation support industries. In our more than twenty years of serving top trial teams, we have support just about every major law firm in litigation. In recent years, we have been consistently voted the best jury consulting firm and best demonstrative evidence firm by the readers of top legal industry publications.

This book contains useful articles like "11 Things Your Colleagues Pay Litigation Consultants to Do," "Is Hiring a Jury Consultant Really Worth It?," "12 Reasons Litigation Graphics are More Complicated Than You Think," "12 Insider Tips for Choosing a Jury Consultant," and dozens of other valuable articles. These articles are designed to help you choose the best litigation consulting team for you.

I invite you to contact me directly, and, if I'm not the best person, I can put you in touch with the right person on the Persuadius team to field questions you might have about jury consulting, litigation graphics, trial technology and other litigation consulting services.

A handwritten signature in black ink that reads "Kenneth J. Lopez".

Kenneth J. Lopez, J.D.
Founder and CEO

Persuadius
ken@persuadius.com



Table of Contents

- 11 Things Your Colleagues Pay Litigation Consultants to Do..... 7
- The 14 Most Preventable Trial Preparation Mistakes 10
- The 12 Worst PowerPoint Mistakes Litigators Make 13
- With So Few Trials, Where Do You Find Trial Experience Now?..... 16
- 11 Surprising Areas Where We Are Using Mock Exercises and Testing 19
- 14 Places Your Colleagues Are Using Persuasive Graphics (That Maybe You're Not)..... 22
- 10 Things Every Mock Jury Ever Has Said..... 24
- Is Hiring a Jury Consultant Really Worth It? 28
- 7 Bad Habits of Law Firm Litigators..... 30
- Top 7 Things I've Observed as a Litigation Consultant..... 33
- How Does a Trial Presentation Consulting Firm Do What It Does? 37
- 12 Reasons Litigation Graphics are More Complicated Than You Think 39
- 10 Types of Value Added by Litigation Graphics Consultants 42
- 16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint..... 45
- 6 Triggers That Prompt a Call to Your Litigation Consultant..... 55
- \$300 Million of Litigation Consulting and Storytelling Validation 62
- Your Trial Presentation Must Answer: Why Are You Telling Me That?..... 64
- 11 Problems with Mock Trials and How to Avoid Them 66
- The Very Best Use of Coaches in Trial Preparation..... 69
- 7 Ways to Prepare Trial Graphics Early & Manage Your Budget..... 71
- Planning For Courtroom Persuasion? Use a Two-Track Trial Strategy..... 74
- No Advice is Better Than Bad Advice in Litigation..... 76
- Why Trial Graphics are an Essential Persuasion Tool for Litigators 78
- How Much Text on a PowerPoint Slide is Too Much? 81
- 11 Small Projects You Probably Don't Think Litigation Consultants Do 83
- Who Are The Highest-Rated Jury Consultants? 86
- Do Professionally Designed PowerPoint Slides Get Better Results? 88
- What Does A Case-Winning Trial Graphic Look Like? 91



10 Things Litigation Consultants Do That WOW Litigators 95

12 Astute Tips for Meaningful Mock Trials 98

6 Secrets of the Jury Consulting Business You Should Know..... 103

11 Traits of Great Courtroom Trial Technicians..... 106

How Long Before Trial Should I Begin Preparing My Trial Graphics? 108

Why Trial Tech ≠ Litigation Graphics 110

Will Being Folksy and Low-Tech Help You Win a Case? 112

12 Insider Tips for Choosing a Jury Consultant 114

How Valuable is Your Time vs. Litigation Support's Time? 116

Working in Parallel vs. Series with Trial Presentation Consultants 118

5 Surprising Areas Where Geography No Longer Matters in Trial Support ... 120

Storytelling Proven to be Scientifically More Persuasive 122

Trial Consultants: Unfair Advantage?..... 125

Storytelling at Trial - Will Your Story Be Used? 131

5 Questions to Ask in Voir Dire . . . Always 133

7 Reasons In-House Counsel Should Want a Mock Trial 135

How I Used Litigation Graphics as a Litigator and How You Could Too 137

14 Differences Between a Theme and a Story in Litigation 142

7 Reasons Litigation Graphics Consultants are Essential Even When Clients Have In-House Expertise..... 145

9 Things I've Noticed About Effective Litigation Graphics After 20 Years as a Litigator 148

5 Trial Graphics That Work Every Time 151

3 Observations by a Graphic Artist Turned Litigation Graphics Artist 156

The Effective Use of PowerPoint Presentation During Opening Statement ... 159

10 Ways to Lose Voir Dire..... 162

5 Things Every Jury Needs From You 164

Why Litigation Graphics at Mock Trials Make Sense 166

15 Things Everyone Should Know About Jury Selection 169

21 Reasons a Litigator Is Your Best Litigation Graphics Consultant..... 174

Do I Need a Local Jury Consultant? Maybe. Here are 7 Considerations. 179

25 Things In-House Counsel Should Insist Outside Litigation Counsel Do ... 182



The 13 Biggest Reasons to Avoid Last-Minute Trial Preparation..... 187

Witness Preparation: Hit or Myth? 190

Witness Preparation: The Most Important Part 196

Practice is a Crucial Piece of the Storytelling Puzzle 202

6 Studies That Support Litigation Graphics in Courtroom Presentations 204

Don't Be the 2% - 6 Ways to Encourage Settlement with Trial Prep 206

7 Questions Will Save You Money with Litigation Graphics Consultants 209

10 Key Steps After: "I've Got a Case I Might Need Help With" 212

4 Tips for Using Trial Graphics in Motions and Briefs 214

12 Questions to Ask When Hiring a Trial Graphics Consultant..... 217

Making Good Use of Trial Director & Demonstratives in an Arbitration 219

Hyperlinking Briefs: Be More Persuasive Using The iPad 222

6 Tips for Effectively Using Video Depositions at Trial 225

Litigators, You Deserve Ritz-Carlton-Level Service..... 227

9 Trial Graphics and Trial Technology Budget-Friendly Tips 229

21 Secrets for Using Litigation Consultants on a Tight Budget 232

Victory at Any Cost! Using Litigation Consultants to Dominate 234

Trial Presentation Too Slick? Here's Why You Can Stop Worrying 237

Litigator & Litigation Consultant Value Added: A "Simple" Final Product..... 239

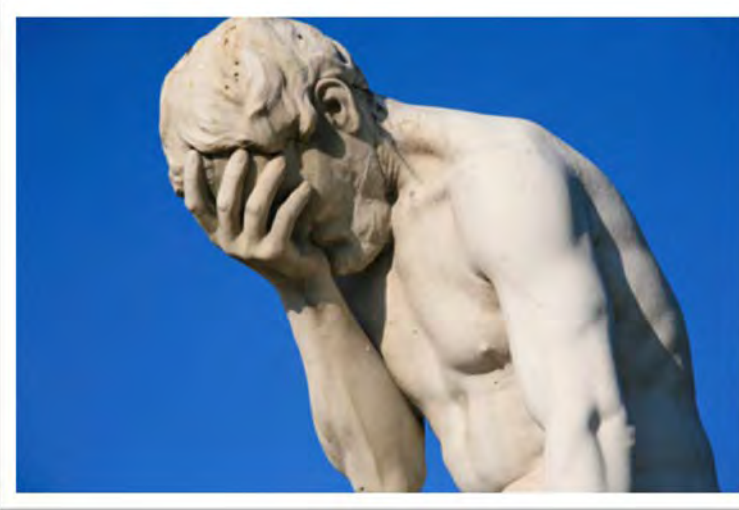
What Does Using a Trial Technician or Hot-Seater Cost? 242

What Does Litigation Animation Cost? (Includes Animation Examples)..... 244

12 Alternative Fee Arrangements We Use and You Could Too 249

11 Things Your Colleagues Pay Litigation Consultants to Do

by [Ken Lopez](#) Founder/CEO, [Persuadius](#)



I have had the following conversation thousands of times in my 18 years at [Persuadius](#). It goes something like this one that I had yesterday:

Friend: So, what are you guys working on?

Me: Well, I believe we are probably involved in the top three cases in the country right now in terms of dollar value. Two are antitrust cases

affecting most Americans, and one is a massive product liability case affecting people worldwide. Together, there are easily hundreds of billions of dollars at stake.

Friend: Wow, what would you guys do in those cases since there isn't an accident to depict or anything?

Me: Facepalm and sigh.

Since I am in charge of marketing at my firm, I knew immediately that to a certain extent I had failed. While we do depict the occasional accident, that type of case is actually quite rare compared with how often we are hired to help [tell a visual story](#) or [conduct a mock trial](#).

Fortunately, with our litigation blog hitting [3,000 subscribers](#) this week, I can begin to quickly set things straight. So in this post, I'd like to provide as clear a description as possible of what most law firms pay us to do.

The term litigation consultant is a broad one. Many people use it to mean many things. We [have written about this before](#) and even [produced an infographic](#) to help explain the term. We use the term litigation consulting to collectively describe our three core services: [jury consulting](#), [litigation graphics consulting](#), and [on-site courtroom technology consulting](#).

Still, these services are not evenly divided in our revenue makeup, and none of these terms really does a great job explaining our value added. So below is a list of 11 things, in descending order of frequency that we really get paid to do.

[Develop a Visual Presentation for Opening:](#) At A2L we believe that most cases are won or lost in the opening statements. It's true because of the way juries reason, as my colleague [Dr. Laurie Kuslansky](#), [discussed yesterday](#), and as we have written about [in](#)



previous articles. Most top litigators share this belief, so they invest heavily in work getting this right. Since more than two-thirds of people prefer to learn visually, it is not surprising that top litigators spend countless hours getting ready to present an opening -- practicing it, developing litigation graphics and testing it.

1. **Conduct a Mock Trial for an Upcoming Case:** We spend a considerable amount of time every month conducting mock trials as well as preparing for them and reporting on the results. This is true **both for jury trials and bench trials.**
2. **Develop a Markman Hearing Presentation:** Because patent litigation has always led the industry in adopting the latest litigation consulting techniques, because patent case filings are rising at record rates and because **one of our senior litigation consultants is a successful patent litigator**, about half of our work continues to involve patent litigation.
3. **Sit in the Courtroom and Run the Technology:** Most of the time, we have a **trial technician** deployed or preparing to deploy to a trial, hearing or arbitration somewhere in the world. These talented folks are the technical wizards of the courtroom as we detailed in **this article** and others like it.
4. **Tease Out a Clear Theme or Story:** As more and more litigators realize the value of **storytelling in the courtroom**, more trial lawyers hire us to help in this effort. We've built a **Micro-Mock exercise** that is tailored for this kind of work and we build storytelling into all of our visual presentations or mock trial recommendations.
5. **Work with an Expert to Explain Something Visually:** Experts are almost universally expert in explaining to other experts why they are correct. More challenging for experts is explaining to a judge or jury why they are correct.
6. **Create an Animation:** When I started our company 18 years ago this week, it was called **Animators at Law**. How far we have come. I started the firm in a rundown part of town, in a storage closet converted to an office. Today, we have personnel nationwide and this includes people in the animation business. We have created animations for airline disasters, to explain the failure of the levees in New Orleans and to demonstrate **how certain technology works in countless patent cases.**
7. **Help Choose a Jury:** We just published a great **five-part series on jury selection**. We write about this topic frequently, as it is something we do quite a often, usually in state courts. **Here is a link** to part one of that series.
8. **Build a Model of Something:** Technically, **demonstrative evidence** is anything that is not real evidence, but litigation consultants generally use the term to refer to anything used to help explain a point clearly to a judge or jury. One form of demonstrative evidence that is often overlooked is **physical models or scale models**. We just finished one this past week in a patent case that demonstrates the function of a key piece of technology.



9. [Work to Refine Deposition Clips, E-Briefs & Building Trial Databases](#): It's not exciting work, but the results of it certainly can be. [Cutting depo clips](#) are part of our regular work and is an essential part of going to trial. Building an [electronic brief or e-brief](#) is also an increasingly common task. The same is true for preparing the database of exhibits that will be shown at trial. When done correctly, any exhibit can be shown on a moment's notice. Normally, this work is conducted by our [trial technicians](#).

10. [All the Other Things](#): To be fair to A2L and other great firms like ours, we can't sum up all that we do in only 11 steps. For a complete list of other things we are doing as litigation consultants, have a look at [11 Surprising Areas Where We Are Using Mock Exercises and Testing](#) and [14 Places Your Colleagues are Using Persuasive Graphics \(That Maybe You're Not\)](#).

The 14 Most Preventable Trial Preparation Mistakes

by [Ken Lopez](#) Founder/CEO, [Persuadius](#)



Compared with even the largest law firms, we go to trial a lot. After all, even the busiest litigators in major firms try at most 30 cases in their lifetimes. We consult on many more cases than that in a year. Indeed, we have spent 20 years going to trial, and our clients are mostly major law firms that are working on very high-stakes cases.

This unique perspective on how litigators conduct trial preparation for cases has given us enough best practices to fill this blog for a lifetime. No two litigators are quite alike. From the trial attorney who knows his case perfectly months in advance to the one who only learns the case a couple of days before trial, there is no one right way to do things.

However, it is easy to make fundamental mistakes when preparing for trial. After all, unless you have worked in a prosecutors' office or have cut your teeth at a smaller firm, the chances are that a trial is a rare event for you.

Here are 14 mistakes we have seen in trial prep that are completely and easily preventable.

1. **Where's the story?** As more and more science emerges about the proven value of [storytelling as a persuasion device](#), it is critical that your case has a story. Many teams arrive at our doorstep with no story in place at all, so we craft one for them through [mock jury work](#) and other exercises like a [Micro-Mock](#).
2. **Where's the meaning?** In addition to telling a story, you have to be prepared to tell jurors why they should care about your client and the case. If you can't do that, don't expect a good result.
3. **Being penny-wise and pound-foolish:** This old phrase means, of course, that one is focused on small costs, not on the ultimate result. Let's say you or the client chooses hotel accommodations that are five miles away from the courthouse to save money, or that you adopt a software solution that isn't tailored to your needs because it's cheaper. These choices don't help in the long run.



4. **Using paralegals or associates as trial technicians:** It's not fair to these good people who support litigation partners to ask them to run software at trial that they have not had adequate training and experience with. We had a recent case where a law firm attempted to use an under-experienced person to handle trial presentation and lived to regret it. They, the judge and their jury waited in silence for ten minutes during opening statements for the technology to work. As our happy (and winning) client said, "you don't get a second chance to make a first impression." I couldn't agree more.
5. **Going with the low estimate on graphics:** As one client said to me recently after a competitor of ours was brought into a case on a low estimate and then dismissed for performance issues, "it was a false economy." If a consultant makes your trial preparation more difficult, or even just less easy, that always costs your client hard dollars. Explaining this [value to in-house counsel](#) is critical.
6. **There's last minute, and then there's really last minute:** Often people think a case will settle and they put off trial preparation, only to find that the settlement didn't occur. Unfortunately, trial preparation is just one of those things that take time, and there really is no fast-forward button. Put off trial prep to keep the client bill down in the near time, and you will likely be the one getting blamed for a bad trial result in the end.
7. **Insufficient practice:** We have published some very popular articles on the subject of practice. From [how actors prepare](#) to [how professional athletes practice](#), there are countless examples of the benefits of good practice. One estimate for great presentations suggests that to be really effective, you must devote an amount of time to practicing equal to at least thirty times the length of your presentation.
8. **Using PowerPoint amateurishly:** I used to race cars a bit, and I noticed on the track that there is a surprisingly wide gap between adequate and great drivers. It shows up on a stopwatch of course, but I would see it more in the mistakes people made. [Preparing litigation graphics on your own](#) is quite similar. Almost all of us know how to drive a car and even drive fast, but very few people can consistently make the right choices on the track. Similarly, almost anyone can prepare a slide in PowerPoint, but making the right choices to win over your jury is much more difficult.
9. **Failing to survey the courtroom in advance:** Just as a professional athlete will visit a new stadium or arena in advance, you should visit the courtroom well before the trial begins. Often litigators learn too late that a courtroom is too small for a standard projector or that a timeline they want to use has no place in a particular courtroom layout.
10. **Failure to role play:** Like an actor who tries to practice alone, an attorney must work with experts, assist in [witness preparation](#) and conduct drills of their opening and closing statements.



11. **Failure to test graphics in advance:** I remain astounded that mock trials are conducted [without litigation graphics being tested](#). You don't want to find out during the trial that your graphics or your equipment are incompatible with the courtroom setup or are ineffective. As any qualified jury expert will tell you [juries rely on more on what they see](#) than what they hear, roughly by a factor of 2:1.
12. **Failure to understand your judge:** There are many good ways to research a judge, some of which we have detailed in [a popular article](#). You simply must understand how he or she decides things. In the court nearest me, there are judges who will not tolerate trial technology of any sort, and there are judges who get annoyed when you don't use it.
13. **Losing it during trial preparation:** Sometimes even great [trial teams go bad](#), but the single worst thing that can go wrong is when the leader loses his or her cool close to trial when anxiety is at its highest.
14. **Failing to brainstorm what could go wrong:** Plan for the worst and expect the best. This should be just as true for pre-trial motions as it is for [trial technology](#).

Articles related to practice, trial preparation and trial presentation that you may also like include:

- [5 Things Every Jury Needs From You](#)
- [A Downloadable Sample One-Year Trial Preparation Calendar](#)
- [10 Things We Do After You Say You Might Have A Case](#)
- [Free Download: Storytelling for Litigators](#)
- [11 Surprising Areas We are Using Mocks and Conducting Practice](#)

The 12 Worst PowerPoint Mistakes Litigators Make

by [Ken Lopez](#) Founder & CEO, [Persuadius](#)



Some online estimates say that about 30 million PowerPoint presentations are given every day. That number seems more than a bit high, and it's hard to find a credible source for it. But let's say it's off by a factor of 80 percent so that just one-fifth of that many presentations are given each day. Still, that would be 6 million PowerPoints.

In the legal community, we give our fair share. Since legal

services are about 1% of the total economy, we can make a guess that at least 60,000 PowerPoints are being given every day in the U.S. legal industry or about 6,000 for every hour of the working day.

If we assume that every legal industry PowerPoint is being watched by an average of two other people and all of those people charge \$200 on average for their services, America's legal industry is producing at least \$3.6 million of PowerPoints every hour! That's a lot of time and a lot of money. We ought to at least use it well.

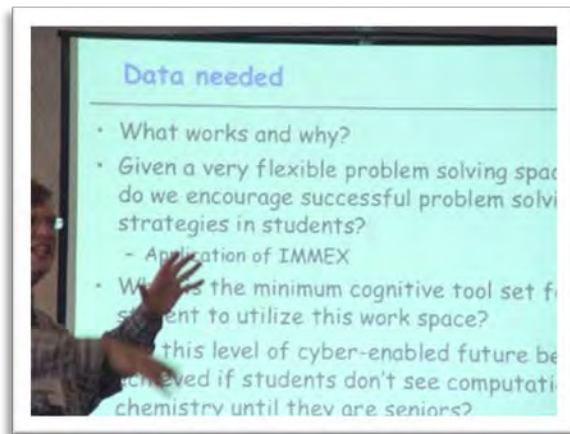
PowerPoint has been the dominant presentation software in the courtroom since 2003. When used well in the courtroom, it allows a skilled presenter to captivate an audience with a well-told story, enhance the audience's understanding of a case, and persuade skeptics that the presenter's position is correct. In other words, a well-crafted PowerPoint presentation helps tip the scales of victory, potentially substantially, in your client's favor.

Unfortunately, I believe the typical PowerPoint presentation used in the courtroom causes more harm than good. Here are twelve easy-to-avoid PowerPoint mistakes.

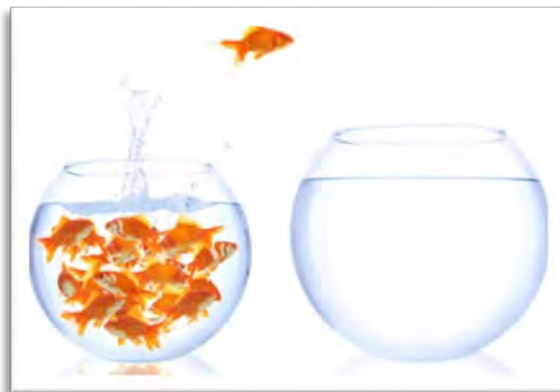
1. **The bullet point list.** This is the mother of all PowerPoint mistakes. If you make this one, you probably make several others on the list. We have written about [why bullet points are bad](#) many times, and below is an example of what not to do. The most significant problem is that people will normally read your bullets and ignore what you are saying. Further, their brains will remember less than if they had either read OR heard what you were saying because of the [split attention effect](#).



2. **The wall of text.** Courtroom presentations should be a lot more Steve Jobs and a lot less like the example below. Nobody can read it.



3. **The “who cares.”** If you fail to [tell a compelling story](#) that nobody cares about, your presentation was a waste.
4. **The flying whatever.** Please do not use PowerPoint animation effects. They are distracting and add little to your presentation.



5. **The “huh” image.** Don't include images that only vaguely enhance your message.



6. **The back turn.** Do not turn your back on your audience. Watch the [TED Talks for good presentation form](#).
7. **The itsy bitsy.** For text on a slide that is projected, I would not go below 24-point text.
8. **The slide that overstayed its welcome.** Don't leave up a slide that has nothing to do with the point you are making. Either insert a black screen slide or press the B key to toggle on and off your presentation.
9. **The Bob Marley.** "[Turnnnn your lights doooowwwnnnn loooooowwww.](#)" If you have to, you have the wrong projector. Use 3000 lumens; that's good, and 5000 lumens is great.
10. **The highly objectionable.** Do not put up materials that the judge will rule inadmissible.
11. **The "ehhh."** If you have sound to play, make sure you have the equipment to amplify it with. Your laptop speakers are not enough for any courtroom.
12. **The End (is missing):** Please **do** insert a black screen on your last slide so that we don't see you hit the "next" key one more time only to reveal the desktop photo of you and your kids in Tahoe.



With So Few Trials, Where Do You Find Trial Experience Now?

by [Ken Lopez](#) Founder & CEO, [Persuadius](#)



I have recently interviewed dozens of in-house counsel from large companies. One subject that continues to come up fascinates me and reflects the changing practice of litigation-focused law.

As my litigator turned litigation consultant colleague [Ryan Flax](#) says, "they call it the practice of law, but no one is practicing." That is, with so few trials occurring, the normal go-to litigators at big law firms are just not

going to trial like they used to, and thus are not getting the practice that they used to get. Since that's true, where does one look for trial experience now, and will there be a shortage of experienced trial lawyers soon at large law firms? Let me offer some observations and five solutions.

The same trial lawyers I once saw go to trial at least once per year a decade or two ago, now go to trial every few years—at best. In their non-trial time, they are not watching trials since they are not being paid to go watch trials, and they do not usually participate in mock trial practice either. The difference between how often a large law firm goes to trial, let alone a single litigator, and a litigation consulting firm like A2L has never been greater than it is right now.

Whereas a major law firm may go to trial perhaps a dozen or two dozen times per year and a single litigator may go to trial every few years, a single litigation consultant at A2L will be involved in at least a dozen trials and often several dozen trials or more, every single year.

If you think trial-loving partners at big law firms are unlucky, think of their associates, and ask yourself, how is anyone getting any trial experience anymore? That is a question that in-house counsel are beginning to ask. As one noted, the people who now look truly comfortable in front of a jury are often plaintiff's counsel, since they are more frequently in court.

One in-house counsel at a large company poignantly noted about the plaintiffs' counsel they face, "they have a swagger and body language that comes from experience, and that experience comes off as confidence, and confidence helps win cases." So, if in-house counsel recognizes that an experience gap is growing, what is the solution?

Here are five ideas for maximizing the amount of valuable trial experience on a trial team:



1. **Litigation Consultants Add Experience to the Team:** In-house counsel no longer expect a law firm to have all of the answers. They expect the involvement of litigation consultants early in a case. With litigation consultants in trial almost full-time, they are a logical add-on both from the trial team's and the client's perspective when considering early case assessment, mock exercises or trial. See, [Litigator & Litigation Consultant Value Added: A "Simple" Final Product](#) and [25 Things In-House Counsel Should Insist Outside Litigation Counsel Do](#) and [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#).
2. **Learning by Doing Programs:** Programs like those offered by NITA and others that allow for practice to occur should be a part of a litigator's life-long learning program every year. See [NITA programs here](#).
3. **Watch Trials on CVN:** Until the Supreme Court figures out that televised trials will improve trial practice, there is an amazing resource trial lawyers can rely on. The Courtroom View Network captures video from trials and makes it available to watch online. In my view, every major law firm should be subscribing to this service to support the training of their litigators. See [CVN discussed here](#).
4. **Take Every Opportunity to Run a Mock Trial:** In-house counsel supports the idea of a mock trial but is often afraid of the time and money investment. That's understandable, and while a multi-panel mock trial will always yield the best data, there are other solutions like a focus group or a Micro-Mock. Each offers a litigator the chance to practice his or her craft. See, [In-House Counsel Should Make Outside Litigation Counsel Feel Safe](#) and [7 Reasons In-House Counsel Should Want a Mock Trial](#) and [Introducing a New Litigation Consulting Service: the Micro-Mock™](#).
5. **Read this Blog and Others Like it:** There are several organizations who are publishing information that is far ahead of traditional CLE's when it comes to litigation. The ABA recognized our blog as one of the top ten litigation blogs, and I have highlighted other blogs helpful to litigators in the past. [Subscribe free to this blog here](#). See, [The Top 14 Blogs for Litigators & Litigation Support Professionals](#) and [Top 100 Legal Industry Blogs Named by the American Bar Association](#).

Other articles related to mock trials, getting trial practice and increasing your chances of winning at trial by Persuadius:

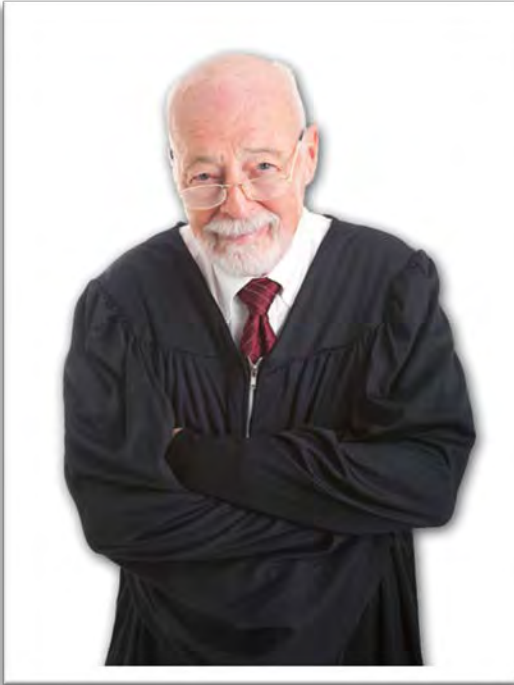
- [Storytelling for Litigators e-book](#) and [Storytelling for Litigators webinar](#)
- [Run a confidential conflict check to get your case on A2L's radar before it is too late](#)
- [The 13 Biggest Reasons to Avoid Last-Minute Trial Preparation](#)
- [Accepting Litigation Consulting is the New Hurdle for Litigators](#)
- [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#)
- [9 Things In-House Counsel Say About Outside Litigation Counsel](#)
- [14 Differences Between a Theme and a Story in Litigation](#)
- [Accepting Litigation Consulting is the New Hurdle for Litigators](#)
- [5 Tips for Working Well As a Joint Defense Team](#)



- [Why You Did Not Use a Mock Trial \[One-Question Survey\]](#)
- [3 Ways to Force Yourself to Practice Your Trial Presentation](#)

11 Surprising Areas Where We Are Using Mock Exercises and Testing

by Laurie R. Kuslansky, Ph.D. Former Managing Director Jury Consulting, Persuadius



People normally think of mock trials as just that – advance run-throughs of jury trials with witnesses, documents and mock jurors, who are able to comment after the presentation about what an advocate did right and what could be improved. But mock presentations can be very effectively used in other contexts than the traditional jury trial. Here are 11 of them:

- 1. Mock SEC Hearings** -- Numerous individuals are called to provide information in various proceedings, formal or informal, before the SEC. Understandably, this elicits a significant amount of anxiety. While experienced attorneys can properly prepare their clients on the procedure, what to expect, talking points and issues, and what to avoid, additional skills in the psychology of being in such a position and handling it are immeasurably helpful. Toward that end, we have been called upon in many instances – both nationally and internationally – to help such individuals identify their sources of distress and coping skills to manage them so they can perform better once interviewed by the SEC and in other settings. [See related articles on securities and banking litigation.](#)
- 2. Mock Regulatory Hearings** – full-blown mock commission hearings, including representatives functioning for all participants, can permit our clients to learn first-hand what works, what doesn't, what is missing, and ways to remedy the issues before the actual hearings, including testing of graphics, key witnesses, and positions. [See also articles on experts and witness preparation.](#)
- 3. Class Certification Mock Trials** – whether for plaintiffs or the defense, such tests have provided valuable information, e.g., identifying facts that undermine the uniformity of the class, which plaintiff would be best received and most compelling as lead plaintiff, which case would be best as the “bellwether” case, and other issues that can guide counsel as they approach the litigation. [See also articles related to class action cases.](#)
- 4. Pre-discovery mock trials** – The testing of possible lines of attack and defense *before* discovery can significantly guide the direction of discovery and the case outcome, including the formation of questions and answers for depositions, the selection of experts, the subject matter for which jurors may seek expert testimony,



- theories that are salient, issues that are confusing, and the like. As a result, counsel can address these in discovery while there is still time to explore the facts, rather than waiting till discovery is closed. Considering that most cases are resolved before trial, the better one can position a client during discovery, the better most clients will do. *See articles on [mind mapping](#) and [trial prep schedules](#).*
5. **Mock Mediations/Mock Arbitrations** – since many cases are resolved by mediation or arbitration, a client needs to understand what those forms of dispute resolution look like. For example, a lawyer may be accustomed to abiding by the rules of evidence, which is proper in a trial, but often not well suited to a mediation, which is more informal. A mediator or arbitrator will generally ask different types of questions than a lawyer is accustomed to seeing in a trial and the lawyer needs to be prepared. *See articles related to [mediation and arbitration](#).*
 6. **Mock advocacy and lobbying presentations** – Sometimes, a case needs to be “won” before a member of Congress or in a quasi-judicial setting, such as convincing a member of the FTC to sign on to a complaint against another company. These informal proceedings are an excellent opportunity for a mock, with someone familiar with the case playing the role of the decision-maker and keeping the advocate on his or her toes. *See articles related to [advocacy, public opinion, and lobbying](#).*
 7. **E-discovery disputes** – These can be extremely technical and complicated because of the nature of electronic evidence, and sometimes the judge needs a considerable explanation about how documents were created and stored, for example. A mock presentation can help ensure that the advocate is fully familiar with the technical aspects and can explain them to a judge in a convincing way. *See [articles related to E-Discovery](#).*
 8. **Markman hearings** – These are crucial events in most patent infringement cases. A patent attorney should not participate in a claim construction hearing without extensive preparation, which can include a mock presentation about the technology involved. Often, the technology is extremely complex, and the lawyer can use the mock to figure out the best way to present it. *See articles related to [Markman hearings and mock Markmans](#).*
 9. **Pre-indictment meetings** – Very often, prosecutors will hold meetings with attorneys before deciding whether or not to seek an indictment. These informal meetings in prosecutors’ offices do not use rules of evidence. They are in many cases the most crucial point of any white-collar criminal matter, and a mock presentation can be extraordinarily helpful. *See [tactics we recommend in criminal cases](#).*
 10. **Mock Negotiations** – Many cases are settled, of course, at the negotiating table. Although a good many attorneys have skills in negotiating and arriving at deals, there are still many new and interesting negotiation techniques that can be taught in a mock context. Thinking about how to negotiate against tough points is not the same as doing it, thinking on one’s feet, and actually responding to challenges. Hence,



mock negotiations against a well-informed mock opponent can put these skills to the test and still leave time for counsel to strengthen areas of weakness or in need of additional preparation.

11. **Bench Trials** - Most people find it surprising that we conduct as many mock bench trial exercises as we do. After all, it's usually called jury consulting, right? Well, often the stakes are even higher in bench trials, and our work has shown us that a key challenge for counsel is determining the appropriate level of information to present to avoid going over the judge's head or patronizing the judge by over-simplification. By presenting before retired judges who have similar backgrounds to the actual judge, or one who knows him or her well, such feedback can spare counsel adverse reactions at trial. This area of trial consulting is certainly on the rise, and our use of judge studies and retired federal judges on mock panels has been well-received whether we are prepping for the [ITC](#), [the Federal Circuit](#), [Markman hearings](#) or a traditional bench trial.

Other mock exercise related articles on A2L Consulting's site:

- [14 Surprising Areas Where We are Using Litigation Graphics](#)
- [Mock Markman Hearings](#)
- [Mock Federal Circuit Hearings](#)
- [Mock Trials Generally](#)
- [Micro-Mock Exercises](#)
- [What mock jurors always say!](#)
- [How to force yourself to practice - even when you don't like to](#)
- [Big changes coming to jury consulting and trial consulting](#)
- [Persadius voted #1 jury consultants by *LegalTimes* readers](#)

14 Places Your Colleagues Are Using Persuasive Graphics (That Maybe You're Not)

by [Ken Lopez](#) Founder & CEO, [Persuadius](#)



People often focus on the use of [trial graphics](#) in, well, trials. And there's no doubt that that's where persuasive graphics, presentations, and exhibits are most often used. But you might be surprised to see how many other places are appropriate for the use of litigation style graphics. Here are 14 good examples.

1. **In motions:** A juror will never see them but a judge will. For more on this topic, read our [article on using litigation and trial graphics in motions](#).
2. **In briefs:** Generally, trial graphics are used for perfectly normal reasons in briefs. Occasionally, an attorney will use them for the sake of humor or just to prove a point. [See this comical courtroom brief](#).
3. **In depositions:** One of our clients recently asked us to prepare litigation graphics for depositions with an eye toward using those same graphics at trial.
4. **In mock trials:** These can be an excellent investment of money and time in a case that is large enough and significant enough to justify the use of litigation graphics during the mock. See our [article on using litigation graphics during a mock trial](#).
5. **In pre-trial hearings:** We all know graphics are used in [Markman hearings](#), but they are also frequently used in summary judgment hearings and in hearings on motions to dismiss. Again, the jury will not see the exhibits but a judge will.
6. **In arbitration and alternative dispute resolution:** This use of trial graphics is overlooked more than others. Many arbitrations follow rules of evidence and resemble trials, and litigation graphics are [quite appropriate in them and in ADR generally](#).
7. **In class certification hearings:** [Graphic demonstrations can be used in many aspects of class actions](#), and the issue of "predominance" is one in which they are

especially useful.

8. **In advocacy and lobbying presentations:** Hydraulic fracturing is a controversial issue, and the graphic that we prepared [shows how fracking works](#) and may dispel some unwarranted myths and fears about fracking. It's received 60,000 views as of this writing demonstrating how one might use PowerPoint and video to get a message out.
9. **In presentation graphics:** Most of us prepare and deliver presentations as part of our work. [This article on presentation graphics](#) showing how the President prepares and delivers an effective visual presentation using persuasive graphics is a good guide for any of us.
10. **In e-briefs:** This technique is being used more and more frequently by trial lawyers, and [e-briefs are now including litigation graphics](#), sometimes animated graphics too.
11. **In e-discovery disputes:** Sometimes, a courtroom presentation consultant will demonstrate what documents were missing and why sanctions were warranted. Sometimes the graphics illustrate, to the contrary, that the documents were completely or largely produced or that the matter in dispute is not large enough to require sanctions. [E-discovery hearings are utilizing persuasive graphics more and more.](#)
12. **In settlement discussions:** We have seen trial graphics prepared for settlement many times in the last two decades. Recently, however, the sophistication demanded of those graphics has been on the rise. Sometimes, even high-end 3-D animations are prepared. The trick, of course, is to balance the persuasive benefit of the graphics with the risk that settlement talks fail, and you tip your hand leading up to trial.
13. **In pre-indictment meetings:** As government budgets have increased over the last four years, so too have pre-indictment meetings with prosecutors. We have prepared countless 'clopening' style presentations for these meetings hoping to help our client avoid indictment altogether. Well-thought-through persuasive graphics may help avoid a negative life or company changing event.
14. **In technology tutorials:** No longer are [technology tutorials used only in patent cases](#) to help educate the judge. Litigators are requesting to submit them in other cases where educating the judge is beneficial to both sides. This could include complex financial cases, large antitrust matters with a complex product at issue and many other types of cases.

10 Things Every Mock Jury Ever Has Said

by [Laurie R. Kuslansky](#), Ph.D. Former Managing Director Jury Consulting, [Persuadius](#)



For decades and in every part of the nation, mock jurors who are presented with various fact patterns and legal issues tend to have the same reactions. Some are helpful and others are harmful, depending on where you stand in the case. Knowing that these issues recur over and over can help to prevent those which are unfavorable to you:

1. Why did the plaintiff wait so long to sue?

While there may be good reason to delay filing suit, mock and actual jurors often use the delay between the alleged problem and the filing of a claim as a yardstick of its merit. The longer the gap, the less credible the claim. If counsel fails to address this issue, it tends to work against the plaintiff. It is especially damaging, for example, when someone claims an issue in the workplace but waits until they are no longer employed. Too many jurors, this signals that it was the termination, separation, or voluntary departure that was the issue, not the conduct, such as discrimination, that is the subject of the complaint.

2. That doesn't make sense.

Lawyers don't always put their case through the basic "smell test" or test of common sense from the layperson's perspective. They skip this step at their own peril because those are the tools most accessible to lay jurors. While the theory of the case may work for a sophisticated user, it may go over other people's heads and not square with more fundamental questions. Jurors' questions may and often do fall outside the strict legal requirements of verdict issues to answer -- but if left unanswered for the jury, those gaps often harm the party that failed to close them. For example, the motive may not be required legally, but is required for most cases psychologically. People want to know who gained and who lost? Why did they do what they did? Did they have alternatives? Why would someone act against their own interest? Why would a rich person nickel and dime?

3. How much should we give them?

Without the benefit of law school, or knowledge of the law, lay jurors often have no difficulty separating causation from damages. Instead, some permit other motives (e.g., sympathy), to drive a desire to award some money, whether or not liability has

been proven. Therefore, it is not uncommon for mock deliberations to begin not with a question of liability but with the question, “So, how much should we give [plaintiff]?” A mere reading of instructions is not the remedy. Instead, defense counsel needs to pay particular attention to this possibility and address it directly – not only legally (the law requires a finding of liability before considering damages) – but in terms of messages of why it is okay not to award damages, or not okay to award them from a practical perspective. For example, one might argue that awarding damages to the plaintiff means that the defendant did the wrong thing and the evidence shows that these people (defendants) did not do the wrong thing.

4. That may be true, but they didn’t prove it.

Thankfully for some defendants, many jurors express their belief that the plaintiff is right but accept that the plaintiff must prove its case and that the evidence does not amount to proof. Arming defense-oriented jurors to espouse this posture to defeat plaintiff-leaning jurors is always worthwhile, especially in cases that may engender sympathy for the plaintiff. “You may think the plaintiff is right or you may want the plaintiff to win, but the test is for the plaintiff to prove their case and if they do not do so, then you cannot find for the plaintiff.” This line of thinking should also be incorporated into the voir dire where available, e.g., asking questions along the lines of “If the plaintiff has to prove its case and does not prove its case with the evidence, can you assure me that you will not find for the plaintiff?”

5. Let’s see what everyone wants to give and divide it.

In an attempt to fairly represent everyone’s position about damages, the most commonly seen approach is the quotient verdict on damages, whereby the average of the individual awards is the final one. Research has shown that it is not a true mean, but rather skewed upward because those wishing to award/punish more strongly tend to stand their ground more fervently and exaggerate the amount more than the opposing camp. To prevent this, individual jurors should be encouraged to stand their ground and should be armed with messages in summation on how to deal with this possibility.

6. Do we have to be unanimous?

No matter how clear the jury instructions when unanimity is required, someone in the deliberations will question it. This typically occurs when the group is not in agreement and seeks an easier way out of resolving their differences. If unanimity helps your side, then additional attention needs to be paid in summation to what the jury is being asked to do. Summary litigation graphics that make it easy for everyone to have a mutual reference point can help disparate thinkers converge on the points made visually, and the presenter should incorporate language that leads them to unanimity, e.g., “As we can see in this summary of the evidence, no one should disagree that x, y, z.” “Everyone on the jury saw and heard the testimony of X, which showed that . . . , so everyone has the evidence needed to come to a unanimous decision on that issue to decide Y.”

7. Were those real attorneys or actors?



It is surprising, but consistent, that mock jurors assume the actual attorneys are actors, but that the jury consultant is an attorney.

8. **Where is it in writing?**

People who lack legal training or involvement in fields in which spoken agreements are common are extremely skeptical about any oral agreement, absent documentary support. In some places, cultures, or age groups, a handshake is a durable bond (e.g., the South and the older generation), but in others, it amounts to a mere he said/she said and means little to nothing. Overall, most jurors and mock jurors reject the concept that a verbal agreement is as binding as a written one, no matter what the law may say. Though a course of conduct may help reinforce that there was an agreement, it often requires some writing to be believed, so it is an uphill climb to prove a binding agreement in its absence.

9. **We should give them something.**

When a plaintiff is especially sympathetic (e.g., a baby or a child), a defendant is disliked or perceived to be rich (e.g., a pharmaceutical or insurance company), or the conduct is notably unlikable (alleged pollution), jurors often rig their decisions in order to award money to plaintiffs, stating their discomfort and reluctance to send plaintiff home empty-handed. This echoes the process of awarding damages stated earlier, whereby there is a disconnection between liability and damages. Part of overcoming this behavior entails arming jurors with a message of why it is not okay to penalize the defendant when wrongdoing is not found, or why it is okay not to reward plaintiff. Again, it is a subject that should be addressed in voir dire. “Although you may have sympathy for the plaintiff(s) in this case, do you have any doubt or discomfort awarding no money if the plaintiff does not prove his/her case?”

10. **It may be legal, but it just isn’t right.**

For some mock and actual jurors, the moral barometer is sufficient to find liability, regardless of the legal standard. Counsel for the defense should make sure to address this possibility. While someone may not like the law, the law is what he or she is required to follow. The subject should also be included in voir dire, e.g., “If your personal feelings are different from the legal instructions, please explain if you would have any difficulty following only the law and the evidence to reach your decision.” “If you have any religious or moral beliefs that might stand in the way of you making a decision only based on the law, and setting those aside, please let us know/raise your hand.”

Here are some other resources on Persuadius site about jury consulting, trial consulting and mock trials:

- [Contact A2L with a question about a mock trial](#)
- [12 Tips for Getting the Most Out of Your Mock Trial](#)
- [Here are 6 good reasons to conduct a mock trial](#)



- [Get more information on our Micro-Mock service](#)
- [Sample One Year Trial Prep Calendar with Mock Trials](#)
- [Learn more about Mock Markman exercises](#)
- [13 BIG changes coming to jury consulting and mock trials](#)

Is Hiring a Jury Consultant Really Worth It?

by Laurie R. Kuslansky, Ph.D. Former Managing Director Jury Consulting, Persuadius



If you are a trial lawyer, would you prefer to know which jurors are going to reject your case after the trial or before?

Why retain a **jury consultant** before you are ready to pick a jury? Because you have no control over who shows up and only a limited number of strikes during the jury selection process. Besides, certain types of jurors are never going to vote your way, no matter what you do. When they reject you, they will do so vehemently (and, if possible, punitively), and they may even take other jurors along for the ride. The only good jury is one that agrees with you, but to know which jurors are on your side requires waiting until the trial is over. Or does it?

You can reliably discover what types of jurors accept or reject your case (through jury profiling) and why they do so (through

trying your case to mock jurors) *before* the fact, while there's still time to do something about it. After a trial has begun, attorneys tend to rely too heavily on evidence that often fails to change minds that are already made up, minds that more often than not use evidence to bolster their entrenched opinions, failing to realize that minds change evidence more than evidence changes minds.

A full understanding of juries comes neither from law school nor from knowledge of the law and legal procedures, nor even from vast litigation experience. Understanding juries also require significant knowledge of psychology, personality theory, group dynamics, cognition, human decision-making, perception, and properly designed research.

Some attorneys, however, dismiss the notion that you can predict what a jury will do, reasoning that "every jury is different" and "juries behave irrationally," so why bother trying to gauge the unknown? Actually, the reasons and processes by which jurors reach their conclusions tend to remain the same from one jury to another. These processes follow patterns that can be revealed through pretrial research. Trial teams can use the results of such research, in jury selection and in their case strategy—before the fact. While the behaviors of "bad" and "good" jurors are case-specific, they are also predictable through data that can be applied strategically to voir dire and jury selection. In other words, there are



ways to increase your odds of knowing trouble before the fact, and we know the worth of an ounce of prevention.

This is the second in a series of five posts on jury selection and trial consultants. Other parts are linked here: [Part 1](#), [Part 2](#), [Part 3](#), [Part 4](#) & [Part 5](#).

Other A2L articles related to jury selection, jury consulting and trial consulting:

- [Persuadius voted #1 jury consultants by readers of LegalTimes](#)
- [Why conduct a mock trial?](#)
- [5 questions to ask in voir dire](#)
- [5 things EVERY jury needs from you](#)
- [10 things every mock jury ever has said](#)
- [13 major changes coming to the jury consulting practice](#)

7 Bad Habits of Law Firm Litigators

by [Ken Lopez](#) Founder & CEO, [Persuadius](#)



In our role as trial consultants, we frequently work with some of the top law firm litigators in the nation, as well as with in-house counsel for some of the nation's major companies. Ideally, we form a cohesive team that works seamlessly to provide outstanding trial representation and to win cases.

Occasionally, we find that law firm litigators are engaging in bad habits that can increase inefficiency, cost the client money, and decrease the chances of winning at trial. Here are seven of them.

1. Lawyers designing PowerPoint slides. Anyone who went to law school can, of course, use PowerPoint. Generating PowerPoint slides is not difficult, and lawyers are smart. Many lawyers can even make

PowerPoint slides that look nice. But:

- a. It's not about pretty slides, it's about effective slides and the rules for how to create those take years to learn. See [Litigation Graphics: It's Not a Beauty Contest](#)
 - b. A lawyer doing slides costs the same or more per hour than a litigation graphics expert doing slides. Classically, you could cut your own hair, but why would you? See [How Valuable is Your Time vs. Litigation Support's Time?](#)
 - c. A lawyer creating slides does not know the tricks of the trade. See [Trial Graphics Dilemma: Why Can't I Make My Own Slides? \(Says, Lawyer\)](#)
 - d. A lawyer creating slides will likely tell a chronological story instead of an effective story. See [Don't Be Just Another Timeline Trial Lawyer](#)
 - e. A law firm might claim to have in-house litigation graphics expertise (See [13 Reasons Law Firm Litigation Graphics Departments Have Bad Luck](#)). But ask yourself: How many trials does that law firm do per year? For even the largest firms, that answer may be a couple dozen. How many cases does that lone artist work on? A small percentage of what is already a small number? Contrast that with a litigation consulting firm with graphics expertise that might do 50 or 100 trials per year concentrated among a handful of key staff. See [With So Few Trials, Where Do You Find Trial Experience Now?](#)
- 2. Paralegals running trial technology.** This is pretty common, and I'm not as adamant about this as I am about content creation. Still, when something goes



- wrong, you want to have one or more people on the team who have been to hundreds of trials, not a few. You might save some money by keeping the service in-house, but the savings are small if any, and the trade-off is a lot of risk. [Free Download: How To Find and Use Trial Technicians and Trial Technology](#)
3. **Conducting in-house mock trials.** I call this getting high on your own supply. You should pick mock jurors from a broad base of people that mirrors your likely jury. See [11 Problems with Mock Trials and How to Avoid Them](#)
 4. **Lawyers running PowerPoint at trial.** It often works, but it often does not work. Why would you allow your litigators to create a risk with almost no benefit? See [Making Good Use of Trial Director & Demonstratives in an Arbitration](#) and [12 Ways to Avoid a Trial Technology Superbowl-style Courtroom Blackout](#)
 5. **Outside litigators who are afraid to ask for help.** Litigation is one of the few competitive areas in which people are afraid to rely on coaches, best practices, and experts, and that makes no sense. Even Michael Jordan had a coach. See [Accepting Litigation Consulting is the New Hurdle for Litigators](#)
 6. **Outside trial counsel who is afraid to ask for a needed budget item.** They often see a pie of a set size, and asking for a budget for a mock trial or other litigation consulting support, might take pie away. You should instead see a pie whose size can be changed when it makes sense. See [In-House Counsel Should Make Outside Litigation Counsel Feel Safe](#)
 7. **Outside litigators who conduct frighteningly last-minute preparation for trial.** I really think the days of the cowboy litigator who rides in at the 11th hour and charismatically bends a jury to his will are largely over. The opposition is much more sophisticated now, and so are juries. See [The 13 Biggest Reasons to Avoid Last-Minute Trial Preparation](#)

Have you ever seen any of these habits play out?

Other articles and resources by Persuadius focusing on trial preparation, the relationship between in-house counsel and outside litigators and on winning cases generally include:

- [Download Free: Storytelling for Litigators Guidebook](#)
- [Free Webinar: 12 Things Every Mock Jury Ever Has Said](#)
- [25 Things In-House Counsel Should Insist Outside Litigation Counsel Do](#)
- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)
- [9 Things In-House Counsel Say About Outside Litigation Counsel](#)
- [The Top 14 TED Talks for Lawyers and Litigators 2014](#)
- [12 Alternative Fee Arrangements We Use and You Could Too](#)
- [The 12 Worst PowerPoint Mistakes Litigators Make](#)



- [21 Ingenious Ways to Research Your Judge](#)
- [10 Videos to Help Litigators Become Better at Storytelling](#)
- [5 Things Every Jury Needs From You](#)
- [7 Things Expert Witnesses Should Never Say](#)
- [7 Things You Never Want to Say in Court](#)
- [16 Trial Presentation Tips You Can Learn from Hollywood](#)

Top 7 Things I've Observed as a Litigation Consultant

by Ryan H. Flax, Esq. (Former) Managing Director, Litigation Consulting & General Counsel, [Persuadius](#)



I've passed another anniversary at Persuadius and in my time as a litigation consultant I've been both surprised and reassured about the state of the litigation business and its players ([I also wrote about my surprises upon beginning my career as a litigation consultant](#)). I've seen both the very best and quite bad litigators in action and have consulted for both. Although some

litigators don't live up to my high standards, I'm impressed by many litigators as both professionals and people. Here are seven of my observations over these years that I think might help you in your practice.

1. Many Lawyers Confuse Chronology With Storytelling

It is almost universally accepted that storytelling is important to engaging an audience (including a jury) and that framing a client's case as a compelling story is a key to doing your best at trial, particularly in opening statements. But more often than not, when I ask a litigation team what their client's story is, rather than explain "why we're really here" as they would to a jury and illustrate some conflict and emotionally valuable moral that is critical to juror engagement, they rattle off some chronological series of events that led to a legal injury to their client or some misconstrued relationship by the opposing party. These are not stories and presenting a case framed this way, while possibly interesting to a legal scholar, is not compelling to a juror.

I'm surprised that so many smart litigators fall into the chronology trap and forsake emotional connection to engage jurors. I don't advise pandering to a jury or excessive emoting by a litigator, but for a jury to care about you and your client and generate the stamina jurors need for a trial, litigators must tap into their emotional brains. This is not done by an information dump, a calendar, or using a lot of words.

A story answers the question posed above – why are we here today, *in this courtroom*? A story also has all the stuff you learned in grade school: a beginning, middle, climax, and end, characters, setting, theme, and moral.

2. Some Lawyers Focus Too Much on Too Small Things

It's easy for litigators (even more so for the associates doing the day-to-day stuff) to over-focus on every detail. The prospect of overlooking a potentially key piece of evidence or being surprised by an unknown fact exposed by opposing counsel is frightening for attorneys (it was for me), so we often wind up thinking way too much about every little thing in a case. This is called being "in the weeds," and when you're there **it's exceedingly difficult to escape without help**. It happens with the selection of evidence, with witness prep, and even with the development of graphics, where sometimes counsel wants to very carefully think about every aspect, e.g., choosing what font style and color palette and slide aspect ratio will best work for their case.

On each of these things, I urge counsel to take a step back and delegate where possible so they can focus on the BIG PICTURE. The best first-chair litigators do this naturally, and the rest of us need to do it deliberately. Attorney time and brainpower should be spent on figuring out what it will take to win. Let litigation graphics consultants decide what font works best for your opening statement presentation. It will be a relief when you do.

3. Many Litigators Don't Know What Tools Are Available

Even though the litigation consulting industry has been around for decades, I still find a lot of lawyers really don't know what we do (in total) and what persuasive tools are at their immediate disposal. Often, my first conversations with new clients include questions like, "What all do you do?" The concepts of litigation graphics, presentation and persuasion consulting, trial technology, and jury consulting are not concrete ideas in many litigators' minds, and I often have to educate clients on what we have in our (their) toolbox.

Most often, such attorneys think of litigation graphics as discrete images created for specific points they want to make during the trial. They don't understand that, while that's a part of our work, such graphics won't alone provide the immersive visual experience necessary (particularly during opening statements) to persuade jurors.

Also, many litigators seriously consider doing their own graphics and/or in-court technology presentation. They have Microsoft PowerPoint and Word and can cut and paste and they've heard that iPad apps make evidence presentation easy. The former is never a good idea and, while the later might be true for some situations, e.g., a hearing or very small trial, it's not going to work in any bigger trial that could have hundreds or thousands of exhibits. There is a lot to know about crafting persuasive trial visuals and there are professionals who do nothing but build trial databases, edit deposition videos and run trial presentation software to create a seamless trial for you and your jurors. Litigators should understand this and use professionals (and let your paralegals focus on what they should be doing as well).

4. Litigators Still Wait Too Long to Bring in a Litigation Consultant

Even though they know better, most of the time litigation teams wait until just weeks before trial to engage a litigation consultant / jury consultant / graphics team / trial

tech. Even though they know waiting makes it a more difficult budget-sell to their client, leads to an uncomfortable rush to develop graphics, may make mock jury exercises impossible, and forecloses the possibility of building discovery around what they learn from a consultant, they wait. I urge early planning for trial (at the complaint/answer stage), which is the right time to develop that important **two-track litigation strategy**, and begin working on your case story and graphics as early as possible. Although we can certainly help you late in the game, we can do a lot more before halftime.

5. A Lot of Litigation Graphics are Subpar

When I get the chance, I always go to my client's opening statements and then to as much of the rest of their trials as possible. So I get to see the litigation graphics developed by/for opposing counsel. I'm consistently underwhelmed. It's impossible to say whether these poor visuals directly led to the oppositions' losses at trial, but they didn't help.

More often than not I see a lot of text-heavy graphics – a severe barrier to juror engagement and communication. I see a severe lack of style, clarity, and intentional design - this screams lack of preparation and deliberateness in the presentation. There are key visual presentation concepts that, if understood and followed, lead to persuasive graphics, e.g., **font type, color choice, simplicity**, complexity, **branding, style**, and others. There is no shortage of information about these concepts out there, but it seems most folks are not paying attention. We are.

6. Lawyers Don't Spend Money Where It Can Help Them

Litigation consulting, jury research, trial graphics, and trial technology cost your client money – very true. But the ROI on these services far outweighs their expense in bigger cases. The **cost of a typical larger litigation**, such as an employment case, hovers just around \$1M. A typical bigger patent case costs about twice that amount. However, the services and tools that could be used to hone your persuasive game at any stage of such litigations turn out to be a very, very small fraction of these costs.

Take a big-time patent and breach of contract case where our client **won over \$300 million in damages**. The costs for A2L's services were *well below* \$200,000, about 5% or less of the litigation budget and about 0.005% or less of the damages award. I know that our services played an important role in the victory, even though the trial team was beyond outstanding.

But, we still see litigation counsel struggling to decide whether \$30,000 or \$50,000 is the right spend for a mock jury focus group (a \$20K difference that could be the difference between scientific data results and seat of the pants analysis) or whether to spend \$12,000 to have a professional trial tech hot seat operator at trial (they should), or whether they can make their own graphics for opening statements in house (they cannot). In my view, saving a penny to lose a dollar makes no sense.

7. Practice is as Important as Everyone Thinks

Finally, it's been shown time and time again that **practicing** oral argument makes sense. The more you practice, the better you'll do. It takes time, but again, the ROI on this time investment is tremendous. When litigators do several full speed run-throughs for opening statements or oral arguments, I see them do a fantastic job at the real thing. They don't need notes, they know their subject matter, they are and appear more comfortable, they seem more reasonable, and they use their graphics perfectly in a compelling way. Not practicing so that you can feel and seem more spontaneous at the opening is a recipe for a poor performance.

Practice. And start early.

Other articles and resources about storytelling, litigation consulting and trial preparation from Persuadius:

- [14 Differences Between a Theme and a Story in Litigation](#)
- [11 Things Your Colleagues Pay Litigation Consultants to Do](#)
- [Conflict Check: Interested in hiring A2L? You're not alone.](#)
- [Storytelling Proven to be Scientifically More Persuasive](#)
- [Winning BEFORE Trial - Part 3 - Storytelling for Lawyers](#)
- [Don't be another timeline lawyer - tell a story](#)
- [7 Things You Never Want to Say in Court](#)
- [FREE Webinar: Storytelling for Litigators](#)
- [FREE BOOK: Storytelling for Litigators](#)
- [6 Reasons The Opening Statement is The Most Important Part of a Case](#)
- [Are you smarter than a soap opera writer?](#)
- [Stories must close loops to be effective](#)
- [10 Videos to Help Litigators Become Better at Storytelling](#)
- [How to paint your client as a hero \(with free infographic\)](#)
- [5 Essential Elements of Storytelling and Persuasion](#)
- [5 Keys to Telling a Compelling Story in the Courtroom](#)
- [Why Trial Graphics are an Essential Persuasion Tool for Litigators](#)
- [10 Things Litigation Consultants Do That WOW Litigators](#)
- [10 Types of Value Added by Litigation Graphics Consultants](#)

How Does a Trial Presentation Consulting Firm Do What It Does?

by [Theresa D. Villanueva, Esq.](#) (Former) Director, Litigation Consulting, [Persuadius](#)



You are going to trial. You have spent months or years gathering exhibits, writing motions, conducting depositions and mentally preparing yourself. And now, you have made the wise decision to hire a [trial presentation consulting firm](#) to assist you with your case.

How does a trial presentation consulting company work, and what value does it add?

For attorneys who go to trial often and use [trial consultants](#) frequently, this question is easy to answer. However, for many attorneys, this may be their first experience working with such a firm. They

may have little idea about how the trial presentation consulting firm works or how it helps get the trial team prepped for trial. Here is an insider's look as to how [our team](#) approaches your case as we assist your team in preparing for trial.

Our first step is to get as much information on the case from the team as possible -- any briefings, expert reports, and the like that will help us understand the case. We also look at any materials that the trial team has written, such as case summaries, opening statement outlines, and the like.

Around the same time, we sit with the trial team and begin to understand the facts as you see them and your ideas for how to present the case. These meetings are crucial. They help us understand the case on a deeper level and also help give us the chance to propose preliminary ideas for [trial graphics](#) – which gives us insight into the trial budget and into the attorneys' preferences.

Understanding the preferred type of [trial graphics](#), [trial technology](#) and, if needed, [jury consulting](#) enables us to determine the appropriate services and estimate the costs better. After all, it's not a good use of our team's time (or your budget) for us to brainstorm and create graphics that your team won't want.

After meeting with the trial team, we dive in. We do our own research, go through our notes from the meeting, and start brainstorming ideas for graphics. One of the essential tools we use is called [mind-mapping](#). Using a brainstorming tool called [MindJet](#), we break down and analyze both sides of the case, organize the facts, develop topics for expert witnesses or other witnesses that may need graphics for their testimony, and organize any other areas we feel need attention.

To some, it may seem like time spent outlining the case and particularly spending time understanding the opposing side's claims or defenses might not be the best use of our time. Quite the contrary, I strongly believe that by understanding the opposing side of the



case, we can not only develop better [demonstrative exhibits](#) but also readily come up with ideas or graphic exhibits ready and waiting to counter opposing counsel's exhibits.

Next, in most cases, we share our suggested list of graphics with the team. This is especially helpful when cost is an issue. This process prevents us from creating graphics that the team just doesn't want. Then, we start the process of creating the first draft of demonstrative exhibits.

If possible, our next step is to meet with the team *in person* to review and discuss the first set of draft exhibits. We find these in-person meetings invaluable for many reasons. First, we can see the team's reaction to the graphics. Second, we get immediate feedback. This enables us to adapt our style to the team's desires, if necessary. It also opens the door to collaboration and communication between our team and yours. In my experience, this meeting gives the attorneys a chance to give immediate input and feedback into the graphics, which reduces the number of misunderstandings that can occur by just sending a draft via email. If an in-person meeting isn't possible, a video call with a webex or GoToMeeting where we share our screen and discuss the exhibits is just as beneficial.

From there we continue to move forward creating and revising exhibits. This revision process may continue up until the eve of trial, and in some instances continues all through the trial. [ACCESS, our online collaboration portal](#), allows for the flow of communication to continue. It allows the team to provide immediate feedback and comments on the trial graphics as we go through the development process. As an online tool, it is also great for teams that are spread out across the country, attorneys who are always on the move, and a team that is in the middle of trial.

So there you have it. A little bit of insight into our team, and how we go about supporting yours. I hope that by receiving some insight into our process, you can have a better understanding of what is involved when you hire our team, and hopefully, relieve any anxiety or uncertainty you may have about engaging a litigation consulting firm like ours.

Other information on our site related to litigation consulting and trial presentation consulting:

- [Contact information for Persuadius](#)
- [Request Complimentary Consultation or Conflicts Check](#)
- [Download The BIG Litigation Interactive E-Book](#)
- [Read How to Save Money on Trial Presentation Consulting Services](#)
- [Read How to Use Trial Technicians in the Courtroom](#)

12 Reasons Litigation Graphics are More Complicated Than You Think

by [Ken Lopez](#) Founder/CEO, [Persuadius](#)

If the creation of litigation graphics were as simple as some people make it out to be, you would never need a litigation graphics consultant. Yet litigation graphics consultants of varying skill levels are everywhere these days. Clearly, there is a need for them. But why? What value do litigation graphics consultants add? It's a fair question, and here are 12 good answers.



- 1. Contrary to what some think, litigation graphics are more than electronic versions of printed documents:** Many litigators make the mistake of thinking they are fully utilizing litigation graphics when they hire a trial technician who does nothing more than show documents on screen. [See Why Trial Tech ≠ Litigation Graphics](#)
- 2. Real litigation graphics consultants are storytelling experts, not PowerPoint experts:** The technology isn't what matters. As with lawyers, there are wildly differing levels of talent and education among litigation graphics consultants. The very best, like those on the A2L team, are true experts in helping to craft a story using visuals. These experts add value, not just slides. [See Patent Litigation Graphics + Storytelling Proven Effective: The Apple v. Samsung Jury Speaks](#) and [\\$300 Million of Litigation Consulting and Storytelling Validation](#)
- 3. Litigation graphics consultants provide the creativity that your trial team may not have.** When it comes to litigation graphics, our customer surveys tell us that it is our creativity that is valued most by our clients. [See Working in Parallel vs. Series with Trial Presentation Consultants](#)
- 4. Your time is too valuable.** You need to focus on the "law track," which is what lawyers are best at. You must consider the order of how you will present your case, how to develop an evidentiary record and how to prepare your witnesses. Allow litigation graphics experts to do the heavy lifting in the persuasion area. [See Planning For Courtroom Persuasion? Use a Two-Track Trial Strategy](#) and [How Valuable is Your Time vs. Litigation Support's Time?](#)
- 5. We have dozens of psychological tricks for influencing people with pictures.** We have written about some of these: [See Font Matters - A Trial Graphics Consultant's Trick to Overcome Bias](#) and [Could Surprise Be One of Your Best Visual](#)

Persuasion Tools?

6. **We have a kind of magic that you don't have in your law firm.** Even if you have some graphics people in your firm, there is no one in your law firm who can do the kind of work illustrated here: [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#). Although there are rare exceptions, artists within law firms are usually either not the best or are on their way to working somewhere else: [13 Reasons Law Firm Litigation Graphics Departments Have Bad Luck](#)
7. **We understand the psychology of a jury and how you can use psychology to your advantage.** We also know how you can hurt your case when you use litigation graphics the wrong way. For us, this is second nature. For litigators, this is not common sense at all: See [Why Reading Your Litigation PowerPoint Slides Hurts Jurors](#) and [12 Ways to SUCCESSFULLY Combine Oral and Visual Presentations](#)
8. **We can help you spot dirty tricks by the opposition.** There are many subterfuges in litigation graphics consulting, and you will mostly likely overlook them but you shouldn't. Many of the tricks are objectionable and offer an opportunity for you to score points with judge and jury by pointing them out, but you have to see them. See [5 Demonstrative Evidence Tricks and Cheats to Watch Out For](#)
9. **Your colleagues are doing litigation graphics all wrong.** They're good people I'm sure, and we know they are smart too. However, the normal instinctive way to use PowerPoint (bullets, text, reading slides) is precisely the wrong way. Unfortunately, that's what we see most often. See [12 Reasons Bullet Points Are Bad \(in Trial Graphics or Anywhere\)](#) and [The 12 Worst PowerPoint Mistakes Litigators Make](#)
10. **We spend a lot more time in courtrooms than you do.** The same trial lawyers who used to go to trial every year 10 or 20 years ago, now often go to trial only every three, five, or even seven years. In stark contrast, our team may go to trial 50 or even 100 times every year. Common sense should tell you to trust what we have to say about how visuals will land with a judge and jury. See [With So Few Trials, Where Do You Find Trial Experience Now?](#)
11. **Whenever a well-educated fresh pair of eyes works on your case with you, you will find something incredibly valuable about it.** See [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#) and [How I Used Litigation Graphics as a Litigator and How You Could Too](#)
12. **Anyone can make a PowerPoint, but only an experienced trial consulting team like A2L can make a PowerPoint that is convincing.**

Other articles and resources related to litigation graphics, trial graphics and demonstrative evidence consultants from Persuadius:

- [Free Webinar: PowerPoint Litigation Graphics - Winning by Design™](#)



- Free Webinar - Watch Anytime - Patent Litigation Visual Persuasion Techniques
- Using & Creating Litigation Graphics to Persuade - An E-Book for Litigators and Litigation Support Professionals
- Litigation Graphics, Psychology, and Color Meaning
- 6 Studies That Support Litigation Graphics in Courtroom Presentations
- Litigation Graphics: Timelines Can Persuade Judges and Juries
- Why Expensive-Looking Litigation Graphics Are Better
- 5 Settlement Scenarios Where Litigation Graphics Create Leverage
- 10 Reasons The Litigation Graphics You DO NOT Use Are Important
- Litigation Graphics: It's Not a Beauty Contest
- 5 Problems with Trial Graphics

10 Types of Value Added by Litigation Graphics Consultants

by [Ken Lopez](#) Founder/CEO, [Persuadius](#)

Over breakfast, the other day, a partner in a major law firm was explaining to me that it can be challenging to explain the added value that litigation graphics consultants can provide in a case, especially given the challenging budget environment in which litigators operate today. He was surprised when I said that the key here is not the fact that graphics consultants know how to prepare PowerPoints.



After all, the average law firm associate can prepare a pretty decent PowerPoint presentation. The problem is that perhaps one in 500 PowerPoints prepared by a smart and well-informed law firm associate does more harm than good. What litigation consultants can do for a trial team is more complex, more persuasive and more sophisticated.

So here are ten ways to which a litigation graphics consultant would add value where a litigation associate might cause harm or simply might not provide benefit.

- 1. Supporting the development of a narrative.** We've written about this extensively, and great graphics consultants like those at our firm have enormous value here. One of the essences of trial presentation is telling a narrative. See, [\\$300 Million of Litigation Consulting and Storytelling Validation](#).
- 2. Helping separate the theme from the narrative.** Many of us who took trial advocacy were taught to start out our openings with "this is a case about . . ." After that, we would usually state our theme. What many lawyers were not taught was how to develop a persuasive narrative. A few rare litigation graphics consultants can operate at the 1st chair level and offer this kind of support. See, [14 Differences Between a Theme and a Story in Litigation](#) and [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#).
- 3. Helping combat the now-fashionable "Reptile" trial strategy tactics that plaintiffs lawyers use.** We have discussed this in several recent blog posts. See, [Repelling the Reptile Trial Strategy as Defense Counsel](#).
- 4. Making sure that you don't invoke the split attention or redundancy**



effect. This is the error of presenting information orally and in writing at the same time. See, [Why Reading Your Litigation PowerPoint Slides Hurts Jurors](#).

5. Offering that fresh pair of eyes. See, [12 Reasons Litigation Graphics are More Complicated Than You Think](#).

6. Creating a high-end PowerPoint that makes a positive difference. See, [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#).

7. Freeing up litigation counsel to be lawyers. My mentor likes to say that we should only do what we are best at. In the run-up to a trial or hearing, there is always more legal work that needs to be done. The role of litigators should be to review draft presentations and provide feedback to the consultants who have actually developed the presentation. See, [Trial Graphics Dilemma: Why Can't I Make My Own Slides? \(Says, Lawyer\)](#).

8. Litigation consultants can use nearly unknown techniques for persuasion like [surprise](#), [chart tricks](#), [statistical persuasion](#) or [methods to overcome cognitive bias](#).

9. Asking tough questions. See, [How I Used Litigation Graphics as a Litigator and How You Could Too](#).

10. Bringing to the fore their extensive trial experience. Top trial consultants such as those on our team may go to trial 50 to 100 times per year. By working with them, trial lawyers gain the benefit of hearing about the best practices of other trial teams. See, [With So Few Trials, Where Do You Find Trial Experience Now?](#)

Other articles and resources on A2L Consulting's site related to litigation graphics, storytelling for persuasion, trial graphics, and demonstrative evidence:

- [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#)
- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [10 Things Litigation Consultants Do That WOW Litigators](#)
- [6 Studies That Support Litigation Graphics in Courtroom Presentations](#)
- [FREE Webinar: Persuading with PowerPoint Litigation Graphics](#)
- [FREE Webinar: Storytelling as a Persuasion Tool](#)
- [10 Things Litigators Can Learn From Newscasters](#)
- [FREE Webinar: Patent Litigation Graphics](#)
- [With So Few Trials, Where Do You Find Trial Experience Now?](#)
- [FREE Download: Using Litigation Graphics](#)
- [7 Questions Will Save You Money with Litigation Graphics Consultants](#)
- [16 Litigation Graphics Lessons for Mid-Sized Law Firms](#)
- [13 Reasons Law Firm Litigation Graphics Departments Have Bad Luck](#)
- [FREE Download: Why Using a Litigation Consultant is Beneficial to You](#)
- [FREE Download: Storytelling for Litigators](#)



- [The 12 Worst PowerPoint Mistakes Litigators Make](#)
- [6 Trial Presentation Errors Lawyers Can Easily Avoid](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)
- [Trial Graphics Dilemma: Why Can't I Make My Own Slides? \(Says, Lawyer\)](#)
- [Why Reading Your Litigation PowerPoint Slides Hurts Jurors](#)

16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint

by [Ken Lopez](#) Founder/CEO, [Persuadius](#)

Litigators **do not** need to know *how* to create advanced PowerPoint litigation graphics. However, litigators *do* need to understand what a skilled artist is capable of producing using the program. Most will be surprised to learn what's possible, and even veteran users of PowerPoint will think there's an element of magic in some of the presentations shared in this article.

As a [litigation graphics consultant](#) who has been using PowerPoint since the 1990s, even I am amazed by the litigation graphics some artists are able to create using PowerPoint. Using real artistic skill combined with PowerPoint's built-in features unleashes impressive creative potential. What used to require 2D and even 3D animation just five years ago can now often be produced within PowerPoint faster and with a fraction of the investment that used to be required. Then, best of all, everything created is available for a litigator or their [trial technician](#) to present right from PowerPoint without any additional software or fancy hardware. In many cases, it can even be presented right from an iPad.

Too often, people view PowerPoint as a program that helps someone put their speaking outline, usually in bullet-point form, in visual form on a series of slides. We have long counseled that [the use of bullet point riddled slides hurt your trial presentation](#), especially when one reads bullet points. Fortunately, most litigators are changing with the times and paying attention to the [good science that shuns the use of bullets](#).

We have written before about [combining illustration with PowerPoint animation](#) to achieve great results and the [four types of animation one typically sees at trial](#). The purpose of this article is to help you understand how far you can stretch PowerPoint. It's not the right tool for every situation, however when used the right way and in the right hands, it is a powerful weapon of advocacy.

Below are 16 PowerPoint litigation graphics presentations (all converted into movies for easy online viewing) that most will be surprised to learn were created in PowerPoint by artists at A2L.

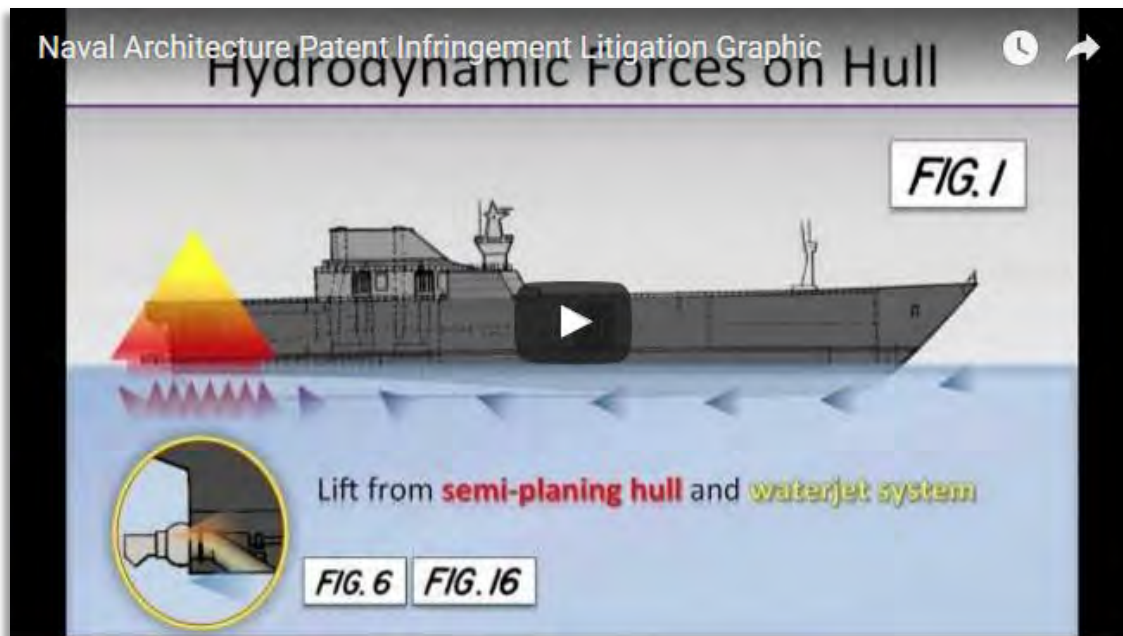


We'd certainly welcome questions about how we created these graphics, and we would absolutely love to [hear from artists who can do this kind of work well](#).

1. This PowerPoint litigation graphic prepared for a recent antitrust trial is really a timeline in an unusual format. To emphasize how difficult it is to run an airline in the United States, a long list of bankruptcies is set to scroll like movie credits in PowerPoint. Interested in more timeline examples, [download our timeline book](#) (opens in new window).



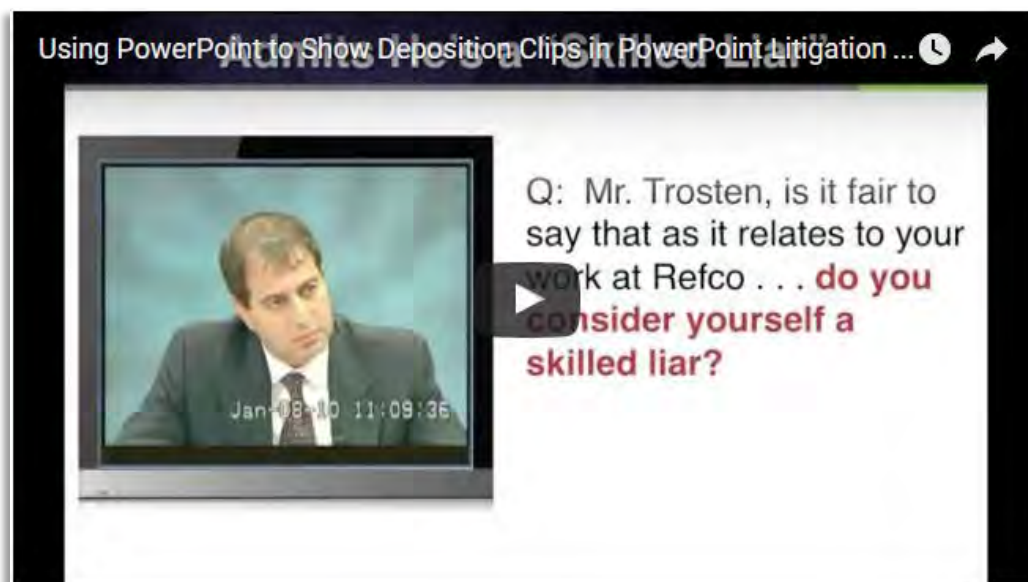
2. This PowerPoint litigation graphic was used by an expert in a patent case to explain how the design of a ship's hull affected its performance. Interested in patent litigation graphics, [download our patent litigation toolkit for litigators](#) (opens in new window).



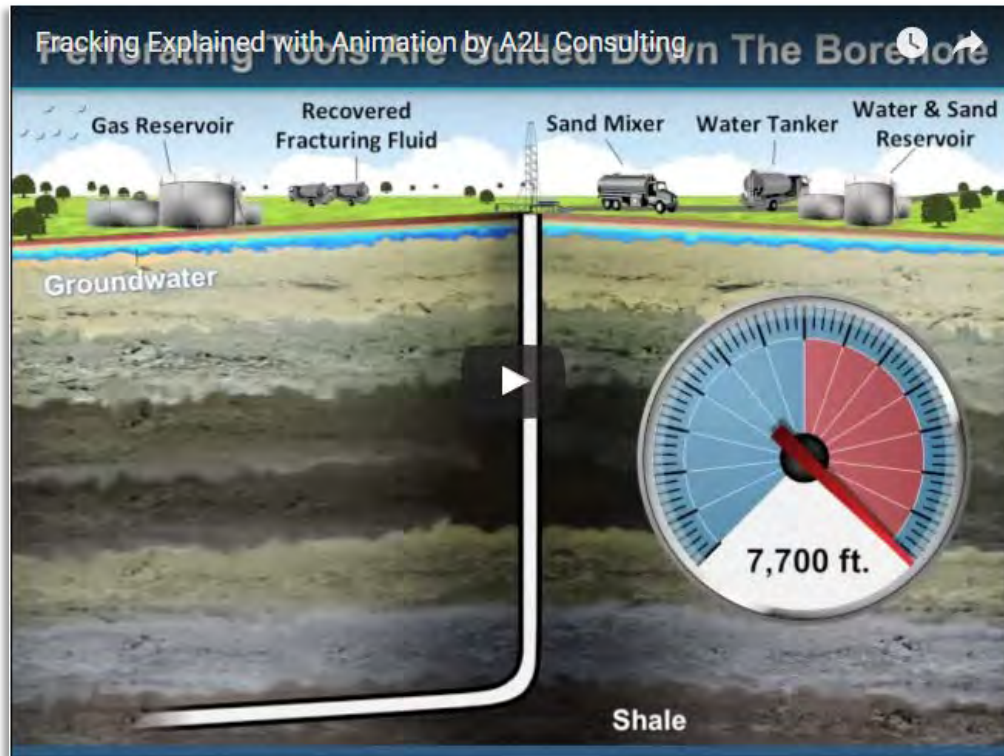
3. This clever PowerPoint makes good use of motion path animation and illustration to explain video playback patented technology. The use of "tags" helps explain the concept of keyframing in video encoding and playback in a jury-friendly way.



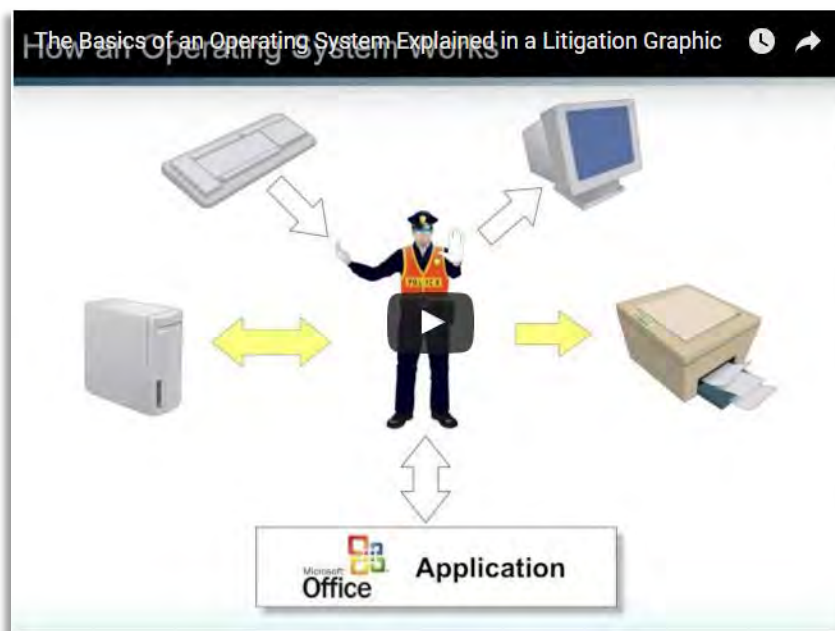
4. PowerPoint can even be used to show deposition clips. If you have more than a handful of deposition clips, you would probably want to use [Trial Director](#) to show them, but for a limited number or a group of short clips, PowerPoint does a good job.



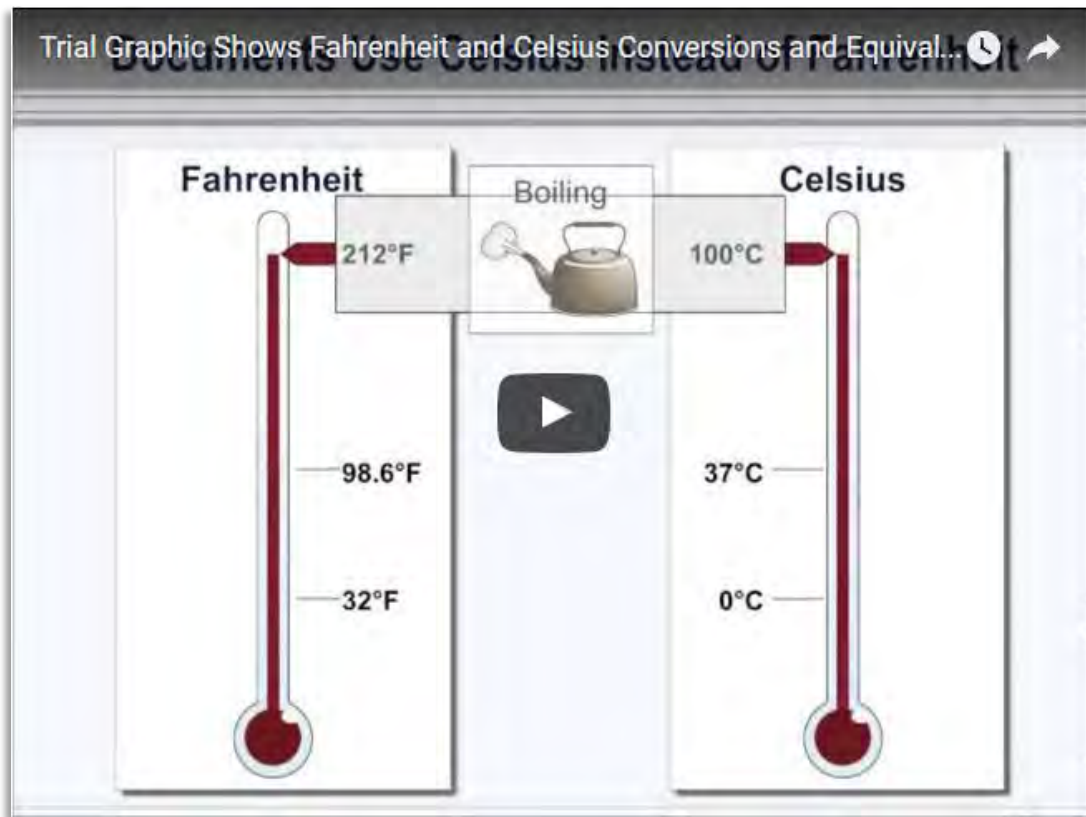
5. This A2L PowerPoint litigation graphic, explaining how hydraulic fracturing (aka fracking) works, has been viewed more than 180,000 times on [YouTube](#). The use of dials and animation of the drill head are not what you would normally expect from PowerPoint (link set to start the video at 1:27). The voiceover audio is embedded into the PowerPoint.



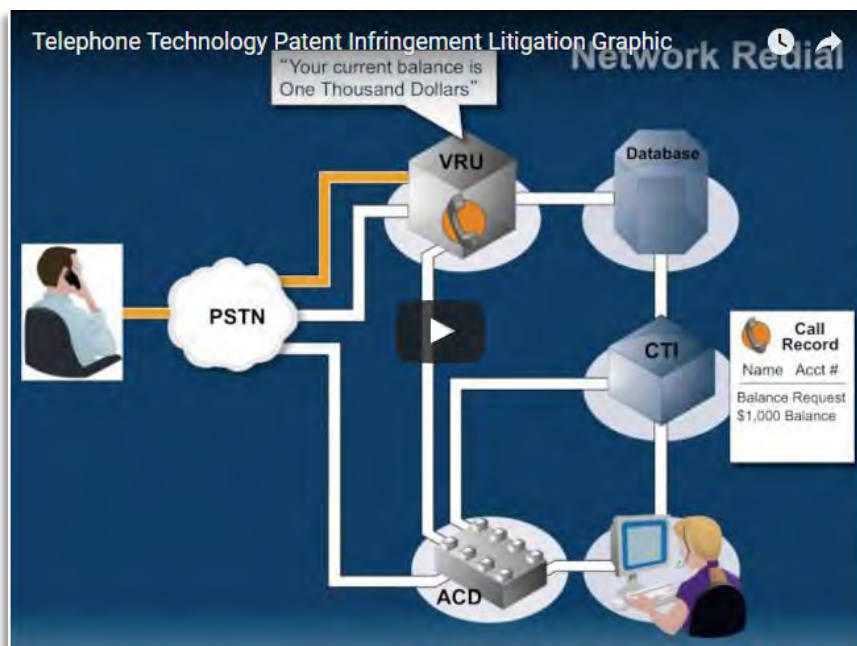
6. This simple traffic cop animation explains the role of an operating system in an easy-to-understand format. By using illustrations combined with animation in a PowerPoint litigation graphic where small parts are varied, an animated or cartoon effect is achieved within PowerPoint.



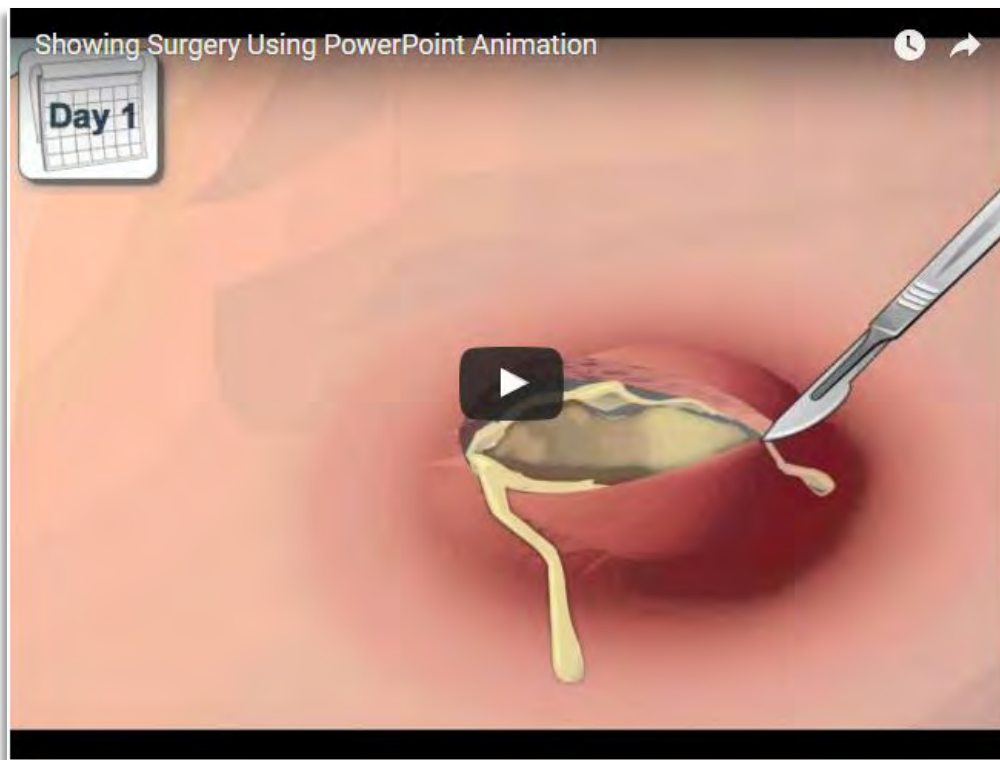
7. In a very simple way, this chart uses PowerPoint to show how Fahrenheit and Celsius scales compare to one another. Like many of the examples in this article, it's surprising that the graphic was created in PowerPoint.



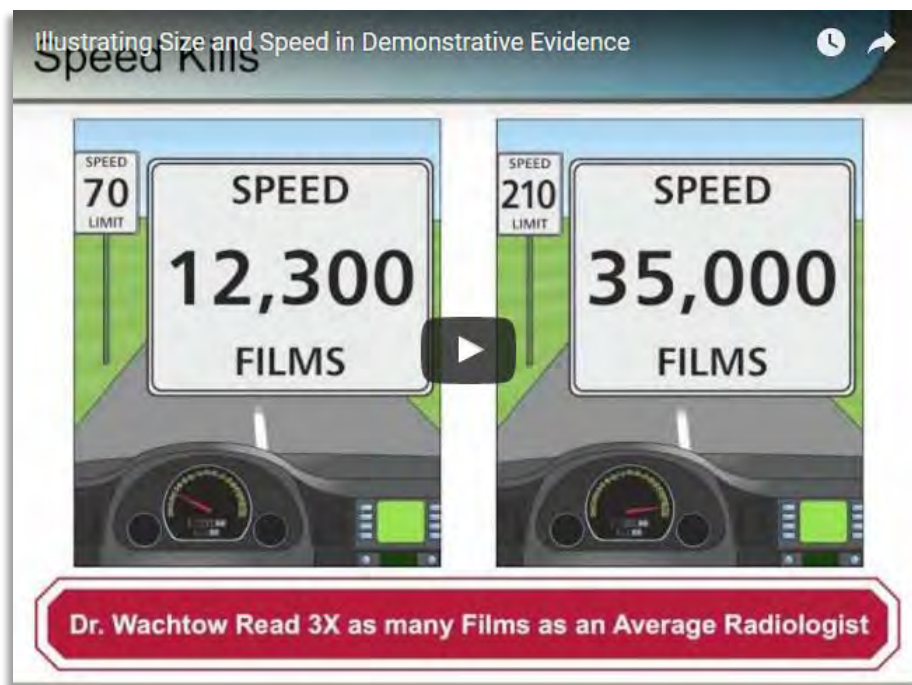
8. This chart shows how a phone dialing system works and is designed for a judge's viewing in a claim construction setting rather than jury viewing during the trial. Again, it is animated and presented entirely in PowerPoint.



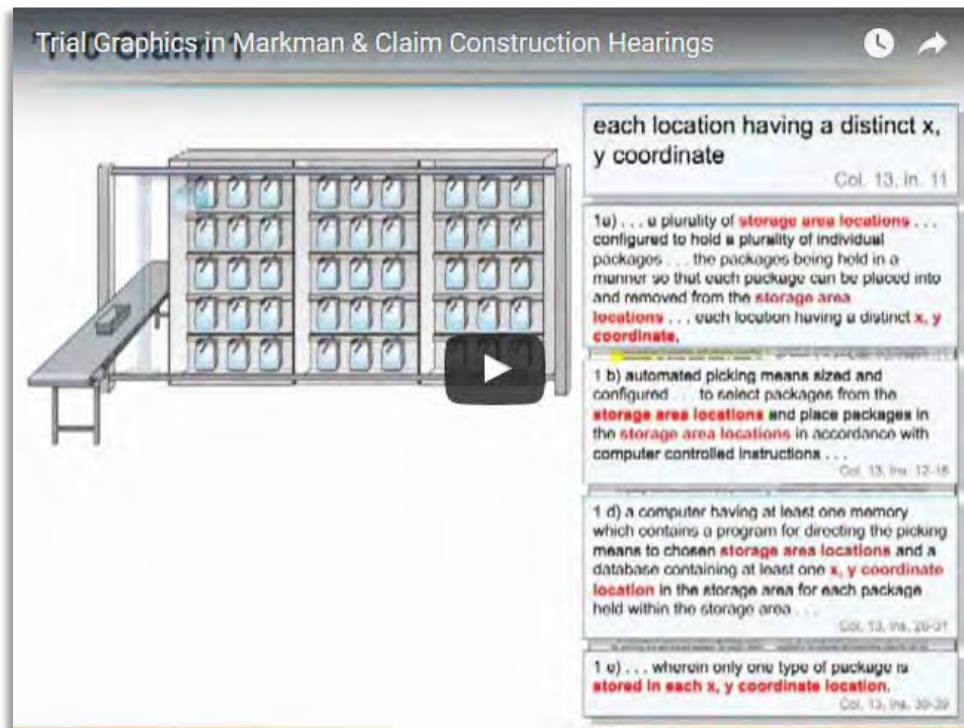
9. Even a surgical procedure can be shown using a combination of illustration and PowerPoint animation techniques. Such work can make courtroom animation economically feasible in even small cases.



10. Here, to help demonstrate that a doctor was reading films too quickly to maintain an appropriate standard of care, an analogy to speeding is created in PowerPoint.



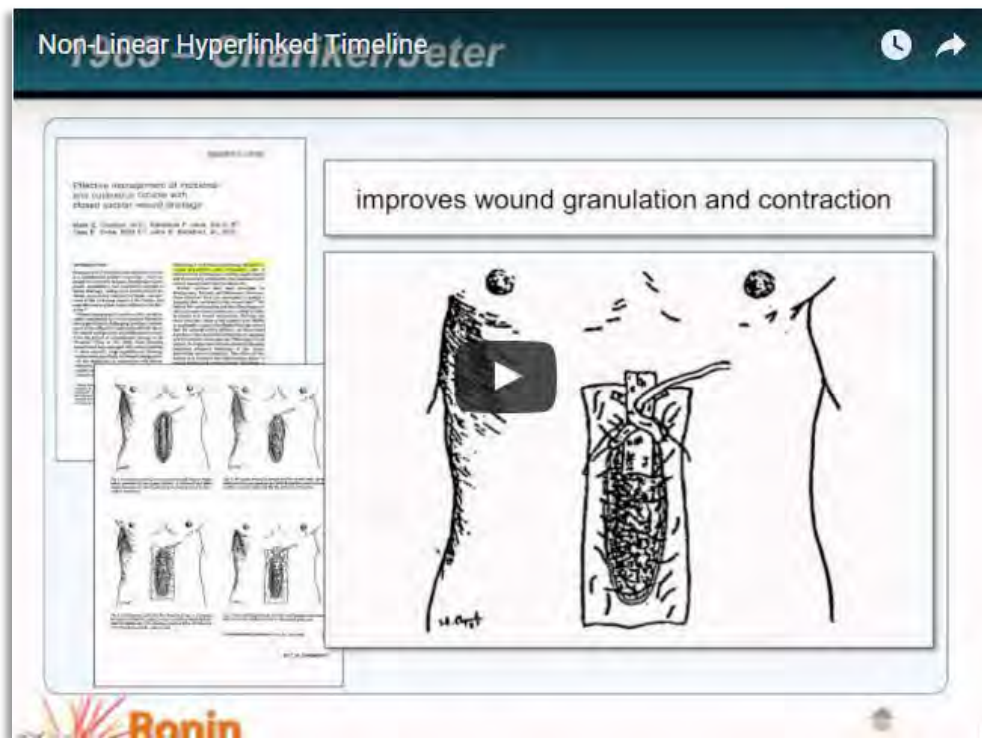
11. For a claim construction hearing, this PowerPoint was created to show how a drug delivery system works in a hospital environment. Claim language is shown in conjunction with the PowerPoint litigation graphic to give it context and meaning. I think it is a smart use of animated graphics juxtaposed with claim language.



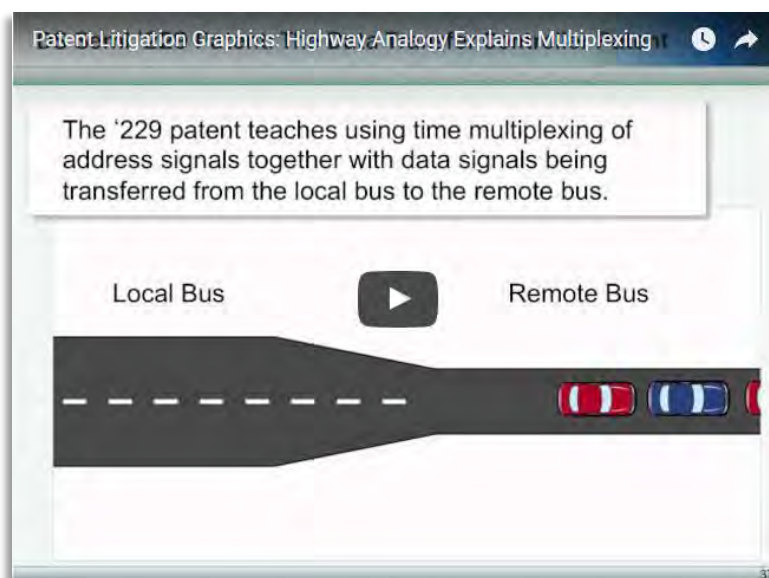
12. Here, the removal of a nuclear power plant reactor pressure vessel is shown. By creating illustrations that are shown in quick succession, the effect of the animation is achieved in PowerPoint without having to go through the expense and complications of creating an animation.



13. Using PowerPoint's native interactive features, one can create hot-spots on a graphic that show a document or another image. This means that images do not need to be shown in linear order. This becomes useful when one wants to use a timeline built in PowerPoint and still have the flexibility to jump around to other documents. Interested in more timeline examples, [download our timeline book](#) (opens in new window).



14. Explaining complicated patent terms with PowerPoint litigation graphics becomes much easier when coupled with a straightforward analogy like the one shown here. Simply a local bus and remote bus (computer communication systems that move data between components) bear similarities to traffic patterns that are easy for a jury to understand. Interested in patent litigation graphics, [download our patent litigation toolkit for litigators](#) (opens in new window).



15. Making heavy use of illustration, this PowerPoint serves as a timeline that explains how a worker was electrocuted on a job site and went undiscovered for some time.



16. Finally, here is an example of how one might use the interactive features of PowerPoint to tell a complicated story in a mortgage-backed securities case. The user is free to click on any of the state icons to view developments in other locations in any order they choose.





Using PowerPoint litigation graphics will solve many trial challenges, however, one needs to know when to use PowerPoint, [Flash](#), [a physical model](#), [a trial board](#) or a [more sophisticated 3D animation program](#). To make that judgment, ask your litigation graphics consultants or [contact A2L](#).

Articles related and resources to PowerPoint litigation graphics on A2L Consulting's site:

- [Why reading PowerPoint litigation graphics slides hurts your trial presentation's effectiveness](#)
- [Why shouldn't I just make my own PowerPoint slides?](#)
- [16 Litigation Graphics Lessons for Mid-Sized Law Firms](#)
- [Free E-Book Download: Persuading with Litigation Graphics](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)
- [12 Reasons Bullet Points Are Bad \(in Trial Graphics or Anywhere\)](#)
- [6 Studies That Support Litigation Graphics in Courtroom Presentations](#)

6 Triggers That Prompt a Call to Your Litigation Consultant

by Ryan H. Flax, Esq. (Former) Managing Director, Litigation Consulting & General Counsel, [Persuadius](#)

This seems to be a significant hurdle in many cases – trial counsel believes he or she needs assistance with the courtroom presentation, trial technology, and/or jury consulting but doesn't know when the right time to get started with the process is (or doesn't fully consider this need until it's become an "emergency"). Holding back their decision are uncertainties about costs, about what exactly the litigation and jury consultants can and will do to help, how long the process should take, and how definite the trial strategy must be to fire the proverbial starter pistol. Let me clear it up: it's never too early (or too late).



There are many logical starting points to engage litigation consultants during the lifespan of a case. Let's take a look at some of them below:

1. Trigger: Complaint (Call Your Litigation Consultants Right Away)

I'm not suggesting you need to seek a litigation consultant to serve your complaint or file the answer, BUT per my (previously published) recommendation that you [use a two-track litigation plan in developing your trial strategy](#), it is important to begin planning your courtroom presentation very soon after these litigation-initiating events and a litigation consulting team will benefit this process. That two-track strategy includes: (1) preparing to persuade a jury and/or judge so you can win the trial; and (2) doing all the really "lawyery" stuff like establishing a comprehensive record, meeting your *prima facie* case, etc., that becomes very important at summary judgment or on appeal.

The benefits of engaging a litigation consulting firm like A2L early in your case is that it forces you to think about those things that will help you win at trial. These include developing the foundational story of your case, identifying complexities of the case that must be simplified and distilled so that a jury of lay-people will understand and be persuaded by your arguments, and developing an understanding of your jury pool's demographics and tendencies so that your case can be built around that knowledge. Moreover, you can begin developing the visual component to your case, which has been [conclusively and scientifically proven](#) [pdf] to be a key aspect of litigation persuasion.

Another important reason to start early is your litigation budget. At the beginning stages of every case you have the opportunity to build into your budget all the things that will help you win (attorney and paralegal time, electronic database storage, discovery software, war-room facilities, jury research, litigation consulting and demonstratives, travel expenses, court reporting and videographers, trial technology, etc.) and have your client understand and

approve these things. A litigation consultant is clearly one of those things you'll want to include and if you wait too long it will have to be an add-on cost to your case that you'll have to get further approval for, rather than an initially planned for, built-in line item cost. Plus, explaining this litigation need to your client early in the case reinforces the fact that you've got the experience to handle his/her case – you know *all* the bits needed for a successful result.

Starting early like this, engaging the consultant and having them begin some preliminary work on your case, doesn't really increase costs. The counsel-consultant relationship can be kept at a low simmer over the course of the months (or years) of litigation. You can seek consult on issues as you move along, e.g., [test storylines](#) on an outside player, develop graphics to use in briefing or discovery or hearings or settlement negotiations, do early jury research.

Eventually, as you get closer to trial, you'll turn up the heat for more trial-relevant and essential input from your consultant and to develop demonstratives to use at trial.

See also:

- [Sample One-Year Trial Prep Calendar for High-Stakes Cases](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)
- [5 Surprising Areas Where Geography No Longer Matters in Trial Support](#)
- [Trial Graphic: Could a Wall Chart Change How Litigators Prep Cases?](#)
- [Free Download: The Complex Civil Litigation Guidebook](#)

2. Trigger: Expert Reports (Call Your Litigation Consultants About 1 Month Before Service is Due)

Discovery is often a time during which the end-goals of litigation can be forgotten or at least swept to the side while attorneys build the heap of facts they'll later use to try and convince some regular folks that their legal case is better than opposing counsel's legal case. Try not to do this. Your case themes and developing storyline should, in part, direct your discovery requests, discovery review, and depositions. Engaging a litigation consulting team will help keep you tuned into these important aspects of your case.



In most big litigation, expert witnesses are a very big part of the discovery process and, ultimately, trial. First, you'll likely have expert reports to (help) prepare and then you'll have expert depositions to take (unless you want to try and restrict the expert's testimony to his/her report's disclosure for some reason). Expert reports are opportunities to use visual support in the form of graphics, animations, or scale models to enhance your expert's positions. To do this you need assistance from your litigation consultant who can work with

you and your expert to develop persuasive visuals that compliment your case and the expert’s opinions.

Expertly crafted demonstratives can be embedded within an expert report or, if they are large and detailed images, more advanced animations, or even scale models, they can be appended as exhibits to the report. Taking the time to prepare these things for your expert paves the way to using them without reasonable objection at trial (see [FRCP 26](#)). Additionally, going through this process of thinking through how to visually convey his key messages engages your expert in a way more akin to the way he’ll have to think at trial – where his goals will be persuasion through education.

What follows the production/exchange of expert reports? Expert depositions.

Unless your expert is an expert at testifying, he likely needs some work to get him in good form to testify. Many attorneys handle this exercise themselves by reviewing the expert’s report with him, explaining the deposition process, explaining the *dos* and *don’ts* of being deposed, etc., but often this is not enough. You may choose to do as I did when I was trying cases – engage a third-party coach to help prepare your expert to be deposed. Litigation consultants (and often jury consultants) can provide outside expertise in preparing your witness. As third parties to the case, consultants can play the “bad guy” more easily than can members of the attorney litigation team. Many times, it’s this “tough love” that turns a novice expert “disaster” into the key piece of the puzzle that wins the day at trial (or doesn’t lose the day at deposition).

All this means that in the weeks leading up to expert reports coming due, you should consider pulling the trigger and calling in your litigation consulting team.

See also:

- [Witness Preparation: Hit or Myth?](#)
- [The Top 14 Testimony Tips for Litigators and Expert Witnesses](#)
- [The Jodi Arias Trial, A Case Study in Experts, Witness ...or Witless?](#)
- [7 Things Expert Witnesses Should Never Say](#)
- [Free Download: A Guide for Jury Consulting for Litigators](#)



3. Trigger: Settlement Conference (Call Your Litigation Consultants About 1 Month Before)

This, too, is a good time to get going with your trial preparation. A lot of clients contact us at this point because they want to have a sort of *Closing-Argument-Lite* to show opposing counsel how strong their case is and how weak the opposing case is.

You’ll want to use a professional litigation graphics firm to help for two reasons: (1) you want this presentation to effectively convey the story you want it to convey so that your argument seems super reasonable, persuasive, and imminently winnable;

and (2) you want your litigation graphics to look “sophisticated” so that your opposing counsel sees how seriously you’re taking the case and how much time and money you and your client are willing to spend on it.

In reality, it is **not expensive** to prepare this short presentation and the time, money, and effort is all well-spent if it moves your opposition. Consider the cost balance in this scenario: if you believe settlement is reasonable, but you cannot convince opposing counsel to do so on favorable terms and have to continue through trial it will likely cost your client hundreds of thousands. If, on the other hand, you prepare a persuasive settlement presentation at this point for less than 5-10% of such costs and your presentation is effective in accomplishing the settlement on your terms, you’ve saved your client those hundreds of thousands of dollars. Even if you don’t settle at this point the costs are not lost because you’ll likely re-use much of the litigation graphics or versions thereof later in the case.

See Also:

- [14 Places Your Colleagues Are Using Persuasive Graphics \(That Maybe You're Not\)](#)
- [7 Reasons In-House Counsel Should Want a Mock Trial](#)
- [13 Revolutionary Changes in Jury Consulting & Trial Consulting](#)
- [9 Things Outside Litigation Counsel Say About In-house Counsel](#)
- [Free Download: Using Litigation Graphics to Win](#)

4. Trigger: Dispositive Motions or *Markman* Hearing (Call Your Litigation Consultants About 2-3 Months Before)

There comes a time in every case where it can end on a motion and this is an important time to have a litigation consulting team available to help make sure your briefing, argument, and presentation are everything they can be.

In all cases there are typically motions for summary judgment – this is a good time to call. In patent cases, there are also summary judgment motions, but before these, there is patent claim construction hearings called *Markman* hearings (named after the case establishing claim construction as a matter of law). Both summary judgment and *Markman* hearings are case-pivotal, mini-trials that must be taken very seriously and litigation teams often come to A2L at this point in their cases.



When presenting oral argument for a summary judgment hearing you will be presenting what you’ll argue is undisputed evidence and related case law on why there’s absolutely no reason you shouldn’t win the case *right then and there*. Your undisputed evidence will likely include documents that came right from the opposing party that prove they can’t win (in your opinion). You will also want to make some points on how all the evidence adds up to this

undeniable victory for you. To do this you must have a visual component to your presentation – you want to show the evidence electronically and also graphically illustrate how it all fits together for your case. This is where a good litigation consultant and trial graphics artist, and maybe even a trial technology professional and a jury consultant, can serve you well.

In a patent case’s *Markman* hearing you’ll have to argue why certain language from what is likely already a complex and confusingly written patent claim means something other than what it actually says on its face. You will point to descriptions in the patent’s specification, to the patent’s drawings, to the prosecution history (and maybe to extrinsic evidence also) to make these points – you’ll need to show the court precisely where the documents prove your case and do so in a convincing way. There may also be a technology tutorial aspect to the *Markman* hearing required. All this makes it absolutely necessary to have a professional team available to develop persuasive visual support for your oral arguments (and briefing, too, if possible). This is likely your only chance to influence the claim construction of your case, which will likely determine the outcome at trial – make sure you do all you can to win here.

Make sure in your next case you consider these dispositive occasions to be the potential triggers to seek expert assistance for litigation.

See also:

- [11 Tips for Winning at Your Markman Hearings](#)
- [Introducing Mock Markman Hearings for Patent Litigation](#)
- [Perfecting the Patent Tutorial for Your Judge](#)
- [Free Download: The Patent Litigation Toolkit \(3rd Edition\)](#)

5. Trigger: Trial is Scheduled (Call Your Litigation Consultants About 6 Months Before)

OK, now things are getting pretty serious. Trial dates are moved all the time in litigation, but if your case is scheduled for 6-months out, it’s likely that’s when you’re going to trial. At this point, if you’ve waited to engage an outside consultant to help you prepare your trial presentation, this is the time to pull that trigger.

Doing so with 6 months to spare enables you and your new litigation consulting team to develop a strategy around jury research, develop convincing and relatable trial story lines, figure out what visuals are needed, etc. With 6 months to go, you still also have time to do mock jury exercises, but that time is quickly slipping away so start planning immediately. With 6 months to go, you can have your litigation consultants fully engaged and supplying you with fresh, outsider’s ideas on where your case’s storylines are strong



and what just doesn't make sense. With 6 months to go, you have the time to play with and tinker with your visual presentation with a bit of leisure, rather than under looming trial pressure to "just get everything done."

If you just cannot commit to engaging a litigation consultant at an earlier stage of your case, do it now.

See also:

- [21 Ingenious Ways to Research Your Judge](#)
- [12 Alternative Fee Arrangements We Use and You Could Too](#)
- [10 Things Every Mock Jury Ever Has Said](#)
- [Demonstrative Evidence & Storytelling: Lessons from Apple v. Samsung](#)
- [Free Download: A Litigator's Guide: How To Find and Use Trial Technicians and Trial Technology](#)

6. Trigger: Trial is REALLY Coming (Call Your Litigation Consultants About 1-3 Months Before)

As you can see, there are lots of other trigger points preceding your very final trial-preparation that should initiate a call to your demonstrative evidence / jury consulting / trial technician team. However, right or wrong, the majority of litigation teams wait until this end-game to get serious help in developing their trial presentation and improving their jury-persuasion strategy. It's not the end of the world, obviously.



At this final stage of your case (barring appeal), we (litigation consultants) must be very committed to developing the specific presentations that will be made in court: opening statement, closing argument, direct testimony, and cross-examination. This presentation development includes one-on-one consulting with the litigation team to sort out the best themes and storylines of your case. Events that must be conveyed to the jury to induce a perception of causation as to key issues in your case must be identified to make graphics, including timelines. If scale models are needed, there's not much time to make them at this point so we must focus on doing so immediately. If any jury research is to be done, it's unlikely that a full-blown mock jury exercise can be organized at this point, but you can still do smaller focus group studies or micro-mock exercises to fine tune your presentation.

Of course, a lot of litigation graphics must be produced to support (typically) an hour of the opening statement, an hour of closing statement (again, typical), any visuals to support your expert(s), impeachment, litigation boards, etc. Also, if your evidence is largely electronically based you'll need a trial tech to immediately begin developing a trial database for you and



then go with you to trial to display your evidence for you seamlessly. If your courtroom is already high-tech and wired and ready to go, great; if not, you'd better arrange to have the equipment there that you'll need to make your best presentation.

Clearly, there's a lot to consider and waiting to the last minute is not ideal. But, if this is your situation, engage an expert to help you along this tricky path.

See also:

- [5 Questions to Ask in Voir Dire . . . Always](#)
- [12 Reasons Bullet Points Are Bad \(in Trial Graphics or Anywhere\)](#)
- [5 Things Every Jury Needs From You](#)
- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [6 Trial Presentation Errors Lawyers Can Easily Avoid](#)



\$300 Million of Litigation Consulting and Storytelling Validation

by **Ken Lopez** Founder/CEO, **Persuadius**

A2L supported a major win at trial last week, and the lessons from that win are extremely useful for any litigator.

The case involved two of the world's top litigation law firms and, respectively, two of their top litigators, both of whom have storied careers. A2L worked for the plaintiff, an inventor. The defendant was a multi-billion dollar technology company that had licensed the plaintiff's technology.

The dispute largely centered around the defendant's decision to stop paying licensing fees to the plaintiff. It was a complex case, and A2L's role was to help achieve a win through a combination of litigation consulting, litigation graphics and litigation technology.



Although we work on plenty of small cases, Persuadius may be best known for its work in cases with tens of millions, hundreds of millions, and frequently billions of dollars at stake. In these cases, simply making a clear and attractive PowerPoint slideshow is not what a litigation consulting firm gets hired for and certainly not all that a trial team needs. Instead, in big-ticket litigation, a litigation consulting firm's ability to deliver real value-add to the trial team will be measured by its ability to:

- support developing an opening statement;
- run meaningful practice sessions with the 1st chair;
- assist in the development of a story and theme;
- ensure the story is one jurors will care about;
- make sure the message (both spoken and visual) is clear;
- incorporate lessons learned from any mock exercises into opening statements and litigation graphics;
- develop the litigation graphics so that their design adheres to the latest psychological studies related to persuasion.

Yes, it may be surprising to some, but this is what great litigation consulting firms do (see [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#) and [11 Things Your Colleagues Pay Litigation Consultants to Do.](#)) The complexity of this work explains why you can count on one hand the number of firms capable of doing it.

In my experience, most trial graphics firms are not aware of their own shortcomings, and, unfortunately, many litigators are not aware of the distinction between a simple trial graphics



vendor (usually a group of artists, project managers, and courtroom trial technicians) and a truly world-class litigation consulting firm (typically led by litigators and Ph.D. Former jury consultants). For example, the CEO of a quasi-competitor to A2L, himself a former law firm hot-seater, said to me, "why would you give lawyers advice since they are paid to have the answers, right?" My answer to him was simple. **You**, shouldn't give advice.

And this is the line that separates litigation consultants from mere PowerPoint trial graphics vendors. It's a bright line, and once you understand it, there should be no confusing who fits into which category.

Leading up to trial, A2L provided all of the services listed in the bulleted list above and more. I had a chance to see the opening statements in this case. Our client humanized his client and told a clear story. He told a story that jurors couldn't help caring about. Told by him, it was simple to get behind the client. Moreover, his litigation graphics were well-refined and simple. They incorporated the latest persuasion science that cautions away from the use of bullet points and too much text. Frankly, his opening was delivered well enough that it would have been hard to beat him.

I believe that most cases are won and lost in the opening statements. It is during opening that the jury normally picks a side to root for and everything else is heard selectively to fit into this framework that each juror builds on his or her own (confirmation bias). Accordingly, enormous time and effort must be invested in preparing for opening statements. This includes many practice sessions, mock trials, a long iterative process of developing litigation graphics for opening and attention to all the other details like trial technology. In this case, opening statements were only about three hours long in total, however, the trial lasted three weeks.

I'm proud to share the news that our side won after just a day of deliberations, and the jury awarded what is likely to be one of the top 10 verdicts of 2014, north of \$300 million (A2L is normally on two or three of these top 10 cases each year). I am immensely proud of **my colleague's** work on this case.

Other articles and resources related to litigation consulting and storytelling on A2L Consulting's site:

- [Conflict check: Be the first to retain A2L](#)
- [Don't Be Just Another Timeline Trial Lawyer](#)
- [Free Download: Top 50 A2L Litigation Consulting Articles of All Time!](#)
- [Your Trial Presentation Must Answer: Why Are You Telling Me That?](#)
- [Are You Smarter Than a Soap Opera Writer?](#)
- [10 videos to help litigators get better at telling stories at trial](#)
- [Free Webinar: Storytelling for Litigators](#)
- [11 Things Your Colleagues Pay Litigation Consultants to Do](#)
- [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#)
- [Free Download: Storytelling for Litigators](#)
- [5 Essential Elements of Storytelling and Persuasion](#)
- [Storytelling Proven to be Scientifically More Persuasive](#)

Your Trial Presentation Must Answer: Why Are You Telling Me That?

by [Laurie R. Kuslansky](#), Ph.D. Former Managing Director Jury Consulting, [Persuadius](#)

Have you ever heard a lengthy joke and started wondering, "Where is this going? It better be worth it!"?

In any area of human endeavor, the longer the buildup, the more your mind wanders and the less you expect a worthwhile payoff. A mystery novel that takes too many twists and turns make a satisfying resolution less likely because there is too much to reconcile coherently. The same holds true for anything that is presented to a jury -- such as long, winding opening

statements, intricate, piecemeal expert examinations, and the like. Any trial presentation that causes jurors to ask, "What's the point?" has not been presented well.



That's because it's much easier for a jury to remain focused and motivated and to understand the relevance of information when the jury has a headline that helps it know where the information is going and that it is worth paying attention to the information. Although counsel knows where he or she is heading and why, the jury may not.

And without knowing the underlying reasons, jurors feel that they are being subjected to random information for its own sake. The result is that they question its relevance and importance. They feel that they, as the audience, are being disregarded. For an attorney, keeping jurors focused until the end to appreciate the meaning of the mosaic, piece by piece, as it brings the full picture into view, requires knowing what the final puzzle is supposed to look like before viewing the pieces individually and assembling them. However, many attorneys wait until the end to tell jurors what the picture will look like, in part due to legal procedure and in part due to their own style. This is not how jurors' minds work.

The same evidence can lead lawyers and jurors to different destinations because litigators' reasoning method (inductive) conflicts with jurors' reasoning method (deductive).

Litigators are required to build foundations, block by block, from the bottom up, before reaching conclusions. They are trained to wait and see -- to attend to specific details until a pattern emerges that forms a theory. Hence, lawyers tend to present jurors with a series of facts, assuming that jurors will wait for, and then recognize, the pattern - *after* the pieces stack up to reach the same conclusion.

However, jurors don't work that way. They start at the end and work backward, forming a general theory into which they fit specific evidence from the top down. Once a juror's theory



is formed, new information is filtered through that theory and tested for how well it fits with the theory. Information confirming the theory is selectively attended to; ill-fitting information is missed, ignored, forgotten, or distorted to fit the theory, through cognitive dissonance.

Evidence does not change jurors' minds as much as their minds change the evidence. Remember the infamous "glove demonstration" in the O.J. Simpson criminal trial? Those who believed he was guilty saw it as proof that he was faking the misfit. Those who believed he was innocent saw it as proof that it did not fit. No one changed their mind because of it.

An up-front theory and story provide jurors with a map that enables them to see where you are going and to follow you. Jurors need to know that the punch line will be worth it before hearing a long joke. They need to see the map before going on the journey with you. Without knowing where you are starting and where you are going, GPS cannot lead you there; neither can you lead jurors to your destination without that information.

To satisfy the conflicting needs of the law, the record, the judge, yourself, and last but not least, the triers of fact (jurors), you can:

- Use case themes: short, memorable phrases that outline your case and conclusions in your opening statement and that are repeated throughout trial to create a relay race between the evidence and where it is heading;
- Reinforce case themes and key points with visuals and repetition in your trial presentation;
- Provide "evidence sandwiches": simple bottom lines first/detailed information as filler/recap of the bottom line;
- Speak "bilingually": Translate legal and technical lingo into layman's language for the jury;
- Anticipate and address consequences of the jurors' verdict options in terms of their lives;
- Tell a simple story (with a start, middle, and end), and fit your evidence into it, not vice versa.

You can overcome common, known and avoidable obstacles to jurors, by starting with the end and making clear what your point is and why it matters, so jurors are more willing to follow you there.

Most of all, don't take the scenic route, lest jurors ask prematurely, "Are we there, yet?"

Related Persuadius articles on the subject of trial presentation, juries, and storytelling:

- [Free Download: Storytelling for Litigators - How to Get GREAT at It](#)
- [5 Things Every Jury Needs From You](#)
- [10 Things Every Mock Jury Has Said](#)
- [Five-part series on jury selection](#)
- [Trial presentation tips anyone can learn from Hollywood](#)
- [Graphically immersive trial presentations work best](#)
- [14 completely preventable trial presentation mistakes](#)
- [How do trial presentation consultants do what they do?](#)

11 Problems with Mock Trials and How to Avoid Them

by [Laurie R. Kuslansky](#), Ph.D. Former Managing Director Jury Consulting, [Persuadius](#)

A mock trial is one of the most sensible things a trial team can do as part of their trial preparation. Not only does a mock trial inform the trial team about how real jurors or a real judge will react to the fundamentals of the case, but it also helps narrow the scope of the evidence and arguments to use. If the research is done before the close of discovery, it can inform the key messages to assert or defend, the type of experts to retain, and the expert testimony that is sought or backfires. It can also inform the trial team if the case is a no-go when all arguments fail or the damages tend to be greatly higher against the defense or lower for the plaintiff(s) than expected. We have seen the results inform clients about dedicating additional resources to support counsel when the client underestimates what is needed to prevail.



In short, there are few pre-trial preparations one can conduct that have a higher return on investment than a mock trial. However, if you fail to avoid some very common mistakes, you are not using your time or your client's money as effectively as you otherwise could.

Below are 11 problems with mock trials and how to avoid them.

1. **Winning.** You want to win for your side instead of actually testing your side's strengths and weaknesses.
2. **Show Me – Don't Tell Me.** It is well established that most jurors prefer visual evidence and all modern trials use it. If you test a case without visuals, it's a bit like going to the movies with a blindfold on and trying to understand the story. You will understand some of it, but there is a lot you won't understand. Plus, the extra time invested in creating graphics pays for itself over and over in time efficiency and it is work you'll use at trial anyway. Often, when it comes to creating a core set of graphics to show and tell your case, it forces you to focus on what is truly most important and what needs you to educate before you advocate. [See Testing Graphics in a Mock Trial.](#)
3. **Stacking the Deck.** You provide graphics for your client, but not your adversary, so you tilt the results. Related to the first item and surprisingly common, if anything, you should work to stack the deck against yourself. It is better to mock lose than to mock



- win so you learn as much as possible to remedy while there's still time.
4. **Denial.** You omit worrisome evidence. Often, trial counsel will leave out troubling evidence in a mock for a variety of reasons – some quite legitimate. However, you are better off knowing ten ways you might lose rather than one way you might win.
 5. **Verdict on Liability.** You use the results to predict the actual outcome on liability and damages. The reason to conduct a mock is not to predict what will happen -- although some analysis of that is inevitable and useful. Instead, use the mock to learn what works and what does not. Use the mock to gain language tools and learn subjects that require graphics tutorials that you can use at trial. If it helps to call someone a serial liar during the mock, you know you can do it at trial and it will help. If it boomerangs, better to know in advance.
 6. **Buck to the Future.** You use the results to predict the likely damages. It is unlikely that the economics permit such a large sample size that you can rely on the statistical results for predicting actual damages. Instead, you can learn the facts and arguments that fuel higher damages and ones which tend to mitigate damages and adjust for trial accordingly.
 7. **Goliath vs. Some Other Guy.** The best and most experienced person presents for your side and someone unequal to the task presents for the other side. No wonder you won, but what is that worth? Instead, make it an uphill battle. Put your 1st chair on your opponent's side whenever possible. We understand that clients often want to see their advocate argue for their side, whether as a trial run or to put their best foot forward, but in the end, it can be a huge disservice.
 8. **Chronology vs. Story.** You try to cover too many details rather than creating a compelling story to test. Rattling off what happened is not telling a narrative. Use it as a foundation to tell the highlights in your story. It's the spine, but not the body. [See A2L's Storytelling in Litigation Webinar.](#)
 9. **Home is Where the House is.** If you don't do the mock trial in the actual trial venue, it is hard to know how the real jury pool will react and what they might be sensitive to as local issues that can impact their perception of the parties and the case. Clients may be over-sensitive to the risks of local research. If there are local rules against it (e.g., as in the E.D. Texas) or the pool truly is tiny, that's a valid reason. If not, there are native sensibilities that are important, but will be missed if a matched venue is used.
 10. **Cast of Characters.** Without explaining who witnesses are when citing their testimony (e.g., the credentials of expert witnesses or the roles of fact ones), their testimony is flat. Instead, make a visual glossary of key players. If their positions are pertinent, include an organizational chart. If their credentials are important, present their CV visually.



11. **Set Client Expectations.** Mock trials are best if you lose so that you learn challenges to overcome, but if your client loses confidence in the trial team for mock losing, then what? Instead, explain to your client up front that you are going to make it a challenge to win this so we can learn how best to fight this case by testing the worst-case scenario. The more criticism we hear from jurors, the better.

It is better to fix the problems in the case than for the mock to be fixed.

Other articles and resources related to mock trials and jury consulting services from Persuadius:

- [Things every mock jury has said in 400+ mock trials](#)
- [Contact A2L about mock trial and jury consulting services](#)
- [Free E-Book Download: How to Get the Most from a Mock Trial and Jury Consultants When You are Headed to Trial](#)
- [5-part series about voir dire and jury selection](#)
- [5 sample questions to always ask in voir dire](#)
- [Is it unfair to your opponent to use trial and jury consultants?](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)
- [12 Alternative Fee Arrangements We Use and You Could Too](#)

The Very Best Use of Coaches in Trial Preparation

by **Ken Lopez** Founder/CEO, **Persuadius**

Some time ago, I wrote about my intensive preparation for a conference speech that I was asked to give and about the 21 steps I took that made it successful. We've also written about how even the greatest athletes practice with their coaches and how great actors prepare with the assistance of others.

It seems to me, however, that most lawyers preparing for trial are hesitant to take advantage of coaching as a means of practice. So I thought I would share my experience, in close to real time, about how I am preparing for an upcoming commencement speech.

This coming May, I'm giving a speech at the graduate campus of the University of Mary Washington, where I serve on the Board of Visitors. It will only be 10 to 15 minutes long, but it is an important speech for me -- and that much more so for my audience. So I'm taking preparation for this event quite seriously.

One of the first steps I took after being asked to deliver this speech was to engage a coach. Now, I'm an experienced speaker. Part of my business is to train others on how to best present themselves. My firm publishes books on the topic of presenting well and making great visual presentations. So why would I need a coach?

I need a coach because my responsibility is to do as good a job as I possibly can in this speech, and a coach can help me do that. This responsibility is quite similar to the duty that a litigator owes to his or her client.

Perhaps it's helpful to remember that every professional athlete works with a coach, no matter how far along in their craft they are. I've always wondered why most lawyers don't do the same during their trial preparations.

So over the coming two months I'll be meeting with my coach several times and delivering practice commencement speeches. The coach's job will be to give me feedback on my style, my content, and my message. I have no question that my talk will be better with his help than if I had done it alone.

So if you have a trial coming up, I invite you to talk to me. I can recommend a coach of almost any variety who can assist with your trial preparation. Some work at A2L on the litigation consulting and jury consulting teams. However, I know people ranging from acting trainers to body language experts. There are good people working in the industry. Take advantage of them, be courageous and improve





your trial presentation. You and your client deserve it.

Other articles and free e-books related to trial preparation, practice, coaching, and giving a great presentation on A2L Consulting's site:

- [FREE E-BOOK DOWNLOAD: How To Create Persuasive Visual Presentations](#)
- [Practice, Say Jury Consultants, is Why Movie Lawyers Perform So Well](#)
- [Litigator & Litigation Consultant Value Added: A "Simple" Final Product](#)
- [Litigation Consultant: Embrace a Two-Track Strategy & Win the War](#)
- [3 Ways to Force Yourself to Practice Your Trial Presentation](#)
- [FREE E-BOOK: Making Great Speeches and Connecting with Your Audience](#)
- [Accepting Litigation Consulting is the New Hurdle for Litigators](#)
- [16 Trial Presentation Tips You Can Learn from Hollywood](#)
- [Mock trial services lead by a jury consultant with 400+ mock trials](#)
- [A2L's Micro-Mock helps lawyers practice on a budget](#)

7 Ways to Prepare Trial Graphics Early & Manage Your Budget

by **Theresa D. Villanueva, Esq.** Director, Litigation Consulting **Persuadius**

One of the many questions I often hear is: *how far in advance should we engage a trial consulting or trial graphics firm?*

Generally, we prefer to work with the trial team sooner rather than later, but it is not uncommon to get a last minute call for a trial that starts in a week or even a few days. However, the longer we have to prepare the better.

One of the benefits of starting earlier is that we can begin to develop the necessary rapport with the trial team and work together to develop case themes and a visual story - all tasks best facilitated by more time. Also, more time allows for additional prep time for presentations and **trial graphics** as well as other things such as **electronic briefs**, **trial technology**, and **jury consulting**, or even **a mock trial/jury research**.

Getting an early start can alleviate a lot of stress. Of course, there will always be the last minute changes, as you get closer to trial, but at that point, the changes are typically minor. However, more time to prepare can sometimes present as many challenges as having a short time to prepare.

One of the challenges we often face when we are given the luxury of engaging with a team earlier rather than later is managing the budget. It is easy for the trial team to get carried away when you have months to think about the **demonstrative evidence**. I've seen many times where teams either get bogged down with "nitty gritty" details and can't agree on a color, to teams that want to see some of the craziest trial graphics ideas they can come up with, "because we have the time, right?" But time does not always equal budget.

I have laid out a seven tips below on how to keep things in check when getting an early start on preparing trial graphics.

1. Set a schedule and stick to it

After our first meeting with a team, it is always helpful for us to set a schedule for team meetings, first drafts etc. Sticking to this framework will keep everyone in check and alleviate the uncertainty about how to proceed and when to expect content to review.

2. Use this time to collaborate with your trial consultants not just reviewing the trial graphics





What better way to utilize this time than to work closely with your trial consultant? It doesn't make much sense for our team to spend time developing 40 slides for an **opening statement** when you haven't even begun to think about it. Take this time to review the case and discuss the story and case themes with your trial consulting team. **Telling your story** and getting an "outsider's" feedback can help you to start weeding through the details.

3. **Avoid the hurry up and wait approach**

Once we are engaged, trial teams will sometimes want to see things immediately for review because they are excited to get started, and then they disappear for weeks. My suggestion is if you have the time, take the time. If we are engaged very early on, many of your case themes may not be fully developed so it is probably not in the best interest of your budget to make trial graphics that are likely to be irrelevant later. Instead, work with your consultants to develop the story first and then create the trial graphics.

4. **Expect monthly budget updates from your trial consultant**

Keeping the team apprised of where things stand with their budget is essential. Doing a regular assessment of costs not only keeps the client and our team aware of the level of effort being put into the project, it also can help head off an uncomfortable post-trial discussion about the bill. Additionally, it helps our team assess the level of effort we are putting in. Are we spending too much time at the front end knowing that there will be a time-intensive crunch at the end that will throw everything off budget?

5. **Don't get hung up on the little things**

This is key in any project whether we have one year or one week to prepare. Spending time discussing what shade of blue to use and wanting to see the same graphic with these different shades of blue is not a valuable use of time or budget. Unless there is a color that vehemently offends you, trust that your trial consultant and artists know what colors (or shades of blue) will work best.

6. **Define the scope and layout a framework of the graphics**

This ties directly in with number 2 above. Work with your consulting team, and lay out a framework of what trial graphics are needed. Getting started in advance gives our team and yours the luxury of thinking about the case and what key demonstratives are really going to give you the edge you need. One way we have accomplished this successfully is to develop either a **MindMap** or an all-encompassing list of possible graphics that we see – everything from "A to Z." Then, meet with the team to discuss how the graphics will look? What information will it convey? Do we really need it? Taking this approach, a lot fewer graphics end up on the cutting-room floor, so to speak.

7. **Be mindful of revisions**

Revisions are many times the reason budgets get out of control. Having months to look at and think about the trial graphics can lead to too many revisions. One way to avoid this is to not make edits until your draft outlines are closer to final, and provide edits/revisions all at once. Providing edits/revisions piecemeal can really inflate time and budget.



So, when time is *not* of the essence, use that to your advantage, and remember these quick tips above to alleviate stress and bring your trial graphics needs in right on budget.

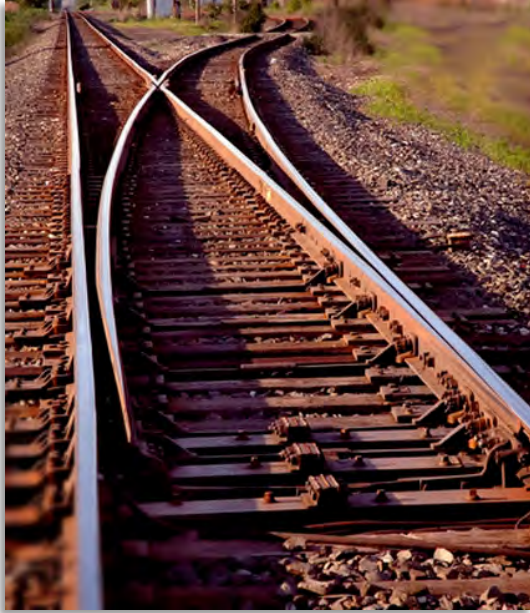
Other Articles Related to Cost Control and Trial Graphics:

- [Firms of all sizes can use trial graphics consultants](#)
- [9 ways to save money when preparing trial graphics](#)
- [21 secrets to using litigation consultants on a tight budget](#)
- [Understanding litigation animation helps save money](#)
- [Download a free litigation e-Book](#)



Planning For Courtroom Persuasion? Use a Two-Track Trial Strategy

by **Ryan H. Flax, Esq.** (Former) Managing Director, Litigation Consulting **Persuadius**



How early in the litigation process should you think about how a jury will react to your case, your client, or you? When should you begin to develop your case themes and storylines? Which is more important to your chances of winning a trial – having a compelling story to tell, or bringing in solid evidence under the law? Here’s an easy one: When you get to the appeal, would you rather be writing the red or blue brief (hint: it’s the red one for respondents)?

What I encourage in this article will seem elementary to the best litigators, but I’m writing from experience when I say that many trial attorneys fail to properly develop the necessary two-track strategy for their case – and lose because of it.

The Two-Track Strategy

What begins at the early stages of case preparation as a *single* track, which includes general case building, wrapping one’s mind around the full scope of the relevant law, filling in the useful facts where they are needed and identifying the harmful facts, must quickly change to a *two*-track strategy directed towards both a jury presentation and a solid evidentiary record. (Although this article is focused on courtroom persuasion in jury trials, it also applies well to a bench trial to a judge, an arbitration to a panel, or a mediation before a mediator, which are all forums with an audience of human beings.)

These two tracks clearly do not occupy the same route, but both are essential to winning.

The “Law Track”

Most attorneys, especially those closer to their law school graduation than to retirement, are more familiar with one of these two tracks than the other -- the creation of a solid evidentiary record that is focused on a winning defense on appeal. We’ll call this track the “law track.” That’s because it’s the track that is most heavily burdened with law and facts, which is what we are taught in law school: we were tasked daily with reading and briefing cases and statutes and being prepared to recite legal requirements when called upon by our professors.

Most attorneys approach their cases in this same way – by identifying what the court of last resort has to say about the relevant law, i.e., what must be proved for them to win in the eyes of the court, ordinarily by fulfilling all the “prongs” of the case law. Then these attorneys slowly build up their “garden of weeds” around the case, based on these issues.

These same attorneys focus on every fact they can soak up to decide where it fits into their legal position, they build preemptive defenses relating to any “bad” facts, and they search for hidden facts to support alternative theories of their case. This is very important because it’s the



foundation of any case. But it's not the only or even most important part of building a case for trial. Moreover, as the "garden of weeds" grows and grows as discovery develops, it's often very difficult for even the sharpest attorneys to extricate themselves from the weeds and see the bigger picture of the case they're about to try.

So, in addition to the "law track," what else should a trial lawyer consider?

The Persuasion Track

The other of the two tracks, and the one that many litigators tend to overlook is building a case to satisfy a jury (or judge in the event of a bench trial) in a "real life," non-legal sense. I call this the "persuasion track."

After all, trying a case in court is something like making an extended elevator pitch for your client, and you need to make sure that the jury wants to hear it and that the jurors will be affected by your pitch in the way you intend.

Often, a litigator will spend too little time, or none at all, on this courtroom persuasion track. Most litigation teams tend to wait until the last minute before trial (often in the war room outside the courthouse) to really put their *story* together in a way that will be persuasive to jurors.

I have found that during trials (and mock trials), juries tend to find relatively few facts very interesting and "important" and that they then base the entirety of their decisions in the jury room on those few facts. There is a well-known psychological phenomenon called *confirmation bias*, which is the tendency to interpret new evidence as confirmation of one's existing beliefs or theories. After observing many mock trial exercises and seeing the results of dozens of jury trials, I have concluded that most juries tend to decide the outcome of a case in the first few minutes of opening statements and then use facts that fit their version of the case as reasoning in deliberations (the strongest or loudest or pushiest jurors typically triumphing in these deliberations). Attorneys need to recognize this and to develop their trial story around the key facts onto which jurors will tend to latch.

If you don't win at trial, you've got the short end of the stick when you head to post-trial arguments/motions and appeal. You must carefully develop your case along the persuasion track to plan to be successful on the second, law track. The question now is, *how is this done?* That will be the subject of my next article.

*This article updates a 2012 article and lays the groundwork for a more detailed explanation of the two-track strategy in subsequent articles.

No Advice is Better Than Bad Advice in Litigation

by **Laurie R. Kuslansky**, Ph.D. Former Managing Director, Jury & Trial Consulting
Persuadius

Often, celebrities and other litigants have entourages, a circle of advisors, and all kinds of ties with other people, so it is understandable that they will turn to them for advice when engaged in legal battles. The problem is that often those people have little to no experience or expertise dealing with this arena, but are chock full of advice, are motivated to jockey for attention and control, know which buttons to press with their friend/client to gain their consent for a course of action, but have trouble admitting they need help, may feel threatened to do so, and thus, misguide the litigant. We have seen this phenomenon many times with the same result . . . bad.



In an infamous criminal trial of a famous football star, the best and brightest jury consultants, armed with lots of good data, advised the prosecution and provided a solid and reliable trial strategy based on decades of experience plus case-specific mock-trial testing. Was it accepted? No. What was? The advice of a psychiatrist neighbor with no such expertise, prior (different) experience, and personal opinion. Result? Bad.

In a lesser known matter, a bookworm-style intellectual property attorney with no jury trial experience turned away mock-jury testing and the expertise of a jury consultant. He concluded they were outside his normal comfort zone of operating, and instead, replaced them with the advice of someone who saw things “his” way – i.e., ignored how real people decide these cases and what they cannot understand or use as evidence because they lack the cognitive ability, interest, or motivation to do so, and relied on dry, tedious, technical information and a deep understanding of the guiding legal principles to guide the jury’s decisions – which as warned and predicted all failed at trial. Result? Bad.

A well-known movie producer had a number of people hanging on to his coattails, enjoying the reflected glory of being in his inner circle. A new group of wannabes wanted to garner his attention and become his new entourage, replacing his old one. How? By claiming the others were mismanaging his business and that his best friend and financial supporter cheated him out of money. They knew that a great way to attract the attention of an artist is to alert them to the notion that they are being cheated out of money. And so, to no good avail, the producer sued his best friend. Result? You guessed it.

If your best friend was a dentist, and you had heart problems, you might ask your friend for a referral, but would you take their advice over a well-regarded cardiologist?! Of course not, but we see this pattern in litigation all the time. When heeding someone’s advice, make sure they are coaching you or your client based on more than your relationship, but on information, experience, and expertise. If not, you may as well treat your heart with a dentist.



Other Persuadius articles related to high-profile clients, jury consultants, and litigation consulting:

- [The value of witness preparation with challenging clients](#)
- [Handling high-profile clients](#)
- [The Jodi Arias Trial, A Case Study in Experts, Witness ...or Witless?](#)
- [Free View: 12 Things Every Mock Juror Ever Has Said](#)
- [The danger of over-coaching your witnesses](#)
- [14 Lessons for Expert Witness Testimony](#)
- [25 Things Inside Counsel Must Insist Outside Counsel Do](#)
- [The Top 14 Litigation Articles of 2014](#)
- [Why a litigator is your best litigation graphics consultant](#)
- [Is your jury consultant really qualified to give advice?](#)
- [10 Things Litigation Consultants Do That WOW Litigators](#)
- [The 13 Biggest Reasons to Avoid Last-Minute Trial Preparation](#)
- [Does witness preparation really work?](#)
- [Free conflicts check and consultation](#)
- [Is using a jury consultant really fair to your opponent?](#)

Why Trial Graphics are an Essential Persuasion Tool for Litigators

by **Ryan H. Flax, Esq.** (Former) Managing Director, Litigation Consulting **Persuadius**



As I pointed out in **my last post**, the oral telling of a story must be accompanied by visuals if it is to be fully effective. Studies show that most (reportedly as high as 61-65%) of the public prefers to learn by seeing and watching. The majority of attorneys, on the other hand, do not prefer to learn this way but are auditory and kinesthetic learners: They typically learn by hearing and/or experiencing something.

This makes sense when you think about it: We all learn this way in law school in class lectures, and we continue to learn this way as practicing attorneys by experiencing litigation. However, most people (e.g., jurors) do most of their “learning” watching television or surfing the internet.

I believe that these learning preferences are solidly based in evolution. Humans evolved from animals that had to rely on visual learning because,

socially, there was a lot more to see and less ability to orally explain things to one another. Our ancestors saw what foods to collect and eat, they saw their neighbors catch a fish, they saw their father hide from a carnivore, and they learned how to live and survive to reproduce, and this visual learning style was evolutionally reinforced. I think that, unless a human is forced into a situation where he or she must hone the ability to learn by hearing a lecture, he or she will more easily learn by seeing something and relying on a person’s much stronger visual capabilities.

No matter how intelligent a person is, he or she will typically teach the same way that he or she prefers to learn. Visual learners teach by illustrating. Auditory learners teach by explaining. So, left to our own devices, we attorneys will usually teach by giving a lecture. However, there is a big problem with this in a courtroom.

Chances are that most of our jurors are visual learners, and if we try to teach them in the way most comfortable us, by giving a lecture, we’re not being as persuasive as we could be. The jurors simply will not get our points or case as well as they could.

How do you bridge the communications gap? By storytelling, as discussed in this series of articles, and with effective trial graphics. This will enable you to teach and argue from your comfort zone - by lecturing - but the trial graphics will provide the jurors what they need to really understand (or feel they understand) what you’re saying and give them a chance to agree with you.

Research shows that **visual support is an essential persuasion tool** in litigation. By conducting two different studies, each having four groups of jurors (totaling about 500 subjects), researchers

tested the persuasiveness and impact of opening statements in an employment discrimination case. One group of jurors saw no graphics, one group saw graphics with plaintiff's opening, one group saw graphics with defendant's opening and one group saw graphics with each opening. This was done twice, for four eight total groups.

The results of this testing established not only that graphics make an argument stronger; it made jurors feel that the attorney using them was more competent, more credible, and probably more likable. The jurors retained the information better, and the result was improved verdicts for the graphics users. When plaintiff used demonstrative graphics, the defendant was seen as more liable. When the defendant used graphics, it was seen as less liable in the jurors' eyes.

Another study by a litigation and jury consultant, Dr. Ken Broda-Bahm, investigated the [effectiveness of various communication techniques](#), specifically as they relate to jurors.

Interestingly, this study found that there really wasn't much difference in effectiveness when comparing techniques using:

- no trial graphics,
- simple flipcharts,
- static and sporadically shown trial graphics, and
- animated and sporadically shown trial graphics.

This result was surprising to Broda-Bahm, and to me reading his published work. However, his study went further and found that when the "jurors" were immersed in graphics, meaning that the attorney always gave them something to see while presenting his argument, the effectiveness and persuasiveness of the presentation dramatically increased.

The bottom line is that you must use visual support to accompany your trial argument and testimony. This can take many forms, such as trial graphics, scale models, poster boards, and electronic display of evidence. Furthermore, the presentation of visual support during litigation must be an immersive experience for the jurors. So unless there is a very good reason to turn off the visual display to have the jurors focus on your face, you should be giving them something to look at.

Other trial graphics related articles and resources on A2L Consulting's site:

- [Submit a conflicts check related to a trial graphics need](#)
- [Free Webinar: How to Use PowerPoint Trial Graphics for a Win](#)
- [Download: Using Trial Graphics in the Best Way Possible](#)
- [New Study: A Graphically Immersive Trial Presentation Works Best](#)
- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [12 Reasons Bullet Points Are Bad \(in Trial Graphics or Anywhere\)](#)
- [6 Studies That Support Litigation Graphics in Courtroom Presentations](#)
- [Why reading PowerPoint litigation graphics slides hurts your trial presentation's effectiveness](#)
- [Why shouldn't I just make my own PowerPoint slides?](#)
- [5 Problems with Trial Graphics](#)
- [12 Questions to Ask When Hiring a Trial Graphics Consultant](#)



- [Why Trial Tech ≠ Litigation Graphics](#)
- [13 Reasons Law Firm Litigation Graphics Departments Have Bad Luck](#)
- [7 Questions Will Save You Money with Litigation Graphics Consultants](#)
- [16 Litigation Graphics Lessons for Mid-Sized Law Firms](#)
- [7 Reasons Litigation Graphics Consultants are Essential Even When Clients Have In-House Expertise](#)
- [Download: The Role and Value of Litigation Consultants Explained](#)

How Much Text on a PowerPoint Slide is Too Much?

by [Kenneth J. Lopez](#), J.D. Founder/CEO [Persuadius](#)



Lawyers love words. Lawyers love words on slides - tons of words on slides. Some lawyers think that the more words they use on a PowerPoint litigation graphic, the better.

They are wrong. Actually, using too many words on a slide will dramatically damage your effectiveness.

This damage is not aesthetic in nature. This is not about your look

and feel. It is scientifically proven damage that affects how well you inform and persuade your audience. Indeed, it can be said the higher your slide's word count, the lower your persuasiveness.

At A2L, we see this every day. Sometimes the trial team prepares their slides in draft form and they have paragraphs of text. Sometimes a trial team just converts their Microsoft Word outline into Microsoft PowerPoint. Sometimes a trial team edits the PowerPoint slides that we create by adding more words.

There are many reasons this occurs. Some lawyers mistakenly believe they are creating a record by including the text. That's not true. The trial record is something entirely different. Some lawyers want the text on the screen so that they have notes to follow and can remember what to say. Some lawyers want to quote relevant text from documents in evidence.

In just about every case, they are making a mistake.

In a nutshell, here's why too much text is a bad idea. There is hard science behind each point:

- People read faster than you talk: If you put up text on a slide, people will read it and then zone out while you distract them with noises. See, [Winning BEFORE Trial - Part 5 - Proper Use of Litigation Graphics](#).
- If people read and hear the same information, they remember far less than if they did one or the other. See, [The Redundancy Effect, PowerPoint and Legal Graphics](#).
- People expect more from you in your presentation. See, [Will Being Folksy and Low-Tech Help You Win a Case?](#)



- Chances are if you are using bullet points in a PowerPoint presentation, you are doing damage. See, [12 Reasons Bullet Points Are Bad \(in Trial Graphics or Anywhere\)](#).
- Chances are if your slides are printable, you are doing damage. See, [7 Ways to Avoid Making Your PowerPoint Slides Your Handout](#).

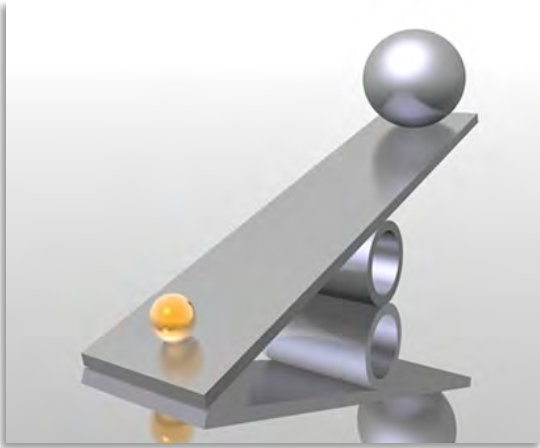
In fact, probably the only time it makes sense to have lots of text on a slide is when you are specifically trying to obfuscate and confuse. That's a legitimate tactic, but you don't want to employ it unintentionally.

Below are a number of articles and resources discussing the use of PowerPoint litigation graphics that help you think about this text problem in more detail.

- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [10 Types of Value Added by Litigation Graphics Consultants](#)
- [How to Handle a Boring Case](#)
- [12 Reasons Litigation Graphics are More Complicated Than You Think](#)
- [How to Make PowerPoint Trial Timelines Feel More Like a Long Document](#)
- [12 Ways to Eliminate "But I Need Everything On That PowerPoint Slide"](#)
- [Why Expensive-Looking Litigation Graphics Are Better](#)
- [How To Use and Design Trial Timelines](#)
- [14 Tips for Delivering a Great Board Meeting Presentation](#)
- [12 Reasons Bullet Points Are Bad \(in Trial Graphics or Anywhere\)](#)
- [Contact A2L about litigation graphics consulting services, contact us about helping with a presentation of any type, or just ask a question](#)
- [6 Studies That Support Litigation Graphics in Courtroom Presentations](#)
- [FREE Webinar: Persuading with PowerPoint Litigation Graphics](#)
- [11 Small Projects You Probably Don't Think Litigation Consultants Do](#)
- [Why Reading Your Litigation PowerPoint Slides Hurts Jurors](#)
- [6 Trial Presentation Errors Lawyers Can Easily Avoid](#)
- [The 12 Worst PowerPoint Mistakes Litigators Make](#)

11 Small Projects You Probably Don't Think Litigation Consultants Do

by **Ken Lopez** Founder/CEO **Persuadius**



I'm sure it's something I'm doing wrong, and perhaps the entire litigation consulting industry is doing something wrong. Every so often when I am talking to a litigator they say something like, "but you guys wouldn't do a small project like that, right?" Nine times out of ten, nothing could be further from the truth. It's exactly what we do. So, why do litigators seem to think litigation consultants only work on BIG projects?

I've talked to my colleagues in the litigation consulting industry (i.e. jury consulting, litigation graphics and courtroom technology), and we

agree that most of us suffer from a reputation that the industry has collectively built over the last 20 years. For better or for worse, the belief seems to be that you have to have a big case to warrant hiring a litigation consultant.

Reality is very different. Every single day of the year we are working on a project that most would characterize as small. To give you a flavor for projects that I would consider small but are routine for firms like ours, here is a list of 11 sample projects we have done that were all in the \$2500-\$7500 range:

1. **Design a litigator's two-hour CLE PowerPoint presentation.** Left on their own, most attorneys will build a presentation filled with text and bullet points. This is an example of failing to combine oral and visual messages properly, and it often does more harm than good. The oral and visual message ends up being nearly identical, and the audience suffers for it. So, it is our pleasure to help refine these presentations. See [12 Ways to SUCCESSFULLY Combine Oral and Visual Presentations](#) and [Why Reading Your Litigation PowerPoint Slides Hurts Jurors](#).
2. **Use a series of illustrations to make an animation.** The animation does not always have to be expensive. This series of illustrations below brought into PowerPoint and played in quick succession gives the feel of animation without the big cost. See [What Does Litigation Animation Cost? \(Includes Animation Examples\)](#).





3. **Five printed trial boards designed and used at trial.** I'm convinced that [printed trial exhibit boards](#) are making a strong comeback. Why? Well, juries are used to PowerPoints now. If you want to make them pay attention, a trial board is a good way to cause them to pause and think, "this must be important, they made this impressive big poster just for us."
4. **Two-day arbitration with a supporting trial technician.** When there are no litigation graphics and jury consulting needs, using a trial technician for a couple of days is quite affordable. See [Making Good Use of Trial Director & Demonstratives in an Arbitration](#) and [Why Trial Tech ≠ Litigation Graphics](#).
5. **A day and a half of witness prep.** One witness can easily make or break a case. For a small investment, the return on high-quality witness preparation can be enormous. Most litigation consulting firms with a jury consulting expertise should be able to provide this service, but not all are created equal. See [Witness Preparation: Hit or Myth?](#), [The Top 14 Testimony Tips for Litigators and Expert Witnesses](#) and [7 Things Expert Witnesses Should Never Say](#).
6. **Clean up, enhance and label 30 photos for trial presentation.** It's not as easy to "enhance" a photo as they make it look on CSI, but it is not expensive to do either. The right amount of clean up and encouraging labels that direct juror attention can be a wise investment.
7. **Create a settlement presentation.** Obviously, most cases settle. Without a strong position and leverage, a settlement will be much lower than it could have been. Smart litigators work with litigation graphics consultants to develop a mini-closing presentation that creates leverage by giving a flavor of how the trial might go. With no rules of evidence to create boundaries, maximum intestinal discomfort creates maximum leverage.
8. **Design a 12 slide pre-indictment presentation.** The government may not have many trial budget restraints, but they don't like to lose either. Good white-collar defense counsel will work with a litigation consulting firm to create a presentation that shows the government why they will lose at trial if they choose to indict the client. See [4 Litigation Graphics Tactics When the USA is a Client or a Foe](#) and [14 Places Your Colleagues Are Using Persuasive Graphics \(That Maybe You're Not\)](#).
9. **Clean up and refine a 45-slide administrative hearing PowerPoint.** Two-thirds of the population prefers to learn visually. If you neglect to present complementary visual aids, you will forfeit a large portion of your persuasive power. If you have a presentation in the works, letting a professional clean it up and refine it can be a very smart use of budget dollars. See [6 Studies That Support Litigation Graphics in Courtroom Presentations](#), [Persuasive Graphics: How Pictures Are Increasingly Influencing You](#), and [Presentation Graphics: Why The President Is Better Than You](#)
10. **Spend a day discussing and another day finalizing five litigation graphics.** I don't think it takes more than five great litigation graphics to win a case - the question



is always which five, however. That's why spending a day with a litigation consultant who is a litigator and graphics expert themselves (I know three good ones nationwide) will yield time and money savings. If you can work together to identify five amazing silver-bullet graphics, you can win a case on a small budget. See [Trial Graphics Dilemma: Why Can't I Make My Own Slides? \(Says, Lawyer\)](#).

11. **I lied, this one is actually free.** One thing we do that I encourage our fellow litigation consultants to do (who feel qualified to do this work) is to provide sales presentation support *gratis* to clients who are making pitches or presentations. We have done this for years, and I know how much our clients appreciate it.

I hope this dispels some myths about the jury consulting, litigation graphics and trial technology consulting industries. While some projects surely are six-figure projects, the reality is that most are not. Like a lot of things in life, it never hurts to ask your litigation consulting firm whether they can help you.

Other articles related to costs of jury consulting, litigation graphics, trial technicians, animation, keeping budgets down and alternative fee arrangements.

- [FREE E-BOOK DOWNLOAD: Getting Good Litigation Consulting Value on a Budget](#)
- [What Does Litigation Animation Cost? \(Includes Animation Examples\)](#)
- [What Do Trial Presentation Services Cost?](#)
- [What Does Using a Trial Technician or Hot-Seater Cost?](#)
- [21 Secrets for Using Litigation Consultants on a Tight Budget](#)
- [7 Ways to Prepare Trial Graphics Early & Manage Your Budget](#)
- [16 Litigation Graphics Lessons for Mid-Sized Law Firms](#)
- [8 Trial Technician-Related Tips for Midsized Law Firms](#)
- [17 Trial Consulting and Jury Consulting Tips for Midsized Law Firms](#)
- [14 Places Your Colleagues Are Using Persuasive Graphics \(That Maybe You're Not\)](#)
- [10 Ways Timely Payment Helps You Save Money On Litigation Consulting](#)
- [17 Tips for Great Preferred Vendor Programs](#)
- [12 Alternative Fee Arrangements We Use and You Could Too](#)

Who Are The Highest-Rated Jury Consultants?

by **Ken Lopez** Founder/CEO **Persuadius**



Every year, our firm receives awards in a variety of litigation consulting and blogging categories. I don't often promote those achievements in this blog, as I regard the blog as primarily educational in nature.

However, I do believe that there is real value in knowing which firms your peers are rating highest in the industry. Not only does this help

you save time and energy when you want to engage a litigation support firm, it helps you know the up-and-coming firms and what the market trends look like.

Recently, *Legal Times*, one of a few elite legal publications remaining, asked its readership to identify the best consultants in a variety of categories including e-discovery, legal banking, legal recruiting, and much more. I'm happy to announce that **Persuadius was voted the number one jury consultant** ahead of other industry giants FTI Consulting and DecisionQuest.

JURY CONSULTANTS

1. **A2L Consulting**
2. **FTI Consulting**
3. **DecisionQuest**

I've always admired those firms and the work that they do. We are friendly competitors, and I congratulate them on their achievements.

The leader of our jury consulting practice is jury consulting industry veteran Dr. Laurie

Kuslansky. Coincidentally, she has held leadership positions with both of the other two top-ranked firms. Her record and reputation in the industry are excellent, and her bio/CV/references can be viewed or [downloaded here](#).



Dr. Kuslansky shares my view that jury consultants alone are not to be relied upon as gospel for advice on jury selection, theme development, and storytelling. This method of jury consulting is antiquated, but still practiced by many jury consultants.

The preferred method for assisting top trial teams is, rather, to listen to the data developed by conducting well-designed mock trials and focus groups. The data is in the form of feedback from mock jurors or mock judges. Any jury consultant can offer a gut instinct (no matter how suspect that instinct is). However, it takes a great jury consultant and jury consulting firm to show restraint and properly interpret the data and feedback from mock jurors and focus group members and know how to blend art and science. The magic comes when a jury consultant can properly obtain good data, interpret it, wisely season it with insightful judgment, and taking in the input of the trial team.

Blindly applying data or narrowly focusing on instinct each has its perils. Likewise, asserting oneself as the smartest person in the room is hardly the team approach clients prefer.

None of the user polls are perfect, but they do provide a useful guide by which to at least assemble a list of potential vendors to consider when potentially headed to trial. The complete Best of the Legal Times 2015 Guidebook may be downloaded [by clicking here.](#)

Other Persuadius articles about jury consulting, jury consultants, and conducting mock trials:

- [Podcast: 12 Things Every Mock Juror Ever Has Said](#)
- [Webinar: 12 Things Every Mock Juror Ever Has Said](#)
- [5 Ways That a Mock Trial Informs and Shapes Voir Dire Questions](#)
- [15 Things Everyone Should Know About Jury Selection](#)
- [5 Questions to Ask in Voir Dire . . . Always](#)
- [5 Voir Dire Questions to Avoid](#)
- [10 Ways to Lose Voir Dire](#)
- [5 Ways to Maximize Persuasion During Opening Statements - Part 4](#)
- [Why a litigator is your best litigation graphics consultant](#)
- [11 Problems with Mock Trials and How to Avoid Them](#)
- [Contact A2L with a question about a mock trial](#)
- [12 Tips for Getting the Most Out of Your Mock Trial](#)
- [Here are 6 good reasons to conduct a mock trial](#)
- [5 Things Every Jury Needs From You](#)
- [Is Hiring a Jury Consultant Really Worth It?](#)
- [12 Insider Tips for Choosing a Jury Consultant](#)

Do Professionally Designed PowerPoint Slides Get Better Results?

by **Ken Lopez** Founder/CEO **Persuadius**

In my last post, [7 Bad Habits of Law Firm Litigators](#), I wrote about the problems caused by litigators who, even when they have an adequate budget, design their own PowerPoint slides for trial. I've seen this result in:

- demonstrative evidence being excluded for using inappropriate tactics;
- demonstrative evidence being used for outright misconduct;
- opportunities being missed to use [persuasion tricks of the trade](#);
- lawyers getting stuck in a [chronological recitation of the facts](#);
- an overall lack of anything [memorable or creative](#) being presented;
- the use of [out-of-date techniques like bullet points that damage credibility](#);
- and many other things that, as I said a few Halloween's ago, can lead to a [deMONSTERative evidence nightmare](#).



Well, there's a new problem to add to this list of challenges faced by litigators who design their own slides, and it was just revealed by a brand new study conducted by the Missouri School of Journalism and the Washington Post.

This study found that good visual design in online articles has been conclusively shown to promote reader interest, enjoyment, emotional engagement, ease of understanding, learning, and curiosity. Using [brain, skin, and other biometric studies](#) to analyze the effect on readers, [the study's author found](#) that clean and professional looking designs caused readers to be more engaged in almost every respect. The more streamlined the design, the better the results.

In this study (and in general), good design means breaking the text into small manageable snippets, highlighting key points, and removing distracting elements from the screen. As the author noted, "If a story is presented well, readers will enjoy it more and engage with it more deeply." Isn't this precisely what litigators want from the PowerPoint presentations that support their expert witnesses and their own opening and closing presentations?

However, how many litigators are actually comfortable producing PowerPoint slides with a clean and uncluttered page design? In my experience (see [How Much Text on a PowerPoint Slide is Too Much?](#)), not many. Yet the benefits of clean visual design have rarely been so

clearly articulated. Thus, it would seem that reliance on professional litigation graphic designers is more important than ever before. It's just not enough to use a PowerPoint template, some bullet points, and [a goldfish photo](#) and think you are producing good design.

At first glance, these new findings might seem to run counter to some things I've said before in articles like [Litigation Graphics: It's Not a Beauty Contest](#) or [Good-Looking Graphic Design ≠ Good-Working Visual Persuasion](#), but I think it would be wrong to draw that conclusion. Actually, I think these new findings are entirely consistent with our experience and these and other articles we've published like [Why Expensive-Looking Litigation Graphics Are Better](#). The challenges for anyone designing litigation graphics in PowerPoint are many and includes:

- varying visual styles throughout a presentation intentionally to maintain interest;
- mixing mediums with other tools like trial boards to maintain interest;
- knowing when to show a blank screen;
- knowing how and when to use fonts for emphasis and obfuscation;
- knowing how and when to use fonts to overcome confirmation bias;
- knowing how to use surprise to overcome confirmation bias;
- avoiding the triggering of the split-attention effect;
- knowing how switching between versions of PowerPoint will affect slides;
- knowing how to properly embed video in PowerPoint slides;
- understanding and using color theory;
- matching the graphic style to the jury and judge;
- avoiding bullet points like the plague;
- keeping Rule 403 in mind with every slide;
- just keeping text large enough on the screen;
- considering color choice and contrast for the display medium;
- building incredibly complicated PowerPoint animations for a fraction of the cost of 3D animation;
- avoiding black hat techniques;
- decluttering slides;
- building in a story;
- knowing best practices for document call-outs of all types;
- understanding how to use highlighting correctly to maintain image quality;
- knowing how to manage PowerPoint presentation file size by managing images correctly;
- understanding version control and enforcing it in the run-up to trial;
- blending video and still images to maintain interest;
- limiting text to small digestible chunks;
- creating an emotional journey with your slides;
- creating points of emphasis so that the critical can be easily separated from the superfluous;
- trying to keep slide content limited to one key takeaway per slide;
- and there's a lot more too.



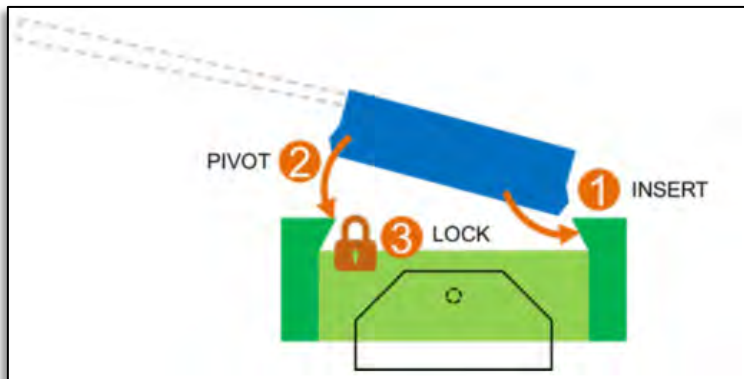
It's a long list, right? And it's why I've said, [litigation graphics](#) are **much more complicated than you think**, and just because you can use PowerPoint (of course you *can*), don't assume you should design your own litigation graphics. You literally won't know what you are missing until it is too late.

More A2L articles, free downloadable e-books, and free webinars about good design, PowerPoint for lawyers and visual persuasion:

- [The 12 Worst PowerPoint Mistakes Litigators Make](#)
- [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#)
- [FREE Download: Why Using a Litigation Consultant is Beneficial to You](#)
- [7 Lessons of Design That are Universal \(in Trial Graphics or Anywhere\)](#)
- [13 Reasons Law Firm Litigation Graphics Departments Have Bad Luck](#)
- [Litigation Graphics: It's Not a Beauty Contest](#)
- [Download Free: Storytelling for Litigators Guidebook](#)
- [Why Reading Your Litigation PowerPoint Slides Hurts Jurors](#)
- [Free Webinar: 12 Things Every Mock Jury Ever Has Said](#)
- [25 Things In-House Counsel Should Insist Outside Litigation Counsel Do](#)
- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)
- [9 Things In-House Counsel Say About Outside Litigation Counsel](#)
- [The Top 14 TED Talks for Lawyers and Litigators 2014](#)
- [12 Alternative Fee Arrangements We Use and You Could Too](#)
- [FREE Webinar: Persuading with PowerPoint Litigation Graphics](#)
- [FREE Download: Using Litigation Graphics](#)
- [7 Questions Will Save You Money with Litigation Graphics Consultants](#)
- [10 Types of Value Added by Litigation Graphics Consultants](#)

What Does A Case-Winning Trial Graphic Look Like?

by **Ryan H. Flax, Esq.** (Former) Managing Director, Litigation Consulting **Persuadius**



Sometimes a trial graphic really does make the difference.

We can't say that in each case we're involved in, a trial graphic likely won the case or played a major role in the win. We support some of the best lawyers in the country and they use the tools we provide to do what they do at trial. Usually, we're there to make sure

they do the best they can do, but sometimes we provide that key image or animation (and the associated consulting input) that really clicks with a judge or jury and enables the win. Here's a recent example.

"Insert, Pivot, and Lock"

This was a patent infringement case before the U.S. International Trade Commission concerning the connection mechanism between automobile windshield wiper blades and wiper arms – that little piece of plastic that might as well be a Rubik's cube for most of us almost every time we need to change our wiper blades. Our client held several patents covering a very special wiper blade connector that was being ripped off by a competitor. To win at trial (final hearing at the ITC), we had to get the judge to agree to our way of

understanding the rather verbose patent claim language covering what was a simple, although elegant, invention.

Here's an example of the claim language captured as an image from the patent:

What is claimed is:
 1. Device for releasably connecting a wiper blade to a drivable wiper arm, wherein the wiper blade comprises a wiper strip which faces the windscreen to be wiped, at least one strip-shaped elongate support element, a slide element which is connected to the support element, and a connecting element for connection to a coupling section of the wiper arm, wherein the connecting element is mounted on the slide element in a manner such that it can pivot, wherein the coupling section has a tongue-shaped insertion section, wherein the connecting element has a seat for the insertion section, and wherein the coupling section and the connecting element have securing sections for providing a mutual permanent connection, wherein, in order to reach a preassembly position in which the longitudinal axis of the wiper arm and the longitudinal axis of the connecting element enclose an angle α in the range from approximately 10° to 100° , the insertion section can be inserted in a substantially rectilinear manner into the seat, and wherein, in order to reach a final assembly position, the wiper arm and the connecting section can be pivoted onto one another about the insertion section/seat contact area until the securing sections allow a permanent mutual connection.

I'd say that this is a challenging read, whether you're a judge, a patent attorney, or a fast food restaurant cashier. It's pretty technically complex and rather long. Definitely "lawyery." No doubt that it satisfies the legal requirements for claim language,

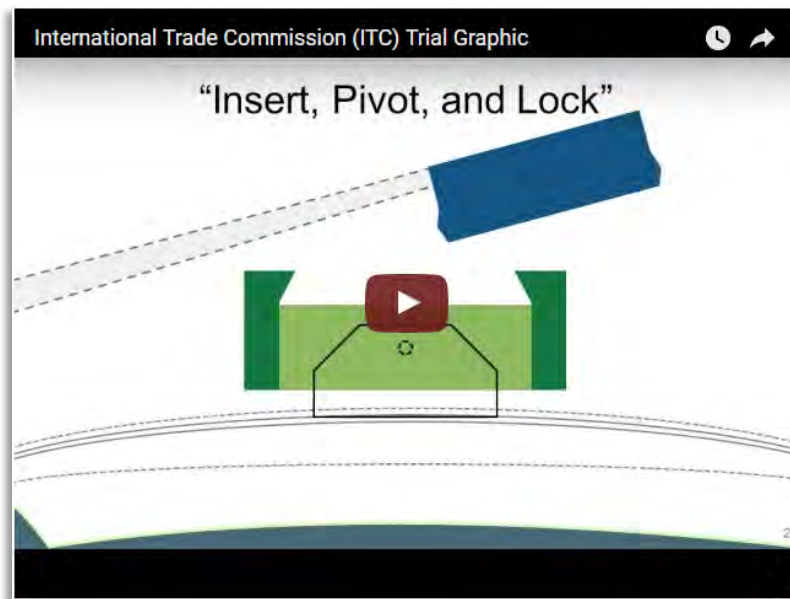
but it almost takes one’s breath away.

We needed to distil this language and the concepts behind it into something that was easily understandable, but we couldn’t be over-argumentative about it. Upon reading this claim language with the benefit of the rest of the patent’s disclosure and the reader’s own common sense, the invention had to seem simple (but elegant).

With that understanding, how do you do it?

After a good deal of brainstorming with the litigation team, we found that the core of the invention was the configuration of elements that allows a user to join a wiper blade to a wiper arm by **simply inserting** the end of the wiper arm into the connector and then **pivoting** the two parts together so that they **securely lock** with one another. Easy enough to say, but it wasn’t so easy to actually identify this concept and explain it with any level of simplicity and specificity and persuasiveness.

After a good deal more brainstorming and whiteboard drawing, we developed a graphic design that really explained it. It was much easier to grasp the inventive concept and more convincing to show it visually, as follows:



With the animation above, we boiled down the claim language into something understandable by anyone, tangible, and acceptable for the judge. We can SEE it; he could see it. It makes perfect sense. The invention (and the infringing products) must work this way – of course.

It may look exceedingly simple, but I assure you it is not. It was not so simple to conceive as a solution to the obstacles in the case. It was not so simple to design conceptually. And it was not so simple to develop the 2D animation (all in Microsoft PowerPoint, I might add). It all works and worked perfectly.



After we showed this animation to the judge during the claim construction hearing, and after the accompanying argument, he eventually began reciting the tag-line of “insert, pivot, and lock” himself in addressing questions to counsel. A pretty good result to that point.

The results of the case were even better.

In the [public version of Judge Pender’s Initial Determination](#) (at 32), when discussing the claim construction, he titles one section “The End Portion of the Wiper Arm and the Connecting Element Can Pivot with respect to Each Other About the First Location *Until* Said Securing Portion Secures the Second Part of the End Portion of the Wiper Arm.” This illustrates that he really gets it. He doesn’t mention the insertion part here, but this part of his final opinion is devoted to the concept that after that insertion the two wiper system components pivot together to lock securely, just as the demonstrative shows. It is clear that the accused devices do this and equally clear that the prior art does not, so the judge’s recognition of this concept is critical to both making the infringement case and overcoming the opposing invalidity case.

In the infringement part of his [Initial Determination](#) (at 36 et seq.), Judge Pender identifies that the accused devices are assembled via a “simple pivoting motion.” Thus, in his finding, they infringe the patent’s claims. The claims cover “insert, pivot, and lock.” The covered product works by “insert[ing], pivot[ing], and lock[ing].” And the accused devices infringe because they, too, “insert, pivot, and lock.”

Winner!

Moreover, the animation above does more than establish that the wiper blades are connected by inserting, pivoting, and locking. It shows that this motion of locking can be engaged from either side of the wiper blade, that is, in a “toe-to-heel” or in a “heel-to-toe” insertion and pivoting. This was also crucial to establishing infringement by the accused devices (see [Initial Determination](#) at 40 et seq.). Judge Pender found that the respondent’s arguments that they couldn’t infringe because their products connected in a backward sort of way compared to the complainants’ devices were just plainly erroneous.

The result of all these favorable events was a complete victory for our client. The judge found a violation of Section 337 and recommended that the commission issues an exclusion order against the opposing party, which will stop the importation of the accused, infringing wiper blade products.

It is not my intention to minimize in any way the wonderful advocacy by our client in this matter. It was truly outstanding. I believe that counsel’s trial strategy combined with the effective demonstrative evidence really sealed the deal here. Seeing, in this case, was believing.

Other articles on A2L Consulting’s site related to patent litigation and the use of visuals in patent trials, in the ITC and in IPRs:

- [21 Reasons a Litigator Is Your Best Litigation Graphics](#)
- [How I Used Litigation Graphics as a Litigator and How You Could](#)
- [5 Tips For Inter Partes Review Hearing Presentations at the PTO](#)
- [Free Download: The Patent Litigation Toolkit \(3rd Edition\)](#)



- [Free Watch: Patent Litigation Graphics Secrets](#)
- [11 Tips for Winning at Your Markman Hearings](#)
- [ITC Hearings: An Overview from Section 337 Practitioners](#)
- [11 Tips for Preparing to Argue at the Federal Circuit](#)
- [Litigation Graphics and Demonstrative Evidence at the USPTO](#)
- [Trademark Litigation Graphics: Making Your Best Visual Case](#)
- [Other A2L articles discussing intellectual property litigation](#)

10 Things Litigation Consultants Do That WOW Litigators

by Ken Lopez Founder/CEO Persuadius



As CEO of a litigation consulting firm offering [litigation graphics consulting services](#), [jury consulting services](#), and [trial technology support services](#), I hear the word "wow" quite often from A2L's clients, and I know our talented competitor firms hear the same. Usually, when I hear it, someone has wildly exceeded a client's expectations, one of our people came through in a pinch or someone on our team went without sleep for even longer than the litigator.

Whatever the reason for the "wow," I'm thrilled to hear it since it means we've truly delighted a customer. I've written about my passion for good customer service in the past in [Litigators, You Deserve Ritz-Carlton-Level Service](#) and [15 Tips for Great Customer Service from the Restaurant Industry](#). I believe great customer service is just a minimum standard in the litigation consulting industry, and at our firm, we are really striving for delight.

Here are 10 situations where litigation consultants like Persuadius and other firms like ours often hear the word, "wow."

1. **Wow, you came in at or under budget:** One of the well-known competitors has struggled recently, and I think one of the biggest reasons was their constant lowballing on estimates. For them, it seemed every major case was estimated at \$25K but the invoice always ended up closer to \$250K. At A2L and at other great firms, we do a great job of setting expectations accurately. We often hear a "wow" around budget especially since we so often use fixed fee pricing and other alternative fee arrangements to delight customers. See [12 Alternative Fee Arrangements We Use and You Could Too](#).
2. **Wow, our jury behaved just like the mock jury:** It is an amazing experience to watch a group of jurors arrive at a nearly identical outcome to those in a mock jury. While we often emphasize that a mock trial should be used primarily support voir dire, for practice and for hearing how mock jurors reason through your case during deliberations as opposed to a predictive tool, it is still fascinating to see a jury behave quite similarly to a mock jury. See [Mock Trials: Do They Work? Are They Valuable?](#).
3. **Wow, the jury loved that demonstrative:** When A2L started almost 20 years ago, we were exclusively a litigation graphics firm. We've since become known as one of the best in the jury consulting and trial technology spaces too. Still, after all these years, we have worked on more litigation graphics projects than any other type of project and probably



- more than most any other firm. Not surprisingly, we often hear about how a demonstrative we developed resonated with a jury. The litigators often seem surprised, but honestly, we're not. It's just what we do. See [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#).
4. **Wow, you found a way to show that:** It is fairly common that I hear this "wow" comment. A trial team, made up of brilliant lawyers, has been working on a case for years. They've struggled to find a way to persuasively describe a particular point, technology or set of facts. Through our creative process, our litigation consultants find just the right rhetorical technique or demonstrative exhibit that conveys a complex point efficiently and persuasively. See [Courtroom Exhibits: Analogies and Metaphors as Persuasion Devices](#) and [Information Design and Litigation Graphics](#).
 5. **Wow, you stayed right there with us:** Usually, when we hear this "wow" it means we were sleep deprived. More specifically, it is typically one of our trial technicians who was the most sleep deprived. These amazing consultants help make last minute changes to the trial presentation, prepare deposition clips and evidence for display and handle the running of the electronic show at trial that makes a lawyer look like a star or a flop. Often they stay awake for days at a time leading up to trial. See [What Does Using a Trial Technician or Hot-Seater Cost?](#) and [11 Traits of Great Courtroom Trial Technicians](#).
 6. **Wow, I didn't know people did what you do:** We have been litigation consultants for 20 years, but the industry is still quite young. While most litigators understand there are people who do demonstratives, jury and trial work, few understand that litigation consultants can be active coaches to litigators, can support theme and story development and do much more to help a litigator prepare a case. See [Accepting Litigation Consulting is the New Hurdle for Litigators](#) and [11 Small Projects You Probably Don't Think Litigation Consultants Do](#) and [11 Things Your Colleagues Pay Litigation Consultants to Do](#).
 7. **Wow, our judge praised your work on the record:** This happens at least once a year, and my favorite clients take the time to send me the transcript. One judge in the Court of Federal Claims said, "These animations are fabulous. I have to commend the plaintiff . . . it's really fantastic." Another District Court Judge asked if our trial technician could help opposing counsel get their presentation to work.
 8. **Wow, you actually helped me improve as a litigator:** This is really my favorite "wow" compliment although I rarely hear it. It takes someone with a lot of humility to believe it and then to say it, but some do, and it's amazing. We really do care about helping our clients win, and we hope to leave them a little better prepared for the next case as a result of having worked with our litigation consultants at A2L.
 9. **Wow, you should have seen opposing counsel when . . . :** This is a wide category of wow. Sometimes we hear this because our trial tech was so much better than the other side's trial tech. Sometimes we hear this because our litigation graphics were so much better than the opposition. Regardless, we're quite competitive at A2L, and we live and breathe our cases. We love winning, but we often love defeating our opponent more. Many of our favorite customers feel exactly the same way.



10. **Wow, sorry, I don't have any suggestions for how you can improve:** I'm big on post-trial debriefs. I wrote an article titled [9 Questions to Ask in Your Litigation Postmortem or Debrief](#) that I think summarizes my feelings around this topic pretty well. Bottom line, though, I love when a client answers my oft-asked question, "on a scale of 1-10, how likely would you be to recommend A2L to a colleague?" with a "10." I'm happy to say I hear that answer quite often.

12 Astute Tips for Meaningful Mock Trials

by **Laurie R. Kuslansky**, Ph.D. Former Managing Director, Jury & Trial Consulting
Persuadius



I have led or helped lead over 400 **mock trials** in the past thirty years. In that time, I have learned what works and what does not. Below, I share twelve of the best lessons that I believe litigators can take from all of my accumulated experience.

1) Don't pull punches on the opposing side.

In mock trials, we often see counsel hone their messages and themes, as well as throw their best ammo at their own side's presentation, but come up short when preparing the case for the opposing side, whether intentionally or unwittingly. The result is a Pyrrhic victory and makes a mockery of the process. If you aren't rigorously testing whether your position stands up to the toughest attacks, what are you actually testing, and how well will that prepare you for the actual trial? In addition, one common request by counsel is for their side to have the last word to stack the odds of winning. Actually, the opposite approach serves counsel better. It is better to mock lose and to understand why than to actually lose. One way to avoid that is to give the other side every advantage, including the last word during presentations.

2) Use balanced litigation graphics for both sides.

Understandably, in an effort to contain cost, as well as their natural desire to make the best case for their client, counsel often creates more and better-aimed **litigation graphics** for their own side, but may make an anemic attempt, if any, to create punchy graphics to drive home opposing points. Again, this is a disservice to their side, because what comes out of a research exercise is only as good as what goes into it, so if the input is skewed favorably, a favorable result is unreliable.



3) Less is more – 2-3 hour presentations leave less time to gather feedback and overload participants

Considering that an actual trial is typically years in the making, entails thousands of pages of testimony or hours of videotaped depositions in discovery, and may last several days, weeks or even months, it is challenging and frustrating for counsel to leave anything out of the mock presentations. There are several problems in doing so:

- Telling is not teaching and teaching is not learning, so dumping information on mock jurors' (or actual jurors') heads lacks strategy and is likely to have diminishing returns;
- Everyone has limits in attention and memory, so the more you tell, the less will be noticed and remembered;
- The more that is said, the more likely it is to be misquoted;
- There are realistic time limits to mock trials that balance format with cost, so there isn't an unlimited amount of time for presentations;
- Most mock jurors glaze over after about 35 minutes, so what difference does it make if you keep talking, but they stop listening?

A tightly constructed presentation with appropriate litigation graphics to punctuate key points respects the audience better and has more promise of driving home what needs to be tested. Actual post-trial interviews of actual jurors show that only certain key points were memorable.

4) Rehearse in advance.

The only way to actually know how long and how well a presentation runs is to do it. Paper is not reality, so while something may work well on paper, it may not work as well in 3D. It may also take a lot longer, or the segues may not flow, or the details may come off as tedious when presented in person, as opposed to listed on the page. In addition, if there is any confusion as to what should be shown when using a computer-based presentation, the operator and presenter need to coordinate their cues and timing, rather than to waste precious time learning that there is a miscue, or a document is missing, or the video is too long and the like. In addition, reading a script verbatim is a good sleeping pill but doesn't make for a presentation that will garner attention. If the presentations go longer than expected because they weren't properly tested and edited, the lost time will come from somewhere else in the schedule, such as the critical mock deliberations time. Last, but not least, if a client attends the research and/or observes the video of the presentations, and they aren't smooth, it does not show the participating lawyers in their best light.

5) Have a professional handle the technology for computer-based presentations so that visuals and video clips appear on cue.

There is a [video of trial technicians working in the hot seat here](#).

6) Keep video clips of witnesses short – it doesn't take long to form an impression and there isn't enough time to show entire depositions for feedback on substance. Its purpose is to evaluate form.



According to Carol Ginsey Goman, who has studied and written about nonverbal behavior and communication, researchers from NYU found that we make 11 major decisions about one another in the first seven seconds of meeting. The human brain is hardwired in this way as a prehistoric survival mechanism. First impressions are more heavily influenced by nonverbal cues than verbal cues. In fact, studies have found that nonverbal cues have more than four times the impact on the impression you make than anything you say.

According to Daniel Goleman, author of *Emotional Intelligence* (1996), “brain circuitry allows a by-passing of the neo-cortex by way of the so-called amygdala hijack: ‘this smaller and shorter pathway allows the amygdala to receive some direct inputs from the senses and start a response before they are fully registered by the neo-cortex’” (p.18). In just a few *milliseconds* of perceiving something, we not only unconsciously comprehend what it is, but decide whether we like it or not.

Given these findings, there is no reason to present lengthy clips to learn what first impressions witnesses make. A few minutes of video will suffice for mock jurors to form first impressions, largely based on appearance, body language and nonverbal behavior. If more than that is desired, e.g., how people react to the content of the witness’s responses, it is more efficient for the presenter to summarize the substantive points, present them visually based on the transcript, or use multiple days to present them on tape, assuming the additional expense is acceptable.

7) Test your worst-case assumptions, not your best.

To determine if someone has diabetes, how meaningful would a glucose tolerance test be without glucose? Not at all. Yet we often see something similar attempted in the draft presentations and discussions leading to mock trials, which exclude the poison pills of the opposing case. Counsel squirms at the notion that we are giving the adversary an unfair advantage, prefer not to assume the worst about rulings on motions, and wish to hide or shield areas of vulnerability. We understand why – they can’t take off their competitive adversarial hat. However, jury research is a different animal for a different purpose – not to win, but to test. To have a meaningful test means we must put our side through the paces of vigorous attack. Otherwise, the test is meaningless.

8) Don’t have a novice play the opponent and an ace play your side.

It is a waste of time or worse to stack the deck by having a seasoned litigator who is intimately familiar with the case and has his or her heart and mind invested in the case present for the client at a mock against an associate who has far less experience in front of juries and is less familiar with the nuances of the issues. The result may be the result of a “presenter effect,” not the evidence and issues, yielding findings that are not instructive for if or how to try the actual case. If the purpose of the research is to compare presenters, there are other ways to do so properly – e.g., have different presenters present the same material to comparable audiences.

9) Don’t have witnesses testify live at the mock.

There is a myriad of reasons not to have live witnesses at research:



- Research is not meant to be live theater. Time limits tend to be tight and must be kept to stay on track and leave enough time for the mock deliberations and other forms of data collection. If done live, there is no guarantee that the Q&A won't go over time;
- If scripted to control the content and timing, it looks like what it is, a canned presentation, garnering less attention and decreasing the ratings of the performance rather than forming a true read of the witness;
- It opens up the witness under deposition or cross-examination to discovery issues as to his or her past participation at a mock trial;
- The witness will reach his or her own conclusions about the meaning and implications of the research, reducing counsel's control over trial preparation;
- If unscripted, the answers may go somewhere that counsel does not want;
- It blows your cover in jurors' eyes as to which side is sponsoring the research, since live witnesses won't be testifying for the adversary. If using actors to cover that, it is never the same as the real thing, creating an unwanted imbalance.

10) Consider who should and should not attend. Once a client or witness observes the research, they may reach their own – erroneous – conclusions.

You can't put the cat back in the bag. Once someone has observed a mock research on a case, there is no way to control their takeaways, whether correct or incorrect. If they may testify, it also opens them up to discovery of that fact. Inevitably, they will fixate on the results (We won!), or on isolated points that stood out in the moment, but had no statistical or general importance when taken in context.

11) Focus on the process of mock jurors' decision-making, not the result.

Invariably at mock jury research, we see someone dash into the hallway and call the client to report the results hot off the press ("They awarded \$100 million!" "We lost 2 of the 3 groups." "They hated our CEO." "The email was a smoking gun that sank us.") We understand why they do this, but it's like going to the Mayo Clinic for a battery of tests and reporting the results of one test to decide the diagnosis, ignoring all the other results. It's likely to be faulty. What has proven reliable for decades of well-done research is the decision-making path, not the actual results. In other words, while one cannot typically predict the final result (win or lose), what seems consistent is what matters to both mock and actual jurors, such as: What ultimately caused favorable vs. unfavorable reactions to the majority? What was confusing? What information was lacking? Why? What angered them? What backfired? What themes stuck? How did multiple jurors refer to the key points in their own language? It would take many more mock jurors than is typically feasible financially to make generalizations based on the results rather than process. If a new drug were tested on 36 people and no one died, would you take it or would you wait till thousands took it without adverse effects?

12) Avoid assuming which types of jurors are bad based on one or two that stand out in mock deliberations.



Imagine you host a small dinner party and one of the five guests is obnoxious. They ruin the whole night. They happen to be male, a part-time actor/waiter, short, with curly hair. Which of those facts ruined the party? Would all short, male actor/waiters with curly hair be obnoxious and ruin your party? The fact is that we don't know. However, it is very common to react strongly when observing an individual expressing strongly adverse opinions during the mock deliberations and brand anyone like them as bad for your case. The problem is that you don't know what it is about that person, if anything, that is the root of the negative responses (is it because they are uneducated? Is it because they had a bad related experience? Is it unique and not a pattern of similar people?). Until you have enough people representing different traits and a statistically significant pattern emerges, these rushes to judgment are often misleading and unreliable. Instead, wait till the actual analyses are done that show the factors that more accurately describe adverse traits. You may be surprised that they have nothing to do with what someone assumed about one or two hostile individuals.

Here are some other resources on Persuadius site about jury consulting, trial consulting and mock trials:

- [Contact A2L with a question about a mock trial](#)
- [Here are 6 good reasons to conduct a mock trial](#)
- [Get more information on our Micro-Mock service](#)
- [Sample One Year Trial Prep Calendar with Mock Trials](#)
- [Learn more about Mock Markman exercises](#)
- [13 BIG changes coming to jury consulting and mock trials](#)

6 Secrets of the Jury Consulting Business You Should Know

by **Laurie R. Kuslansky**, Ph.D. Former Managing Director, Jury & Trial Consulting
Persuadius



1) Anyone can call himself or herself a “jury consultant.”

There are two basic types of jury consultant: those with appropriate credentials . . . and everyone else. Those with appropriate credentials have a background in a relevant field, such as psychology, sociology, or the law, with the training, skills and knowledge to provide bona fide and reliable data collection and interpretation. This includes knowledge and respect for appropriate research design, statistics, and individual and group decision-making. It also includes a working knowledge of the law and legal procedure. However, since ours is an unregulated

profession, anyone can and does tout himself or herself as a jury consultant. But knowing the law alone is insufficient to interpret human behavior professionally. And knowing psychiatry alone does little to assist with legal decision-making. Case in point: then D.A. Gil Garcetti relied on his neighbor, a psychiatrist, on the O.J. Simpson criminal trial, instead of turning to the legitimate jury consultants at his disposal . . . and we know how that worked out in the end.

A good jury consultant not only has the appropriate training but also has the ability to use both art and science to make a significant contribution to a trial team. Although there are organizations, such as the ASTC (American Society of Trial Consultants) with practice guidelines and membership requirements, they have no enforcement teeth, and no licensing authority exists for jury consulting, other than groups such as the American Psychological Association that can qualify their specialists.

As a result, we in the jury consulting field have encountered a colorful array of individuals who lack some or all of the credentials desirable in a jury consultant. Some may lack sophistication in research design; others may rely excessively on qualitative, small-group testing to overgeneralize; still, others may be ignorant of the psychological and cognitive bases for perceiving and processing information or of the factors that drive verdicts. Some even come from utterly unrelated backgrounds such as jewelry design or acting. Yet they all call themselves “jury consultants.”

Verdict: Buyer beware. Make sure to vet the credentials of your jury consultant and make sure he or she holds the requisite background to assist in what you need. You don’t go to a



dentist for a back problem, so don't use a communications consultant for psychological insights.

2. Fame is a game.

There are jury consultants who have garnered significant media attention, but they aren't the best ones out there. In fact, one should question the motives of someone who serves a client in litigation and seeks the limelight rather than holds discretion at a higher premium. In fact, some of the best jury consultants have rarely or never had publicity – to the benefit of their clients and of their professional integrity.

Verdict: Seek out a jury consultant with the goods and a good name, not tip-of-the-tongue media hounds.

3. It's a small world.

In the beginning, there were very few pioneers in jury consulting, and they all knew one another. As the field expanded over the past 30-40 years, the profession has spawned numerous individual practitioners, small boutiques and larger, national firms. However, throughout this expansion, most experienced jury consultants either know one another or know of one another and probably know everyone's true worth – or lack thereof -- but are loath, outside exchanges with colleagues, to reveal it. They hold a wealth of knowledge about the field and competitors, but it is seen as bad sportsmanship to disclose negative opinions, even though such opinions may be widely held within the profession and well founded.

How do you tell a prospective client that the person they are considering merely echoes what the attorneys say, rather than providing something of value? Or that someone well known does bad research? Or that a company merely retreads old findings? Or that someone is actually crazy?

Verdict: You don't.

4. Some tell you what you want to hear vs. what you need to hear.

Jury consulting is not only a profession, it's also a business. To that end, some counsel – especially newer users of the field – are highly resistant to hearing about any doubt or trouble with their case, even if that is the best value they may gain from a jury consultant. As a result, to avoid losing a client, many jury consultants sugar-coat at best, or at worst conceal, the bad news, mirroring what the client wants to hear rather than delivering critical information.

Verdict: If you only want to hear what you already think, don't pay someone else to say it.

5. We usually know what won't work, but if you make us do it anyway, we'll let you do it.

An experienced jury consultant has plenty of experience watching failed approaches, such as purely scientific presentations with no story, presentations that are cognitive overloads or too long, “tutorials” that are too complex, avoidance of difficult issues, uninformed jury-selection approaches without data to support them, endorsement of an “expert witness” who is clueless about connecting with lay people, and the like. We have also often heard attorneys say, “In order to win this case, the jury must X.” It is rarely supported by the data. In these situations, if the attorneys are rigid in their thinking and not truly open to the input of a solid jury consultant, either the consultant quits (unlikely) or the consultant capitulates to the client, to the client’s disadvantage. It takes someone bold enough to face the risk of losing a client to insist on telling the truth.

Verdict: If you hired a good jury consultant, talk less and listen more.

6. We often know what will work, but you won’t try it, thinking “If it isn’t perfect, it isn’t good.”

Some litigators have a difficult time embracing new ways of seeing their case once they’ve formed their own opinions about it. New themes proposed by a skilled jury consultant may largely fit the evidence, even if not all of it, but when some points don’t, counsel may dismiss the otherwise appealing theme entirely, rather than trying to find ways to make it fit by slightly modifying the theme or revisiting the evidence to support the theme. If a good jury consultant has proposed a theme, the consultant likely has good enough reason to do so, based on an assessment of the evidence and experience with juries. Remember, most litigators have gone to trial far fewer times than most experienced jury consultants. It is only after investing many thousands of dollars that counsel discovers what the consultant suggested in the first place is true. Jurors are far less likely than the lawyers to scrutinize all the facts and all the evidence and all the legal implications at the level that the lawyers do, so they are not as likely to reject broader-sweeping themes that are appealing and largely account for the evidence more simply.

Verdict: Try more, spend less.

Other helpful resources related to jury consulting and trial consulting on A2L's site include:

- [10 Things Every Mock Jury Ever Has Said](#)
- [12 Great Tips for Great Mock Trials in Your Venue](#)
- [13 Changes Coming to Jury & Trial Consulting](#)
- [How to Prep a Witness](#)
- [Persuadius Voted #1 Jury Consultants by the readers of LegalTimes](#)

11 Traits of Great Courtroom Trial Technicians

by **Laurie R. Kuslansky**, Ph.D. Former Managing Director, Jury & Trial Consulting **Persuadius**



A trial technician, also known as a hot-seat operator, has an incredibly challenging job. He or she needs to manage the minute-by-minute display of evidence at a trial. Often that means bringing up deposition video that has already been synchronized with the deposition transcript, or being able to bring up one of the thousands or even millions of documents on a moment's notice. In addition, a great hot-seat operator must understand what the litigator needs to prove at trial and what the pitfalls may be. He or she must almost feel like a "second skin" to the trial lawyer and must anticipate problems that will inevitably occur in the proof of the case.

Here are 11 characteristics of a great trial technician.

1. They anticipate problems and solve them before they happen. Typically, the trial technician is able to respond to requests from the litigator at trial almost before the requests are made.
2. They exude calm and confidence, even when everyone around them is tense.
3. They don't just flash massive amounts of text on the screen that no one can read. Instead, they know how and when to enlarge and highlight key portions. They have an instinctive feeling for what will be relevant to a jury.
4. They are a source of solutions and better ways to achieve the presenter's goals. It's amazing how often a bright and qualified person ends up being a hindrance rather than a help to a litigator's goals.
5. They disagree when it's in the best interest of the client. The excellent trial technician sees things not only in terms of the law but also in terms of how they will fare before a jury and is unafraid to state his or her opinion.



Why Work With Persuadius?

6. They are quick on their feet and always on their toes. You only have to tell them what you want once and they get it.
7. They're flexible and make changes on short notice without a fuss. A great trial technician can make significant changes in a presentation without calling attention to himself or herself.
8. They are highly professional and blend well into the trial team.
9. A great trial technician is realistic about the limitations of the technology and the time it takes to perform certain tasks, so they can advise counsel to help prioritize for the best outcome.
10. Even when the presenter fumbles, the great trial technician can keep going and help the lawyer stay on track.
11. The great trial technician is an excellent communicator who can put even the novice technology user at ease.

How Long Before Trial Should I Begin Preparing My Trial Graphics?

by **Ken Lopez** Founder/CEO **Persuadius**



"How long in advance of the trial should I be working with my **trial graphics firm**?"

I hear this question in some form quite regularly. Often the person asking it has some idea of what they are planning to do, and they are looking for validation of their plan.

However, for those who are genuinely looking for best-practices, I can offer meaningful guidance based on 20 years of advising top litigators and watching top trial teams prepare for trial.

Clearly, a balance must be struck between the likelihood of settlement and the value of preparing your trial presentation long in advance of trial. Prepare too late and you risk not helping your fact finders understand your case, and you surely won't be maximizing your persuasiveness. Prepare too early and you run the risk of doing work that won't be needed if settlement occurs, and you might be focusing too much on your trial presentation and not enough on **developing a good record**.

So what's the right amount of prep time for trial graphics?

For some cases that we work on at A2L, we will begin graphics preparation and mock trial testing years in advance of trial. Sometimes we start working a potential issue before a single lawsuit has been filed. For other cases, we begin our work only days ahead of the trial. The right answer for your case depends on several factors.

- **How much is at stake?** If the answer is billions of dollars, a minimum of six months of trial graphics preparation is required, and the best practice approach would be a year or more. If the answer is a few million dollars, a month should be sufficient. If the answer is in between (and most of the time it will be), follow a best-practice approach of nine months of lead time and never dip below three months of lead time.
- **Is this pattern litigation?** For pattern litigation, apply the rules above, but measure what is at stake by looking at the overall value of the potential cases combined.
- **Is the subject matter challenging?** Some cases are more complex than others. A patent case involving chemistry with twelve patents at issue is much harder for a judge and jury than a single-site environmental contamination case. An antitrust case requiring complex economic testimony about market power is more complicated than an

employment discrimination case. If you can't explain your case and why you should win to your grandparent in less than 30 seconds, it's probably complicated. In these instances, follow best-practice schedules, not a minimum allowable time approach.

- **Is it a close call?** Be honest. Can you see a way that your opponent can win this case? If the answer is yes, prepare at a best-practice level time frames, not on minimum schedules.
- **Do you plan to test your trial graphics with a mock jury or in a mock bench trial?** Without the benefit of having tested your trial presentation, it's very hard to know how well you prepared. Testing a case once is helpful, but real value happens when a case is tested multiple times, thus allowing for course corrections from the first event to be tested in subsequent events. If you are planning for a mock trial add three to six months to the trial graphics prep schedule.

A great deal can be achieved at the 11th hour. The litigation consultants, the litigation graphics consultants and the jury consultants on our team can very quickly assess whether best practices are being applied to persuasive storytelling, courtroom communications, and trial presentation. Quick changes are possible that yield big results even late in the game. So, in a sense, it is never too late to focus on trial graphics.

Of course, it is probably never too early either. Building a compelling and persuasive story that people care about takes time, and a lot is left on the cutting room floor. There are just some things that cannot be rushed no matter how much talent, experience or intelligence are involved in trial preparations.

You will know that you've prepared enough when you know your presentation is going to work. You know it's going to work because you've tested it in a **mock trial**, a **micro mock event**, or by some other method. Great law firms and great in-house counsel favor intense trial preparation early regardless of the possibility of settlement.

Other articles related to trial graphics, litigation graphics and demonstrative evidence from Persuadius:

- [Planning For Courtroom Persuasion? Use a Two-Track Trial Strategy](#)
- [Sample One-Year Trial Prep Calendar for High-Stakes Cases](#)
- [The 13 Biggest Reasons to Avoid Last-Minute Trial Preparation](#)
- [10 Reasons The Litigation Graphics You DO NOT Use Are Important](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)
- [Free Webinar: Using PowerPoint Litigation Graphics](#)
- [10 Things Litigation Consultants Do That WOW Litigators](#)
- [Using & Creating Trial Graphics to Persuade](#)
- [7 Ways to Prepare Trial Graphics Early & Manage Your Budget](#)

Why Trial Tech ≠ Litigation Graphics

by [Ken Lopez](#) Founder/CEO [Persuadius](#)

At least once a week, I hear someone on A2L's customer relationship team say, "a litigator



told me they already hired a litigation graphics consultant, but really they've only hired their trial technology consultant so far. How can we help them understand the difference between the two roles?" Hopefully, I can help clear up the understandable confusion somewhat in this article.

A litigation graphics consultant and a trial technology consultant are two entirely different roles. Perhaps because of the [quick rise of midsize law firms in big litigation](#), we are hearing confusion more often than ever. Except in the rarest of

circumstances, a good trial team should not try to combine the work in one person.

There is a stark difference between the work that trial technicians do, primarily the presentation of electronic evidence, and the work that litigation graphics consultants do, primarily designing demonstratives to teach and persuade the fact-finders.

Both are high-level tasks. Both can make or break a case. However, the work of litigation graphics consultants is centered around determining how to best tell a story, how best to present the evidence, and how best to persuade a judge or jury using just the right visual aids.

The work of a trial technician is largely centered around the effective and efficient presentation of digital evidence - both demonstrative and real. Trial technicians are in the business of [using Trial Director and other programs to display documents](#) and demonstrative evidence on call.

Most good trial technicians can use PowerPoint. However most trial technicians cannot do the kind of litigation graphics work in PowerPoint featured here: [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#). This work represents high-quality information art.

PowerPoint in the hands of a non-artist can be a very dangerous weapon as I wrote about recently in [12 Ways to SUCCESSFULLY Combine Oral and Visual Presentations](#). Trial Director in the hands of an artist can be just as dangerous. Just as not all lawyers are litigators, not all artists can run technology under pressure and not all trial technicians can make great art.



In rare circumstances, the two roles exist in the same person. However, I think there are only a small handful of these talented people working in the industry right now, and they are charging hourly rates that are the equivalent of a good graphics person and a good trial technician combined.

The kind of person who can understand a complex legal story and figure out how to present it to a lay audience is an entirely different personality type than a person who can handle the methodical, rigorous and incessant demands of the hot seat. Trying to save a few thousand dollars trying to combine the two roles in one person will almost always be harmful to your trial presentation.

You certainly want a trial technician who can use PowerPoint since they can make on-the-fly edits for you at the trial site or even in the courtroom. If you are trying to save money, you can often do so by avoiding the expense of an on-site artist, since a good trial technician can be a conduit to an artist working remotely.

Cases with more than five million dollars at stake normally require both roles to be filled by at least two different people. Typically, the work of the litigation graphics consultants begins months before trial. The work of a trial technician usually begins weeks before trial.

Whether it is the art of making great litigation graphics or whether it is the art of performing technological miracles under pressure, putting the wrong person(s) in the wrong seat(s) will result in bad art - and nobody likes that.

Articles and resources on A2L's site related to trial technicians, litigation graphics, and PowerPoint:

- [What Does Using a Trial Technician or Hot-Seater Cost?](#)
- [What Do Trial Presentation Services Cost?](#)
- [12 Alternative Fee Arrangements We Use and You Could Too](#)
- [FREE DOWNLOAD: Storytelling for Litigators: Building a Great Narrative for Judge & Jury](#)
- [FREE WEBINAR: Storytelling as a Persuasion Tool](#)
- [FREE DOWNLOAD: Complimentary Complex Civil Litigation E-Book Download](#)
- [FREE DOWNLOAD: A Litigator's Guide: How To Find and Use Trial Technicians and Trial Technology](#)
- [FREE DOWNLOAD: Using & Creating Litigation Graphics to Persuade - An E-Book for Litigators and Litigation Support Professionals](#)
- [12 Ways to SUCCESSFULLY Combine Oral and Visual Presentations](#)
- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)

Will Being Folksy and Low-Tech Help You Win a Case?

by [Ken Lopez](#) Founder/CEO [Persuadius](#)



I had a conversation with a major law firm partner recently that sounds like a thousand I've had before. It goes something like this: "I generally delegate the preparation of [litigation graphics](#), and I tend to keep things pretty low-tech anyway."

To be fair, this is the way cases have been tried for a very

long time, and the partner had had a great deal of success with this approach. So, what's wrong?

What's wrong is that jurors' expectations have changed enormously in just the last few years. Jurors expect a trial presentation to be polished and more like the nightly news than like a corporate PowerPoint. They expect a trial lawyer to be polished and well-practiced, more like Brian Williams than a dull CLE presenter. [This rural Arkansas jury said it better](#) than I ever could when they responded to a question about the use of trial technology by saying, "Today is technology. That's what it's all about."

In their "Litigation Services Handbook: The Role of the Financial Expert," authors Roman L. Weil, Michael J. Wagner, and Peter B. Frank reject the idea that trial lawyers are penalized by jurors for seeming too well practiced or knowing too much about technology:

"Some lawyers and witnesses worry about appearing too slick," they write. "They worry that nicely designed and colorful exhibits or the use of high technology will reinforce the image that the party they represent has substantial resources and thus does not need to be awarded damages or would have little difficulty in paying them. Post-trial interviews we have conducted demonstrate that this is a needless worry. . . . Jurors often see visual communication – for example, on TV or on their own computers – that is superior to anything they see in the courtroom."

So if you're trying cases the way your father did, you may not be meeting a jury's expectations. Just the other day, one of our litigation consultants shared with me a



conversation he had had with a California litigator. This lawyer came to us after falling so far behind in his technology in a recent trial that the judge insisted that his opponent's **trial technician** help him pull up documents electronically to speed up the case. Ouch.

Some consultants think a lower-tech approach is better in order to avoid looking like the 500-pound gorilla in a case. I think **that is usually misguided**. If you're a large company, you don't look good for looking low-tech. You look as if you didn't prepare.

The purpose of using technology and modern presentation techniques is not to dazzle with gadgetry. Rather, it is to clearly and efficiently present your case using technology to emphasize key points better than one can do through traditional means. By embracing technology you're not only meeting jurors' expectations. You're also saying to them, "I worked hard at this in order to make it understandable, to save you time, and to show you we are an open book." I think modern juries reward this approach.

Articles related to trial technology, litigation consulting and trial technicians:

- [Free Download: How to Use a Trial Technician/Hot-Seat Operator at Trial](#)
- [Saying goodbye to the David vs. Goliath courtroom myth](#)
- [Embracing litigation consulting is key if you are trying big cases](#)
- [5 things every jury needs from you](#)
- [10 things every mock jury ever has said](#)
- [Why should I conduct a mock trial](#)
- [The two-track strategy to litigation is key to success in modern trial practice](#)
- [Why litigation graphics work according to science](#)
- [A simple presentation that looks polished is a clear final goal](#)

12 Insider Tips for Choosing a Jury Consultant

by **Laurie R. Kuslansky**, Ph.D. Former Expert Jury Consultant



counsel to test the waters at no cost or risk.

1. Ask people you know and trust who have gone to trial with the jury consultant for recommendations. There is no substitute for talking with people who have actually worked with the consultant. Reputation alone is not enough to go on.

2. Test the waters. Provide the candidates with the same set of information and see what suggestions they come up with at an initial meeting. This allows the jury consultants to do what they are hired for – absorb and interpret information and turn it into useful recommendations. This kind of trial run enables

3. Find a consultant whom you are comfortable with, but not too comfortable. In other words, if the jury consultant is merely a yes-man or woman, look further for someone who is willing to speak their idea of truth in support of your success, rather than just echoing what you want to hear.

4. Look for someone who asks questions you haven't thought about yet. Sometimes a jury consultant will ask searching questions to a lawyer at their initial meeting. This usually means that the consultant has found a gap in information, logic or evidence based on the consultant's preliminary review of the case information. An experienced jury consultant will have very good "gut" reactions shaped by hundreds of similar cases. Ignoring these questions as "irrelevant" or "not important" is a missed opportunity for the attorney. Unless the question is entirely off-base, or answered easily by information the consultant did not know, take it seriously. A jury consultant who stimulates you to think about your case from a new angle is likely someone who can make a real contribution to the case.

5. Find a consultant who is willing and able to point out weaknesses in your case. Often, lead counsel does not want to hear faults or weaknesses with his or her case. Associates are then afraid to explore them. If a jury consultant dares to go there, it will also be a useless exercise -- unless the consultant insists on being heard, rather than being in denial. It's important to know that the consultant can be the one who tells you that the emperor has no clothes.

6. Look for a consultant with a knack for coming up with catchy ways to encapsulate the heart of the case in a few words to offer appealing, fitting case themes. Often, a case is won or lost on the basis of these brief summaries.

7. Ensure that a consultant uses common sense as an important consideration in putting forth evidence and theories. The consultant should not just look at legal theories. For example,



say a particular cause of action does not call for the jury to find a motive. Jurors will still want that blank filled in, and a skilled jury consultant will identify this gap and offer good ways to address it.

8. Look for a consultant who is willing to disagree, but is not intolerant of your opinion. The consultant should get what you're saying but not just regurgitate what you want to hear. Being a jury consultant requires confidence and a certain amount of ego to balance the attorney's ego, but too much of a good thing is not good. Hence, you want a jury consultant who is not intimidated by you, but who isn't always the smartest one in the room.

9. Seek a consultant who has experience with the issues in the case and is a quick study. Familiarity with the trial location is much less important than many lawyers think, because a good approach translates well in any venue. A strong strategist who is good on his or her feet, quickly grasps information and synthesizes it into tactical steps, is excellent at reading people, can translate data into a practical course of action, and has an intuitive sense of the right case themes – are all more important than knowing the ins and outs of the courthouse. People are people, and there are other people on the trial team (e.g., local counsel), who can provide what is needed that relates to the venue.

10. Look for a consultant who can show some flexibility in method, pricing, approach and adaptability. Litigation is a moving target, there are many moving pieces and constituents, and change is the norm. Hence, in selecting a jury consultant, you want someone who can adapt to those changes alongside you and work in your best interest. Find out how they approach such changes, the cost implications, and their willingness to try different approaches if your needs, client or case are not a "one-size-fits-all" situation.

11. Choose the best jury consultant, not just the closest jury consultant. Do not fall into the regrettably too common thought pattern that the "local" jury consultant is the best. Just because someone regularly works in the venue does make them the right fit for your case. You should be relying on local counsel for venue tips and the best jury consultant you can find to help extract meaningful guidance from your mock jury and to assist as needed during jury selection.

12. Choose a jury consultant who is integrated with a litigation graphics team. Not all jury consultants understand litigation graphics, yet almost every competent jury consultant will tell you that most juries prefer visual information. Simple question, if juries are going to count on visual information as part of their decision-making, and your consultant is not insisting on testing graphics, do you really believe you have the best jury consultant?

Articles related to jury consulting, jury consultants, mock trials, and testing:

- [Why you should test your graphics with your mock jury](#)
- [What should you ask your jury litigation graphics?](#)
- [Free jury consulting e-book](#)
- [10 things EVERY mock jury says](#)
- [12 tips for truly valuable mock trials](#)
- [A2L voted #1 jury consulting firm by LegalTimes readers](#)

How Valuable is Your Time vs. Litigation Support's Time?

by **Alex Brown** Director, Operations **Persuadius**

How do you determine value?

This weekend, while my oldest child was in Boston at a gymnastics meet, we thought this would be the perfect time to “renovate” her room back home. My youngest daughter wanted to help but also wanted to negotiate her fee to do so. I came up with many reasons for her to find value in helping: the good of the family, experience, and enjoyment, but none of these provided the proper balance of cost and value to her. Finally, I told her that she will be able to destroy something that belongs to her big sister, without any concern for retaliation. This brought her on board, and in the end, she not only loved it but she also had the added benefit of being able to tell her sister how much fun it was to destroy her room and how destructive the work needed to be.



As litigators, you have a similar job of having to persuade your client about, say, the importance of using expert witnesses or the need to bring on a litigation support team. This is always a delicate conversation because there are so many factors in play; emotions, money constraints, and inexperience, to name a few. For years, the use of expert witnesses has been an easy sell for the most part. But the importance of litigation support (i.e. theming, visual presentations, trial technology/hot seat operators, and mock trial exercises) is not universally accepted, so it can be more of an uphill struggle to convince clients of the need for these things and even harder to persuade them of the value. But why? It's clearly not the cost since that normally runs anywhere between .5 percent and 5 percent of the legal fees in a big case. So the sticking point is the need for these services.

Here are a few of the things we hear when discussing our services.

- It's just PowerPoint, I can do that myself?
- Just give me a list of universal questions I can ask the jury.
- We'll just run a mock trial at the office.
- I think we can bring you in after we know what we want, so it will be cheaper.

As a litigator, do you enjoy having the client sit next to you every step of the way, having the client in meetings when you discuss your next steps, and having them question you on every decision? Of course not. The client doesn't have the experience, and these questions will drive down productivity. The same is true for litigation support. Perhaps in the back of your mind, you think you can do it yourself. But the difference between doing it and doing it



right is vast. I would never ask my doctor to fix my electrical problem, I would never ask my babysitter to fix the brakes on my car, and I will never ask my mother to drive at night. Likewise, I would never ask my litigator to do what A2L can do for them. A2L's team is experienced and professional. They can develop more options because they understand the case and are there to support you. They see more court time in a month than most litigators see in several years. Why wouldn't you want that level of experience in your corner?

David Beldon of iExecuVision International and Vistage once gave me the most important mantra that you as a litigator should incorporate into your life: "I will only do today, what ONLY I can do."

Other A2L articles and resources related to the role of litigation support, getting value from litigation support and making a case for litigation support services to in-house counsel:

- [The Real Value of Jury Consulting, Litigation Graphics & Trial Tech](#)
- [How PowerPoint Failures in Demonstrative Evidence Can Sink a Case](#)
- [No Advice is Better Than Bad Advice in Litigation](#)
- [10 Things Litigation Consultants Do That WOW Litigators](#)
- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [The 13 Biggest Reasons to Avoid Last-Minute Trial Preparation](#)
- [Practice is a Crucial Piece of the Storytelling Puzzle](#)
- [11 Traits of Great Courtroom Trial Technicians](#)
- [How Long Before Trial Should I Begin Preparing My Trial Graphics?](#)
- [Good-Looking Graphic Design ≠ Good-Working Visual Persuasion](#)
- [Planning For Courtroom Persuasion? Use a Two-Track Trial Strategy](#)
- [25 Things In-House Counsel Should Insist Outside Litigation Counsel Do](#)
- [7 Questions Will Save You Money with Litigation Graphics Consultants](#)
- [With So Few Trials, Where Do You Find Trial Experience Now?](#)
- [A2L Consulting's Litigation Support Services](#)
- [Do I Need a Local Jury Consultant? Maybe. Here are 7 Considerations.](#)
- [9 Things In-House Counsel Say About Outside Litigation Counsel](#)
- [11 Problems with Mock Trials and How to Avoid Them](#)
- [Trial Graphics Dilemma: Why Can't I Make My Own Slides? \(Says, Lawyer\)](#)

Working in Parallel vs. Series with Trial Presentation Consultants

by Ken Lopez Founder/CEO Persuadius

Our business saw a big growth spurt begin in the summer of 2013. Since the summer, cases of all types and sizes have arrived at our doors.

With so many cases going on simultaneously, I have had an opportunity to compare the styles of various trial teams. One stylistic difference I see is between those trial teams who want to work in parallel versus those who want to work in series.



Let me define terms here -- **parallel versus series**. In the electrical sense, most people think of parallel versus series in the context of holiday lighting. If a string of holiday lights were in series and one bulb went out, the entire string would go out. The reality is that all holiday lighting is manufactured with parallel circuitry. Thus, if one bulb goes out, the others stay on.

So what does **electrical circuitry** have to do with the courtroom and trial preparations? It offers a reasonable metaphor for two styles of trial preparation. If a trial team operates in parallel, it allows a high degree of control, input, and independence for its **trial presentation consultants**. They will be free to work with the trial team to develop a theme, a story, an outline and their draft slide decks without a ton of day-to-day input from the trial team except for some general coaching.

On the other end of the spectrum, what I'm calling the series approach, there are trial teams that will not allow trial presentation consulting operations to proceed without a high degree of control. Nothing is to be executed without authorization and input, and discussions are conducted in a highly regimented format.

These two styles are common amongst our clientèle. We see both types in equal amounts, and I suspect if we took the time to graph and assess it, we would see a bell curve.

Very few trial presentation consulting firms can be trusted to operate in parallel. After all, how could they come to understand and appreciate the nuances of a case that has been in progress for years? Well, I can say that firms like ours and a small handful of others around the country operate quite well in a parallel format.

In trial presentation, freedom combined with some structure allows for maximum creativity. And it is creativity quite specifically that a trial team is seeking to outsource. The more freedom within



reasonable boundaries, the better the results, but both approaches can and do produce good results.

One of the great challenges for our frontline litigation consultants who in our firm are usually former litigators themselves is assessing whether this trial team who is in front of them wants them to operate in parallel or in series. Asking the question in an otherwise heated trial environment does not always produce a real answer.

How do you know if you can trust your trial presentation firm to operate in parallel at all? I think a lot of it has to do with the personnel in that firm. Are they attorneys? Are they litigators? Are they experienced litigators? If the answers to these questions are yes, I think you might get very good results by allowing them the opportunity to operate in parallel for a brief period of time.

So what would this look like? Well, you might say I'd like to see a draft presentation that follows this ten-point outline in a week. And I'd like that to take no more than 50 hours. Running a test along these lines will help you understand whether you are dealing with a trial presentation consulting firm who is capable of operating in parallel or series. This is important to know as it helps define the level of management that will be required from your team.

Articles related to trial presentation consultants on A2L's site:

- [Free E-Book Download: Using Litigation Graphics to Prevail at Trial](#)
- [A2L's Trial Presentation Consulting Homepage](#)
- [What does trial presentation consulting cost?](#)
- [What does litigation animation cost?](#)
- [16 trial presentation tips you can learn from Hollywood](#)
- [How does a trial presentation consulting firm work?](#)

5 Surprising Areas Where Geography No Longer Matters in Trial Support

by **Ken Lopez** Founder/CEO **Persuadius**

Geography is often part of a buying decision. We make decisions about where to get our hair cut or where to buy groceries that are influenced by geography. Then again, we don't often make a decision about which social networks to use or where to buy flowers from based on geography.



Trial support services fall somewhere in between those extremes, and I find that the question of location really depends on whom you ask. We have clients around the world, and some of those are geography-sensitive clients who prefer to work with one of **our staff close to them**. This week alone, I saw inquiries from a New York client and a Chicago prospective client, both of whom demanded to meet with our local staff. Others don't care where our people are located. They just want **the best trial support firm**.

When I started our firm in the mid-1990s, geography was not a big issue for most people. There were really only a few firms anywhere who did what we did. Accordingly, people who needed jury consulting help or litigation graphics help focused only on quality. Today, there are more firms doing what we do, although I really still see only a small group who are really industry leaders.

So some people still do not pay attention to geography, while others do. Given that anyone can now hop on **GoToMeeting** or even **Google Chat** and have a video conference in seconds, geography really should not matter much. I find that a video chat is nearly as good as an in-person meeting. It is also more time and cost efficient.

Here are five surprising areas in which geography used to be a big deal for trial support services but just isn't (or shouldn't be) anymore.

1. Brainstorming: Litigation graphics brainstorming or trial preparation strategy sessions used to be something that had to be done in person. We needed the free space of a whiteboard or flip charts to make it work, and the personal interaction was crucial for us in learning how to advise a trial team to illustrate a key point or to design a jury exercise. Today, we use **shared mind mapping tools** to brainstorm with clients, coupled with video chat.

2. Interviewing Vendors: It used to be that the best way to pick a trial support vendor was to meet the prospect in person. This is no longer necessary, and in many cases, it only serves to increase the price. Today, video conferences are increasingly replacing in-person meetings. After all, one's ability to set up a good looking environment for a video conference and



handle the technology says a lot about the ability to serve you well in a trial support capacity, doesn't it? You can find a lot out about how well a firm anticipates problems.

3. Moving Big Files: It was not too long ago that FedEx was our large file transfer solution. Today, [we use highly secure services to manage documents](#) online, and large files are moved in seconds. Still, at a certain point, moving gigabytes worth of data gets to be a pain, but we have an integrated system for moving files readily. This ability is especially important when managing [a quick-turnaround e-brief project](#).

4. Practicing One's Trial Presentation: Litigators used to rely on practicing in front of the mirror or conducting mock trials for practicing their trial presentations. Now, we are offering remotely conducted [Micro-Mock](#) exercises where trial counsel can test themes, evidence, and their trial presentation remotely. The less personal nature of it seems to [encourage more practice](#), which is a great benefit.

5. Good Trial Consultants Aren't Just Local: Pretend you're sick and need lifesaving surgery for a rare condition. Do you go to your nearest hospital, or do you go to the best and most experienced doctors who can help you? The same should be true for most trial support services we provide, in particular, [trial/jury consultants](#). There are very few jury consultants and litigation graphics consultants, and I think a lot of people forget that. The entire industry is estimated to only be about \$150 million. So, it would be very unusual if the best person or most experienced person was nearby. Our senior jury consultant, for example, has conducted more than 400 mock trials. I suspect there are only a handful of people in the world who can say this.

As both voices calls and in-person meetings are slowly replaced by high-quality video calls, I expect to see fewer in-person meetings. This is just as true for local meetings as it is for meetings across the country. As geography matters less and less, competition will increase and prices will fall. That is good news for an industry that is seeking [more cost efficiency related to trial support](#).

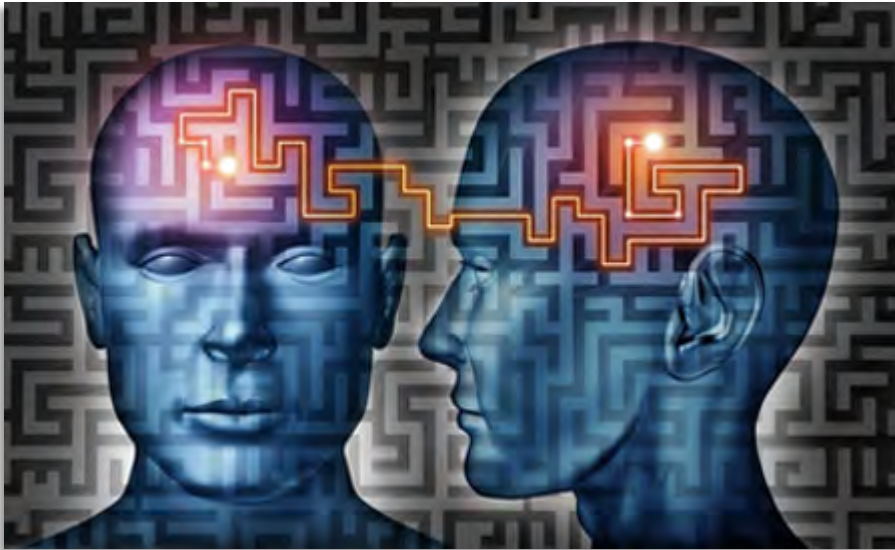
Articles connected to working with trial support services efficiently and related topics:

- [Free Download: Maximizing Value in the "New Normal" Legal Economy](#)
- [They call it the practice of law, but few are practicing.](#)
- [How to Choose a Jury Consultant](#)
- [How to Choose a Trial Technician](#)
- [How to Choose a Trial Support Firm](#)
- [How to Choose a Trial Graphics Firm](#)
- [10 Steps We Take When You Tell Us You Might Have a Case](#)

Storytelling Proven to be Scientifically More Persuasive

by **Ryan H. Flax, Esq.** (Former) Managing Director, Litigation Consulting **Persuadius**

In my last post, I discussed **how important it is for every litigator to tell a story** because jurors will always frame the facts of a trial in the form of a story. As storytelling litigators, we need to relay to our audience: (1) what happened; (2) where it happened; and (3) why we care. We must set the scene: By the time you're done with your opening statement, your audience should know "what the weather was like" (literally or figuratively) when liability arose. Finally, it's necessary to provide a social tie-in – **some reason why** your jurors would wish to absorb and retell the story



you're telling. Otherwise, there's no reason for them to pay attention.

That last bit is somewhat surprising but is very important to remember. One of the first things that humans consider when taking in new information is its social value to them – whether it's worth their remembering so

that they can reap some value in its retelling (consider, by analogy, Facebook "status updates" and "sharing"). New information is filtered through a social network of the brain more than by our IQ centers.

When researchers studied human information uptake using MRI scanning, the areas of the brain expected to be most activated, i.e., those relating to memory, deep encoding, higher-level abstract reasoning, and executive function, **were not** activated. Instead, the brains' regions central to thinking about other people's goals, feelings, and interests ("theory of mind") were those **most highly activated**. This was surprising but is an important lesson to those of us who rely on persuasion for our livelihood.

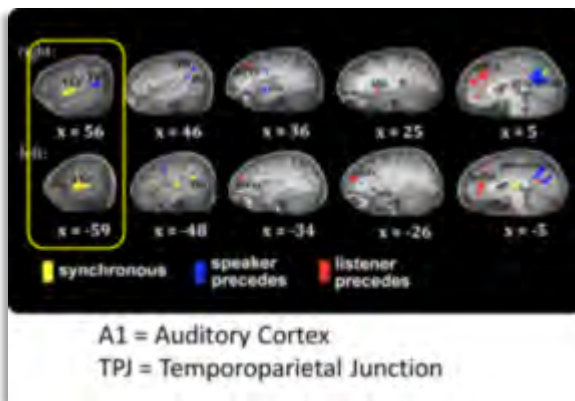
What are the implications? Spreading ideas, norms, values, and culture depends less on IQ-type intelligence and more on the influencer's social-cognitive abilities, use of emotions, and motivation.

We must understand two things about persuasion:

1. You cannot change jurors or their capacities; but
2. You can change your approach to them. You can tailor your approach by putting the facts into the context of a story, both verbally and visually.

An effective story provides relationships between the facts and the characters. It addresses the characters' motives or intentions. It puts this information into a context, a physical and psychological environment – the setting. Doing these things will make you more persuasive. How do we know this? We can read the brains of storytellers and story listeners.

Studies show that while listening to an effective story, listeners' brains react more like participants than spectators. We say that people experiencing a deep connection are “on the same wavelength.” What’s amazing is that there is neurological truth to that.



Scientists at Princeton University looked at brain scans (fMRI) of storytellers and listeners to the stories. They found that the most active areas of the brains of the speakers and listeners matched up; they were in sync or coupled. However, this synchronized activity was found in the areas of the brain relevant to the theory of mind, not in areas that drive memory or the prefrontal cortex associated with cognitive processing. The stronger the reported connection between speakers and listeners, the more neural synchronicity was observed in the

test subjects (yellow color in the image above). The extent of brain activity synchronicity predicted the success of the communication –**so connecting with your audience more makes you more persuasive.**

Other research using brain scans reveals other important information relating to effective storytelling and will help us plan our course of action **on the persuasion track**. This research shows that our brains react differently based on the types of words used. Information (e.g., evidence) presented to test subjects without using sensory language stimulates only the brain's language areas (Broca's and Wernicke's areas), and this is interpreted as “noise” (blah, blah, blah, blah). The task for the listener is seen as remembering words and more words – which is not fun and not interesting for the audience and makes keeping them engaged and persuading them much more difficult.

Research finds that use of sensory language actually stimulates the same areas of subjects' brains as the original action would (e.g., the olfactory cortex when hearing descriptive words involving smell such as lavender and cinnamon, or the motor cortex when hearing about movement). Litigation is about persuasion, which can only happen, research shows, by literally changing the brain of your audience. This brain-changing requires accessing the correct neurotransmitters, which are especially present when a person is: curious, predicting, and/or emotionally engaged. These are your goals when planning your **persuasive track strategy**.

Oxytocin is the neurotransmitter we most care about when attempting to persuade an audience. It's the trust/empathy molecule. It is increased in audience members after they listen to stories eliciting empathy. Hearing inspirational stories causes more blood to flow to our brain stem. The brain stem is the part of our brain that makes our heart beat, regulates our breathing and keeps us alive. Thus, using effective storytelling to persuade means you've literally induced a reaction from the very substrate of your audiences' foundation for biological survival.



Other Persuadius resources related to storytelling in litigation:

- [Storytelling at Trial - Will Your Story Be Used?](#)
- [Planning For Courtroom Persuasion? Use a Two-Track Trial Strategy](#)
- [WATCH: Storytelling for Litigators Webinar](#)
- [DOWNLOAD: Storytelling for Litigators E-Book](#)
- [WATCH: Using PowerPoint Litigation Graphics for the Win](#)
- [How To Emotionally Move Your Audience](#)
- [10 Videos to Help Litigators Become Better at Storytelling](#)
- [Are You Smarter Than a Soap Opera Writer?](#)
- [Good-Looking Graphic Design ≠ Good-Working Visual Persuasion](#)
- [Don't Be Just Another Timeline Trial Lawyer](#)
- [20 Great Courtroom Storytelling Articles from Trial Experts](#)
- [Portray Your Client As a Hero in 17 Easy Storytelling Steps](#)
- [No Story, No Glory: Closing Arguments that Don't Close Loops](#)
- [5 Keys to Telling a Compelling Story in the Courtroom](#)
- [Patent Litigation Graphics + Storytelling Proven Effective: The Apple v. Samsung Jury Speaks](#)

Trial Consultants: Unfair Advantage?

by Laurie R. Kuslansky, Ph.D. Former Managing Director, Jury & Trial Consulting Persuadius

Can justice be bought in the American system?

The answer in a word is “Yes” and “No.”

The question, however, is not whether Hollywood-style plots to tamper with, threaten, or bribe judges or jurors succeed, or even whether “designer” lawyers supported by maverick trial consultants and paid experts “unnaturally” influence the otherwise noble process of the American legal system.

The real question is whether the money spent on reinforcing one side of an issue or the other leads to a bad (that is to say, wrong) outcome. Justice is in the eyes of the beholder. Though a lofty ideal, there is no universal agreement of what justice is. If such agreement existed, there would be no need for a process to determine the just result, because it would already be known before any trial took place. Everyone does not agree on what justice is in a particular instance because different people are driven toward different outcomes, each seeing their desired outcome as serving justice. That is natural. For example, in the insurance industry, policyholders may believe justice is having their claims found legitimate and covered, while insurers may believe justice is having claims scrutinized for reasons not to pay or for retrieving payment by reserving their rights when they do pay. The system is driven by self-interest and the assumption that each side will do all it can to prevail.

While one often hears rhetoric about seeking justice and being fair and impartial, these mean different things depending on whom you ask. I recall asking a lawyer whether he sought justice. His response still rings true as he explained, “You only want justice when you are not involved. When you are involved, you don’t want justice; you want to win.”

In trying to win, advocates use the best tools and weapons available to obtain the desired goal. Everyone involved attempts to accomplish persuasion toward their way of seeing things, to the most favorable audience possible. The efforts expended are on using the strengths of the case as perceived by the trial team, presenting what is helpful, and doing damage control as well as possible.

Trying to win also includes trying to avoid unfavorable-seeming jurors and arguments, and resisting unfavorable decisions by the judge. This is natural. Wanting to win is natural. The desire to win (or not to lose) money or liberty is also natural. To reject this is to believe that





there is a predetermined party in the right that should prevail no matter what. As if for each case there is a “telos,” or ultimate end, that could be discovered if only the seeker were perfect in his or her method. This, however, flies in the face of the fundamental premises of the American system: Everyone deserves their day in court, everyone is entitled to proper legal representation, and everyone is innocent until proven guilty. In short, everyone has the right to win.

The theory does not equal reality. What the law requires often differs from what actual people in the position of making decisions require, for their requirements are based on their desires and experiences, not the law.

Several examples demonstrate this gap. The law typically claims that the party suing has the burden of proving its case, while the accused need not prove anything. Yet most decision-makers want to hear the truth from the horse’s mouth (i.e., the accused). The law may offer the party being sued or prosecuted the option of a judge or jury of peers. However, no one has 6-12 true peers (especially when there is disagreement on what constitutes a “peer” and where individualism is at a premium).

A commonly heard suggestion is to help restore the so-called *natural* process by having advocates accept the luck of the draw in selecting a jury to assure its randomness. The suggestion is to take away advocates’ ability to exercise “peremptory strikes” (i.e., the ability to reject a fixed number of potential jurors without stating any reason). Many believe that a jury should be “neutral” (i.e., comprised of people who are disinterested, impartial, nonpartisan, open-minded, and unbiased). However, neutral is not natural. These requirements defy the basic human condition. Prospective jurors are ordinary people, not empty vessels void of experiences, knowledge, prejudices, and attitudes. In other words, jurors have natural preconceptions which prevent them from being truly neutral.

Some see specialized trial consultants, or “jury pickers” as some commonly refer to them, as an unnatural intrusion into a legal system which would otherwise be natural (that is, random). However, there is a major flaw in the belief that absent the advocates and their advisors, juries would be random. Before advocates or consultants even become part of the mix, the randomness of a jury is limited by who is available in the pool of prospective jurors.

To be random, there would need to be a blind call with an even chance to any of them. This is simply not the case. From the outset, it is not random because jury eligibility is limited “naturally” by a number of things. Some of the limitations include age, distance from the court, language fluency, citizenship, registration with the motor vehicle bureau or voter registration, and the lack of certain physical and psychological impairments. A truly random system would include anyone, but it does not.

An additional criticism is that advocates try to stack juries with people who are not neutral, but rather who favor the advocates’ side. Jury selection gives advocates some say in who is dismissed, but not over who stays; they are left on the jury by default, often through seating arrangements and substitutions which may be entirely unpredictable. Hence, there is a natural limitation to what anyone can do to influence the randomness of jury composition, even if they so desire.



The effect of trial consultants, for instance, is to help advocates do what they already do, only better. What do social scientists do to accomplish this and who benefits?

In brief, they bridge the gap between the kinds of expertise required to satisfy the law vs. the audience (the jury). Lawyers' expertise is the result of a very specific education in the law, personal status in the world, and experience with specific case facts and players. As a rule, lawyers are better educated, more motivated, more interested, and have lived with the facts longer than jurors ever will. Lawyers do not get their training by interacting with common people, nor do common people usually come from their world. Lawyers are immersed in the minutiae of their cases because that is what the law requires. Jurors, on the other hand, are not subject to such requirements. This is why and how big plaintiff lawyers beat up on big defense lawyers.

Social scientists and trial consultants, on the other hand, are trained observers and interpreters of what jurors as people want and need to know to resolve the conflicts in dispute as they, the jurors, see them, not necessarily as the lawyers or adversaries do. Skilled trial consultants offer vital information to parties in litigation through sound methodological techniques of research design, data collection, analysis, and seasoned consulting, which take years of proper education and training. Empirical research is more reliable and far more objective than plain old intuition. When done properly, jury research also identifies the kinds of arguments jurors accept or reject and what can be done about them. Further research may be required to test reshaped arguments and determine likely damages awards. Jury profiling to identify the most hazardous juror features for your case optimizes the use of peremptory strikes when allowed. When the key themes of a case are identified through research, they can be reinforced in the minds of the jury. This is accomplished in various ways, including recommendations for the presentation approach of the lawyers, proper preparation of witnesses to carry the themes throughout the trial (as if in a relay race), and through strategic litigation graphics and demonstrative exhibits.

The tools that trial consultants add to the repertoire of a skilled trial lawyer can strengthen one side of the case to the detriment of the other. Is this bad or simply implementing the system to its utmost?

There are many other examples of psychological components which determine decision-making and thus the relative strengths and weaknesses of a case presentation strategy. The concepts of impression formation, credibility, perception, comprehension, and memory are not in the curriculum of law, yet clearly, affect the lawyer's audience and need to be understood, assessed, and applied where relevant to a trial strategy. Knowing that these psychological factors necessarily affect the outcome of a trial, especially a jury trial, does subvert or enhance the trial process by using trial consultants trained in psychology.

As Shakespeare might have said, "All the litigation world is a stage." However, most lawyers are too bogged down with the factual agenda of the case to satisfy jurors' needs for a well-told story with sufficient drama to sustain their attention enough to watch the stage. Trial consultants play a significant role in identifying what the best story is (given the facts and the players) and ways to deliver it with clarity and interest. It could be argued this improves the jury trial system by making it jury-friendly. By not understanding what claims mean in the eyes of the jurors, clients set themselves up to be victims of the archetypal insurance



defense attorney who may tell the client “You have a great case,” only to phone back the day it goes to trial to announce, “We’re settling” from the courtroom steps. A client has a right to know what his or her case is really about, how well the attorney has prepared the case, and the strengths and weaknesses related to it. These are some of the reasons why jury research is a useful tool for litigants, especially unpopular ones or those facing daunting case facts.

Since there are no reliable actuarial data of jury verdicts and awards, jury research is the best source of risk assessment. Such research is based on the fair representation of the case and of the kinds of people who sit on real juries. Several well-publicized cases exemplify how trial consulting made a significant difference by seeking to understand and satisfy jurors’ needs, and to resolve their dilemmas in reaching a verdict. The Menendez brothers, for instance, alleged that they killed their parents because they feared being killed themselves after experiencing years of abuse as children. The first time the cases were tried, defense counsel was highly effective at showing the father as an unlikable, arrogant, difficult, powerful, and abusive man whom the brothers feared. Each brother’s trial resulted in a hung jury (i.e., no unanimous verdict was reached) because jurors would not abandon their opposing positions. Some held fast to their sympathy for the abused young men on one hand, while others vehemently rejected the defense as an “abuse excuse” on the other. The role of trial consultants was key in bringing the retrial (for which the defendants were tried together) to a different end. The strategy was to help jurors organize the evidence differently to show that the defendants’ actions were not justified. The first prosecution goal was accomplished by putting the focus on the history of the mother’s relationship with her sons, as she had a significantly less salient role in their alleged prior abuse than the father and was hardly a current threat to two grown young men. By focusing on that, it would be difficult to see her murder as justified. If jurors were persuaded that the brothers committed unjustified murder against her, it would be easier to carry this judgment over to the father’s murder as well.

An example in which trial consultants played a key role where money was at stake rather than liberty is a patent dispute between a small, unknown company and a Japanese-owned industry giant. The case revolved around patented video game technology and whether the industry giant infringed it. Jury research revealed several key problems for the plaintiff: 1) individuals attracted to technology and video games were impressed with the defendant’s audio and visual wizardry, but were disinterested in how it came about; 2) the technology represented in the plaintiff’s patent was abstract and complex, while the defendants’ allegedly infringing products were concrete and simple; and 3) jurors with anti-Japanese bias who might have been considered unfavorable to the defendant did not apply this bias against the defense when coming to a verdict, so it was of no help to the plaintiff. To overcome these obstacles for the plaintiff, a trial strategy was forged based on research with mock jurors, which proved effective. A theme describing the plaintiff’s breakthrough technology as the “seed to the tree” on which all other such games were produced and enhanced with bells and whistles was salient to most mock jurors. It was quite persuasive and overcame important weaknesses (e.g., that the company never produced anything based on its patented idea and that the company was bankrupt, while the defendant was a great success worldwide). The plaintiff’s affirmative position of ownership was further enhanced by having the actual inventors dramatically “tell their story” of how the seed was developed and how the branches of the tree related back to the seed. They effectively



portrayed the personal aspect of owning – and being robbed of – something which turned out to be very valuable (a story many people can appreciate). Finally, the research identified traits of unfavorable jurors, and during jury selection, this information was used to eliminate those most unlikely to favor the plaintiff. In the end, the jury found the patent valid and infringed and awarded hundreds of millions of dollars to the plaintiff (although the appeal process ultimately rejected the amount awarded).

A third example involved the manufacturer of sophisticated telephone equipment used by a relatively new mail-order company. The mail-order company claimed it was losing business because the manufacturer's equipment was defective and could not process a large volume of calls. The plaintiffs' expert had prepared a damage model which supported an award in the tens of millions of dollars. The plaintiffs, a group of likable entrepreneurs, had filed the case in their hometown. The manufacturer planned a case story which, first and foremost, defended the performance of its equipment and challenged the plaintiffs' damage model. Because the technology involved was quite sophisticated, a lot of emphases was to be placed on explaining this technology to the jury. But the manufacturer's case story also attacked the credibility of the entrepreneurs, accusing them of mismanaging the business. A trial consultant was retained to evaluate and refine the manufacturer's story. Research strongly indicated that real persuasion, in this case, would be achieved at a different level. A different tactic was chosen. A story was recommended which took advantage of the plaintiffs' desire to paint themselves as an American success story. The new story celebrated the entrepreneurs' success and congratulated them for generating such a large volume of business. Completely different in tone and substance from the original story, the new story placed very little emphasis on the equipment and its function, and a great deal of emphasis on how the plaintiffs had become an overnight success. Embedded in the story was a key theme: "They got too big, too fast." It was a simple, easy-to-understand concept, and ultimately became the filter jurors used to decide the case. Testing showed this theme to be very effective, especially in the context of the positive story now being told. The entrepreneurs were portrayed as people who were not bad managers so much as they were simply unprepared for their sudden success. The story was no longer technical or negative; it allowed the jury to like and admire the plaintiffs, yet still find against them. When the case went to trial, the jury found for the manufacturer. Summing up the jury's opinion of the entrepreneurs in his post-trial interview, the foreman said, "These were good guys who had good ideas; they simply got too big, too fast." The jurors had embraced the story and made it their own.

These examples demonstrate that trial consultants, using social science research methods and principles, are able to reverse jurors' orientation by strategically redirecting their attention and satisfying their need to find for one party or another. These scenarios exemplify how skilled professionals impact the system, a circumstance which is seen as a strength or a weakness of the system, depending on whom you ask.

What are the weaknesses of this system? It is often driven by economics and politics. That is, it is more likely that the party more economically or politically attracted to the service providers will benefit most from their services. A modest individual is unlikely to be able to afford the services of a host of experts, including a premier trial consulting firm, or to attract them with a promise of good marketing or politically correct pro bono recognition. A balancing factor may be the natural advantages of an individual's case in David vs. Goliath



lawsuits, since the David character is often more popular and engenders more sympathy from jurors than a big, rich corporation or insurance company.

How can these “defects” be remedied? If one defines the defects of the American legal system as the ability to hire superior representation and skill at attempts to sway decision-makers to agree with you, then the “defects” of the system are the backbone of the litigation industry. However, the ability to prepare well for litigation is the result of skill, not finances. A streamlined, hard-hitting presentation which is thematic and clear is far more compelling to a jury than an elaborate dog-and-pony show which is unfocused and lacking in proper substance. Without knowing the themes of a case and how each witness and exhibit can support them, an expensive presentation is reduced to bells and whistles and will not carry the day.

To the extent that finances determine who gets what in legal preparation, there are several solutions for those who cannot afford it. Attorneys can learn to improve their trial presentation skills. Knowledge learned in one case in which a trial consultant is retained can be transferred to other cases where one is not used. One may find they are dealing with several parties who can help defray costs by participating in a joint jury research effort. One may also find that he or she has related cases that can be handled together, with benefits to all.

When one does a cost/benefit analysis of what a litigant stands to win or lose in comparison to an investment in pretrial jury research, the benefits often outweigh the costs, because proper research and consulting turn a high-stakes gamble into an educated risk. Going to trial blindly without knowing and properly preparing for the risks would be as unwise as issuing insurance unconditionally, without performing due diligence to assess the potential risk, and without taking proper precautions before assuming it. Gaining an edge from empirically pre-testing your case may be state-of-the-art, but it is pushing the system in a natural direction. It takes into account the factors that affect the reality of the system.

These statements may sound brash and self-serving – representative of a “cowboy justice” system. However, they intend to show that justice is not blind, just myopic. It often requires proper enhancements to be seen in the eyes of the beholders: the jurors. *It is not what we show them that rules, but what they see.* Trial consultants assist in diagnosing jurors’ vision. By seeing the panorama of one side’s definition of justice, the jurors can see it, too.

Other articles and resources related to trial consulting, jury research on A2L Consulting's site:

- [Free E-Book Download: Storytelling for Litigators](#)
- [Free Webinar: Using Storytelling in Litigation](#)
- [Free Litigator's Guidebook: Getting the most from your trial consultants](#)
- [What every juror needs from you](#)
- [What every mock jury ever has said](#)
- [Goliath vs. Goliath litigation](#)
- [The David vs. Goliath litigation myth](#)
- [Using trial consultants on a budget](#)
- [Using trial consultants to dominate your opponent](#)

Storytelling at Trial - Will Your Story Be Used?

by **Ryan H. Flax, Esq. (Former) Managing Director, Litigation Consulting Persuadius**

In my last post, I discussed the importance of every trial lawyer of developing **a two-track procedure in every trial** – one track that focuses on developing a convincing story that jurors can instinctively relate to, and one track that focuses on building a record of law and facts for a possible appeal.

The first thing that every trial lawyer must do is recognize this two-track necessity and begin to immediately develop case themes around key facts. It's essential to work as a team to identify your *story* and what facts fit into it. Remember, stories are supposed to be interesting and entertaining. They have a beginning, a climax, and an ending. They have a theme, a setting, and fully developed characters.

Help your case by making it understandable to the jurors and by keeping them from being bored.



Why a Good Story Matters

Litigation is not easy for anyone involved. It's usually something of a complicated mess for us as attorneys. For jurors, it's likely the most complex, complicated, and confusing thing they'll ever be asked to participate in. After all, think of what is being demanded of them. You're asking them to understand an area of law that probably took you an entire law school semester to understand and to apply that law to some new and unusual facts, then to hand one side a lot of money or send someone home empty-handed. As a litigator, you have the job of making it easier for them to find things your way.

A key component of making it easier for jurors and making them feel like they understand you and your case is storytelling. Storytelling is both an art and science and using storytelling techniques will make you a more persuasive litigator.

A story will emerge during a trial, and it may as well be yours. Mock trials and focus groups show us that when there are camps within a jury representing the two sides of the case, each camp will have a fairly consistent story. Consistently, those stories: (a) are short; (b) fit with "common sense"; (c) borrow *some* of the salient facts from the trial; (d) are complete – with a start, middle and ending, including what happened and what should happen; (e) take only a few moments to tell and use plain language; and (f) once embedded, are difficult – if not impossible – to change in jurors' minds.

The question is, where do these stories jurors use come from?

Humans automatically make stories out of virtually all life events to gain a sense of control, even if it's a false sense. It's the difference between collecting bare facts and interpreting them in a coherent manner. Most people can't resist making assumptions, drawing inferences, and



imposing upon the facts what they “mean” rather than merely accepting information as is. Most of what people discuss in their social lives are **stories and gossip** – not random facts.

So, again, because we know that your jury will be using a story to sort out your litigation facts and determine its results, whose story do you want the jurors using -- one they’ve made up, one provided by opposing counsel, or yours?

As I just said, litigation is probably the most complicated thing your jurors will ever have to be involved with in their lives, but, even setting aside the subject matter and law of the case, let’s take a look at what each juror has to do just for the jury to reach a verdict:

- show up,
- stay awake,
- be motivated enough to pay attention,
- be mentally and physically able to pay attention,
- know what is important to attend to,
- understand what they are seeing and hearing,
- be motivated and able to remember,
- recall the information after some period of time,
- be able to repeat the information in their own words, and
- be willing and able to convince fellow jurors who disagree with them.

That’s just one juror’s task. Moreover, the *other* jurors must also be awake, pay attention, and understand, etc., so that they can operate as a unit. That’s a lot required of those doing their civic duty, so the easier you can make it for them to do the tasks you can influence, the better.

Other Persuadius resources related to storytelling in litigation:

- [WATCH: Storytelling for Litigators Webinar](#)
- [DOWNLOAD: Storytelling for Litigators E-Book](#)
- [Top 14 TED Talks for Lawyers \(focus on storytelling\)](#)
- [How To Emotionally Move Your Audience](#)
- [Are You Smarter Than a Soap Opera Writer?](#)
- [Litigators Can Learn a Lot About Trial Presentation from Nancy Duarte](#)
- [Portray Your Client As a Hero in 17 Easy Storytelling Steps](#)
- [No Story, No Glory: Closing Arguments that Don't Close Loops](#)
- [5 Keys to Telling a Compelling Story in the Courtroom](#)

5 Questions to Ask in Voir Dire . . . Always

by **Laurie R. Kuslansky, Ph.D. Former** Managing Director, Jury & Trial Consulting
Persuadius



The meaning of the term "*voir dire*" translated literally, means "See say," but figuratively means "to speak the truth." In common practice, "*voir dire*" describes the process of questioning potential jurors, by judge or litigator, in advance of a jury trial to uncover conflicts, biases or other reasons to dismiss the potential juror.

The stated goal of *voir dire* is to impanel an impartial jury. However, in the majority of courts that allow *voir dire* questions by counsel, the goal of each side of the case is to get the best jury for their client possible through a process of revealing and eliminating those who are most adverse. Through a combination of dismissals for cause and peremptory challenges, potential jurors are removed from the pool of jurors. As an example of the traditional process, see [this description of the voir dire process written for those called for jury duty](#) in the Southern District of New York.

In cases where the sides agree and the judge permits, jury selection often begins with a series of written questions agreed to by all parties. Ideally, [mock jury pre-trial research](#) is conducted to identify the most important and revealing questions to include based on the types of jurors who tend to look most unfavorably on the client's case. In court, once prospective jurors' information and responses are received, there is often very limited time in which to conduct additional fact-finding research and evaluate the responses.

Many litigators mistakenly believe that *voir dire* is conducted only by judges in federal court. This is simply not true. I have conducted mock trials focused on *voir dire* and *voir dire* consulting in a majority of states in the U.S. On many occasions, this was done in preparation for a federal trial. [This recent ABA article does a good job of describing the state of voir dire in the federal courts.](#) Even in those courts where the judge or the clerk conducts the *voir dire*, many accept proposed questions from counsel. The key is to know which, few questions are most productive.

Since the *voir dire* process can help determine the outcome of a case, it is essential to use it to your advantage. With the foregoing in mind, here are five questions I would always suggest asking in *voir dire*, whether in state court, in federal court, on a jury questionnaire, or among the questions presented to your judge to ask.



1. **If you were my client, would you be completely comfortable having you as a juror on this case?**
2. **Can you think of anything in your own life that reminds you of this case? What and how?**
3. **Is there anything that you have seen or heard that would make it hard for you to guarantee to judge my client the same as the other side?**
4. **Is there anything you'd prefer to discuss in private?**
5. **Is there anything we haven't asked you that you think we should know?**

Each of these questions is designed in one way or another to uncover biases that might hurt your client. Each is designed to provoke deeper thinking and candid responses, rather than meaningless knee-jerk ones which are politically correct, but not helpful in decision making during jury selection. Each is open-ended and designed to avoid a simple yes or no answer.

Other articles related to jury selection, mock trials and trial consulting you might find helpful:

- [10 things every single mock juror has said ever](#)
- [Persuadius voted #1 jury consultants by the readers of LegalTimes](#)
- [5 signs you have a problem verdict form](#)
- [5 things every jury needs from you!](#)
- [10 ways to spot your jury foreman](#)
- [FREE DOWNLOAD: The Guide to Jury Consulting for Litigators & Lit Support](#)
- [12 tips for really really valuable mock trials](#)
- [SAMPLE TRIAL PREP CALENDAR](#)

7 Reasons In-House Counsel Should Want a Mock Trial

by Laurie R. Kuslansky, Ph.D. Former Managing Director, Jury & Trial Consulting Persuadius



Times have changed. No longer will in-house counsel approve every request outside counsel makes related to the trial. Budgets are demanded and negotiated. Litigation team structures are scrutinized. Expenses of outside consultants are doubly scrutinized.

So, it is not uncommon for outside litigation counsel to propose that a **mock trial** is conducted only to have in-house counsel push back. Indeed, A2L recently supported a case with nearly \$100 million at stake where in-house counsel was quite skeptical about conducting a mock trial.

Outside counsel made the case for a mock trial, and in-house counsel ultimately approved the expense and attended the mock trial. Like most instances when a client attends the mock trial, the value is immediately clear to them, but that realization is until not after the fact. Once the actual jury trial was completed, not only did A2L's client win a complete defense verdict, they won substantial counterclaims as well. A true slam dunk, thanks to the skill of the attorneys working for the defense and their secret weapon - a preview of unexpected areas of weakness and strengths of both sides.

Here was a typical example where in-house was skeptical about conducting a mock trial before doing one, convinced it was a good idea once they saw the mock deliberations and once the result came in, certain it was a great idea. This is not uncommon for A2L, and not all that uncommon for the high-caliber litigators we have the privilege of working with throughout the country. So, how can we all help doubtful in-house counsel appreciate the value of a well-conducted mock trial?

Here are seven reasons we believe in-house counsel should want a mock trial:

1. **Risk/Reward:** The process of litigation is expensive. The longer one stays on that course, the more it will cost. By identifying the case's potential risk/reward earlier rather than later, you will be able to control the budget more rapidly and more wisely.
2. **Evaluate Settlement Intelligently:** Knowing the strengths and weaknesses of the case will help you develop a more focused approach, will improve the preparation of witnesses and depositions of opposing witnesses, and will help in-house counsel decide whether, when and for how much it makes sense to settle.
3. **Negotiate with Strength:** Most cases settle before trial, so the better armed you are during discovery and pretrial, the more strategic you can be during settlement talks.



4. **Guide Discovery Efficiently:** While many in-house counsels understandably prefer to spend “no dime before its time,” i.e., only conduct a mock trial when a trial is certain and imminent, conducting a mock trial before the end of discovery might yield greater rewards. That may seem counterintuitive because all the facts are not in hand, expert discovery is not completed, and rulings that may affect the nature and scope of the case are pending. However, it is a great advantage, while there is still time, to get a read on the case even in its skeletal form in order to guide rather than react to the way in which the discovery evolves.
5. **One Early Bite at the Apple:** Once it’s over, it’s too late. In other words, what if a particular type of expert or subject of testimony is seen as critically relevant and helpful to mock jurors – but you only find this out after the deadline? Then it would be of little use and frustrating. Mock trials often reveal this information, so why not get it when it could make the most difference?
6. **Trial Strategy Alignment:** Sometimes in-house counsel and outside counsel have different opinions about trial strategy, the importance of certain witnesses, and the need to spend money on certain items. A mock trial usually clarifies the issues and leads to agreement.
7. **I.D. Major Problems Early:** If the case is unwinnable or can’t be settled, the sooner you find out, the better. That way, you can make informed decisions. If anyone on the trial team is under the false impression that the case is better than it is, the mock trial will help clarify any misguided beliefs.

Articles related to mock trials and jury consulting:

- [Free Download: Trial & Jury Consulting E-Book](#)
- [10 Things Every Mock Jury Has Said](#)
- [12 Tips for Valuable Mock Trials](#)
- [Sample 1 Year Trial Prep Calendar](#)
- [Big Changes are Coming to Jury Consulting](#)
- [A2L Voted Best Jury Consultants by LegalTimes](#)
- [11 Places We Are Using Mocks That Will Surprise You](#)
- [7 Questions to Ask Your Mock Jury About Your Trial Graphics](#)

How I Used Litigation Graphics as a Litigator and How You Could Too

by **Ryan H. Flax, Esq.** (Former) Managing Director, Litigation Consulting
Persuadius

It is well known and generally accepted by the top performers in the litigation community that you need to use demonstrative evidence, including litigation graphics, to be persuasive at trial. As a scientific certainty, using visual support to back up your key points and arguments is critical to maximizing persuasiveness. As a litigator, I've personally created and used graphics and developed litigation graphics for others, to use at trial, at *Markman* (patent claim construction) hearings, and for other presentations. As a litigation consultant, I've seen countless terrific litigators both understand that they do need graphics and at the same time misunderstand how they should be using litigation graphics in these and similar settings.



My new friend, **Alan Fisch** of the DC-based, IP litigation powerhouse Fisch Sigler LLP, and I were just discussing this over lunch and agreed that it's remarkable how true this is and how many great litigators lose at trial because they fail to master the basic principles of trial persuasion. Using trial graphics incorrectly can be as bad as or worse than not using them at all.



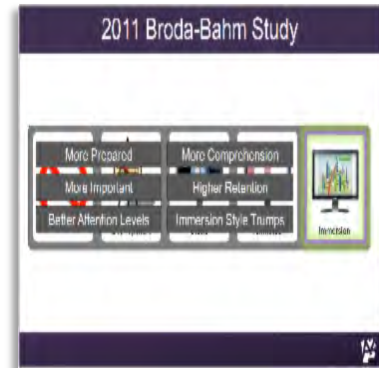
Before getting into the “how ” the question of “why” visual support is so critical to trial success must be touched upon. Studies show that the majority of people are visual-preference learners, or at least combination visual and some-other-learning-style-learners. See, e.g., Felder and Spurlin, [Applications, Reliability and Validity of the Index of Learning Styles](#), *Int. J. Engng. Ed.* Vol. 21, No. 1 at 103-112 (2005); Ayse Esmeray Yogun, [Match or Mismatch Between Business Students' and Business Academicians' Learning Styles: A Research at Toros University](#), *The Macrotheme Rev.* 3(2), 38-46 (Spring 2014); see also, [Animators at Law Communication Style Study](#). This means that people want to be taught and will better understand lawyer argument and witness testimony if it is not only spoken to them, but also shown to them visually. The theory is that by presenting information and argument to jurors (and judges) in the way they likely prefer to receive it, they'll enjoy and pay more attention to your presentation and remember what you say.

There is actual scientific research to back this up, specifically in the litigation setting. A wonderful man named Dr. Jai Park and his research partner, attorney Neal Feigenson,



studied the effects of using visual support (in the form of PowerPoint graphics) during opening statements of a basic employment discrimination lawsuit. Dr. Park and Mr. Feigenson found that using litigation graphics improved ultimate results (verdicts) by making jurors believe that the attorney using them was more capable, better prepared and probably more likable. Jurors were able to understand and remember the facts better when graphics were used.

Beyond merely knowing that visual support must be used at trial, we know that you need to use an immersive technique when arguing and showing graphics. Jury consultant Dr. Ken Broda-Bahm performed a study on mock jurors by using five different techniques for presenting oral argument (opening statements): (1) no graphics at all; (2) old-school flip charts; (3) professionally made, static graphics that were only sporadically shown; (4) fancier professionally made animated graphics still sporadically shown; and (5) a combination of 3 and 4 where the jurors were always given something to see during the presentation. Surprisingly, only the last technique, the immersive style, made any significant improvement in persuasiveness.



Another important point is that we know that your argument needs to be structured as a story. People are hard-wired to enjoy and expect stories. Storytelling literally gets the teller (you) and listener (juror) on the same mental wavelength. By this I mean that the very same areas of the brain are activated in synchronicity in the storyteller's and listener's brains – they share thinking patterns. Also, good storytelling causes the release of oxytocin, called the trust molecule, in listener's bodies. This physical reaction to a good story makes an audience more likely

to be sympathetic and ready to "help," which is what you want a jury feeling when your case is presented.

And this word – feeling – is the key to victory at trial. As Dr. Maya Angelou famously said, "[p]eople will forget what you said, people will forget what you did, but people will never forget how you made them feel." This is doubly true for jurors and litigators. Jurors will most remember how they felt about you and your case, and thus, about your client, and will decide your fate based on that feeling, sprinkled with some of the salient facts from the trial that fit with their conclusion on how the case should turn out. Make them feel like you won.



All the above is essential knowledge to be persuasive at trial. You need to tell a compelling story, you need to support that story with litigation graphics, and you need to show those litigation graphics in an immersive way. But, how do we as litigators do this in real life? Here's how:

When I explain these concepts to other litigators, and I do this *all the time*, I analogize trial presentation to the television news, where there are two kinds of presentation graphics. We are all well acquainted with the broadcast news and are comfortable with the style and format of its typical (really universal) presentation. The news is an informative presentation that always uses an immersive graphical style to tell story after story after story. The goal of the broadcast is usually to quickly inform you as a consumer of mass media, probably to evoke some emotion, and sometimes to persuade. What do we see news broadcasters doing and how can we adopt a similar style to be persuasive in presenting a trial argument?



Take a good look at the photo here of anchor Brian Williams of the NBC Nightly News. Most news reports, like those presented by Williams, are dominated by the anchor speaking directly to us through the camera. Almost always, next to the anchor's head is a large graphic, which is almost always static, but for (maybe) some sort of animated entrance for the graphic. This is what you see in this photo of Brian Williams reporting on an airline crash.

You obviously cannot hear anything of what Williams was saying because I've only provided you a picture, but you "*know*" what he's saying nonetheless. You've already created some "story" in your own mind explaining what you're seeing in the picture – to explain the emotions evoked in you by seeing the image of the crashed plane and the look of concern on Williams's face. Your concocted story may or may not be correct, but the mere fact that you've developed one for yourself is proof that everything I've said above is correct.

This is how you'll use the lion share of your trial graphics during your immersive presentation. You'll make your points and tell your client's story orally and show the jury graphics that support those point, storylines, and themes. However, this is not what most litigators think of when they think they need litigation graphics. What they typically think of is the weather man.

To continue with my news report analogy, there is a wholly different kind of litigation graphic that will be interspersed within your larger visual courtroom presentation. These second type of graphics are more complex, are directed to more complicated subject matter and issues, and are expressly spoken to by the presenter (you). These types of graphics are like those used by Washington, DC's NBC4's Doug Kammerer here in the photo of him doing a weather report and forecast.

Kammerer is standing in front of his graphics (actually, they are superimposed over a green screen in production, but he can see what he's doing) and discussing them in detail. You see that he is pointing to the jet stream pattern and the cold front it's pulling down from Canada into the United States. You know what that weather pattern is doing – it is making us





very cold – because the colors and graphics tell us that.

He's looking us in the eye, but talking about the complicated weather patterns graphically displayed behind him – he's explaining complex things to us in a way that we understand even though we are not meteorologists.

Here's America's beloved weatherman, Al Roker of the Today Show explaining how to talk to a graphic like this:

What's the benefit of following the "TV news" style of presenting? First, it allows you to use an immersive visual technique without it seeming overdone. Second, you'll be presenting your case to the jury in a way that they expect and are very comfortable with. You'll be able to connect with your jurors, you'll make the trial more entertaining and enjoyable for them, and they'll appreciate it. As Dr. Angelou said, they'll remember how you made them feel, and it will have an impact when they decide the outcome of our case. If you choose not to follow the advice of this article you risk alienating, confusing, irritating, boring, or otherwise losing your jury-audience. This is disastrous for trial lawyers.

What's the benefit of following the "TV news" style of presenting? First, it allows you to use an immersive visual technique without it seeming overdone. Second, you'll be presenting your case to the jury in a way that they expect and are very comfortable with. You'll be able to connect with your jurors, you'll make the trial more entertaining and enjoyable for them, and they'll appreciate it. As Dr. Angelou said, they'll remember how you made them feel, and it will have an impact when they decide the outcome of our case. If you choose not to follow the advice of this article you risk alienating, confusing, irritating, boring, or otherwise losing your jury-audience. This is disastrous for trial lawyers.

When litigators come to us for the first time seeking litigation graphics for their trial, they usually say things like "I need a graphic that shows _____" (fill in this blank with any complex issue that's hard to explain) rather than I need a visual presentation that supports this story, these themes, and tracks this opening statement. Once they get it, though, it's later they understand they really need and want. The complicated issues in any litigation present themselves more obviously to us and are, thus, the first things litigators realize they need to educate a jury about. It's more difficult to unveil the heart of the case, develop and story around it (why are we really here in court?), and support that story visually and in conjunction with the important evidence of the case. Following the path I've set out above, developing a story, committing to supporting that story with an immersive visual presentation, and presenting the story and visuals in the "TV news" technique will make you a better litigator.

Other articles and resources on A2L Consulting's site related to litigation graphics, storytelling for persuasion, trial graphics, and demonstrative evidence:

- [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#)
- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [10 Things Litigation Consultants Do That WOW Litigators](#)
- [6 Studies That Support Litigation Graphics in Courtroom Presentations](#)
- [FREE Webinar: Persuading with PowerPoint Litigation Graphics](#)
- [FREE Webinar: Storytelling as a Persuasion Tool](#)



- [10 Things Litigators Can Learn From Newscasters](#)
- [FREE Webinar: Patent Litigation Graphics](#)
- [FREE Download: Using Litigation Graphics](#)
- [7 Questions Will Save You Money with Litigation Graphics Consultants](#)
- [16 Litigation Graphics Lessons for Mid-Sized Law Firms](#)
- [13 Reasons Law Firm Litigation Graphics Departments Have Bad Luck](#)
- [FREE Download: Why Using a Litigation Consultant is Beneficial to You](#)
- [FREE Download: Storytelling for Litigators](#)
- [The 12 Worst PowerPoint Mistakes Litigators Make](#)
- [6 Trial Presentation Errors Lawyers Can Easily Avoid](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)
- [Trial Graphics Dilemma: Why Can't I Make My Own Slides? \(Says, Lawyer\)](#)
- [Why Reading Your Litigation PowerPoint Slides Hurts Jurors](#)

14 Differences Between a Theme and a Story in Litigation

by Ken Lopez Founder/CEO Persuadius



Twenty years ago in my trial advocacy class, we talked a lot about developing a theme for a case. We learned to say things in an opening statement like, "this is a simple case of right and wrong" or "no good deed goes unpunished."

The goal of developing and communicating a theme is to give your fact-finder(s) an organizing principle that they can fit the evidence into neatly. However, for as much as we talked about themes, one thing I was not taught much about in law school was storytelling.

The two devices, themes, and storytelling are related, but they are not the same. A case theme can be thought of as a case's tagline, somewhat similar to corporate slogans like "when it absolutely, positively has to be there overnight" or "the ultimate driving machine." It's a shorthand version of the case designed to connect with the life experiences of the fact-finder(s).

I have seen cases where a story was told, but no theme was used. I have seen cases where a theme was used, but no story was told. The reality is you need both, particularly during opening statements, and appreciating the differences between themes and stories is critical for success at trial. With estimates running as high as **80 percent for the number of jurors who have made up their minds just after opening statements**, getting your theme-story combo right is nothing short of essential - for BOTH plaintiff and defendant.

Here are fourteen key differences between themes and stories used in litigation:

1. **Themes are attention getters, stories are attention keepers.** You're a clever lawyer, and you can rattle off a great case theme that gets people thinking. However, without a meaningful story to back up your opening line, **fact-finders are just going to make up their own story** or just tune you out.
2. **Themes provide a reason to be interested, stories provide the emotional connection required to care.** If a **jury does not care about your case**, they are likely not going to get on your side and could very well just be daydreaming even while making eye contact.



3. **Themes explain stories motivate.** A [well-told courtroom story](#) will trigger a biological and an emotional response that leaves your fact-finder open to being persuaded.
4. **Themes sound like you are being a lawyer, stories sound like you are being human.** It is [very important to be likable at trial](#), and being likable generally means behaving like someone people can really relate to. If you are [over-using lawyer-language](#), you create distance between you and a jury.
5. **Themes provide a smidgen of structure, stories provide a decision-making framework.** You know that you've told a story well in the courtroom when the jury tells the same story to one another during deliberations. We see this occur during mock trials regularly. See [10 Things Every Mock Jury Ever Has Said](#).
6. **All lawyers know to use themes, many lawyers will fail to use stories.** I recommend downloading our free [Storytelling for Litigators book](#) and watching our free [Storytelling for Persuasion webinar](#) to rapidly improve your storytelling skill set. I've watched good lawyers lose cases when they failed to articulate a good story.
7. **Themes are mostly tools for opening and closing statements, stories are incorporated throughout the trial.** If you have set up your story well and worked with every member of your trial's cast including fact and expert witnesses, everyone will add clarity to a story throughout the trial.
8. **Juries will not usually talk about your themes, juries will talk about your stories and often adopt them as their own.** See [Your Trial Presentation Must Answer: Why Are You Telling Me That?](#) and [10 Videos to Help Litigators Become Better at Storytelling](#).
9. **Stories have many characters with understandable motives, themes provide little in the way of character development.** See [Are You Smarter Than a Soap Opera Writer?](#)
10. **Themes may offer the what or how, but stories offer the why.** See [Your Trial Presentation Must Answer: Why Are You Telling Me That?](#) and [20 Great Courtroom Storytelling Articles from Trial Experts](#).
11. **Themes offer something quickly relatable, stories offer something you can get lost in.** See [5 Essential Elements of Storytelling and Persuasion](#)
12. **Themes affect one part of the brain, stories affect another.** See [Storytelling Proven to be Scientifically More Persuasive](#)
13. **Themes don't really persuade, stories will persuade.** See [Storytelling as a Persuasion Tool - A New & Complimentary Webinar](#)
14. **Themes don't need litigation graphics to support them but stories sure do.** See [Why Trial Graphics are an Essential Persuasion Tool for Litigators](#).



Other articles and resources related to courtroom storytelling, theme development and opening statements on A2L Consulting's site:

- [Conflict Check: Interested in hiring A2L? You're not alone.](#)
- [Storytelling Proven to be Scientifically More Persuasive](#)
- [Don't be another timeline lawyer - tell a story](#)
- [7 Things You Never Want to Say in Court](#)
- [FREE Webinar: Storytelling for Litigators](#)
- [FREE BOOK: Storytelling for Litigators](#)
- [6 Reasons The Opening Statement is The Most Important Part of a Case](#)
- [Are you smarter than a soap opera writer?](#)
- [Stories must close loops to be effective](#)
- [10 Videos to Help Litigators Become Better at Storytelling](#)
- [How to paint your client as a hero \(with free infographic\)](#)
- [5 Essential Elements of Storytelling and Persuasion](#)
- [5 Keys to Telling a Compelling Story in the Courtroom](#)
- [Why Trial Graphics are an Essential Persuasion Tool for Litigators](#)

7 Reasons Litigation Graphics Consultants are Essential Even When Clients Have In-House Expertise

by **Ken Lopez** Founder/CEO Persuadius

I frequently encounter trial teams that say things like:

- "My client has some graphics capabilities in-house."
- "Our client is a top expert in the field, so they want to explain the technology to the jury in their own way."
- "My client wants to stand up at trial and use a flip chart to explain the science."

I hear these and other similar statements most frequently in **patent cases** and **other science or technology-focused cases**. On their face, there's nothing wrong with these remarks. However, sometimes the client's desire to be helpful interferes with the trial team's ability to try the case effectively. I empathize with these litigators. Nobody likes to say "no" to a client, especially when the desire to be helpful is partially motivated by budget concerns.



When I founded A2L nearly twenty years ago, the only meaningful competition we had in the **litigation graphics** and **courtroom animation** industries came from engineering firms who also supported trial teams. A2L's offering was very different. We brought artistic lawyers and litigators in to serve as litigation graphics consultants rather than using engineers.

My rationale was simple. Engineers may be very good at illustrating a point, but they are not especially good at persuasively making a point. For that, lawyers were best suited, and they could also rely on engineering, scientific or technical support from the client and experts as needed. Our model became synonymous with what we now commonly refer to as "**litigation consulting**."

It didn't take too many years before our competition morphed to look a lot like A2L, and those engineering firms eventually faded away. I believe the same principles apply when evaluating how or whether to use litigation graphics consultants when the ultimate client has the significant internal expertise, even artistic expertise, in-house.

Just like those engineering firms A2L used to compete with when support is offered by in-house resources at the client's firm, it is typically highly expert, highly trained and is useful for facilitating the illustration of a point in the courtroom. However, such in-house expertise, mostly scientists, engineers and technology experts, is not normally persuasion-oriented,



and this group is almost always unfamiliar with what a fact-finder needs to see in order to find for the client.

In these situations, instead of an ideal client>litigator>expert>litigation graphics consultants>fact-finder flow of information, you end up with a highly imperfect client>expert>litigator>client>fact-finder flow that results in higher costs and worse outcomes. Here are seven reasons I think a trial team needs help from outside litigation graphics consultants no matter what kind of expertise the client's in-house people can provide.

1. **Well-founded discovery fears:** Anytime the client is involved in trial presentation preparations, there is a risk that they will inadvertently generate new evidence that is subject to discovery. Since litigation graphics consultants are working for the law firm, these communications are protected from discovery.
2. **Storytelling assistance:** With [storytelling recognized as a serious persuasion tool](#), it is very helpful to work with litigation graphics consultants like A2L and others who are expert in helping trial teams craft a story. See [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#). No matter how expert a client is in the underlying subject matter of a case, they are not likely also presentation experts, persuasion experts or storytelling experts.
3. **A fresh set of eyes:** This cliché is one of the primary reasons trial teams use litigation graphics consultants at all. When you've lived with something for a long time as a trial team does and as in-house personnel at the client do every day, it helps to hear how experts like trained litigation graphics consultants approach the same information.
4. **A forest perspective:** Closely related to the fresh pair of eyes concept, a litigation graphics consultant is not burdened with all the details when a case is presented to them. Accordingly, they are able to hear it in a way that is similar to the way a juror will. Usually, neither a trial team nor anyone from the client is able to step back far enough to get out of the trees and really see the forest in the same way a jury will.
5. **Mock trial testing:** Firms like A2L are not just litigation graphics consultants, but are instead full-service litigation consulting firms. One key component of a comprehensive litigation consulting firm is the ability to conduct mock trials and provide mock trial analysis of the effort by a Ph.d.-level expert. Obviously, this is not going to be an expertise offered by the client's in-house team. Testing of how a judge or jury will react to a case is critical in large cases as are testing the visuals that will be used. See [7 Reasons In-House Counsel Should Want a Mock Trial](#) and [10 Things Every Mock Jury Ever Has Said](#).
6. **Persuasion science is moving fast:** Great litigation graphics consultants are experts in the science of persuasion. I suspect this group of people numbers fewer than a couple of dozen people nationwide. Since your goal at trial is to persuade the fact-finders, you really want every persuasion advantage you can find. It is not realistic to expect that you will find this expertise at the client firm or even inside most



law firms for that matter. See [Could Surprise Be One of Your Best Visual Persuasion Tools?](#), [Font Matters - A Trial Graphics Consultant's Trick to Overcome Bias](#), [6 Studies That Support Litigation Graphics in Courtroom Presentations](#), [5 Ways to Apply Active Teaching Methods for Better Persuasion](#), and [8 Videos and 7 Articles About the Science of Courtroom Persuasion](#).

7. **Masters of PowerPoint:** A litigation graphics consulting firm can run circles around mere PowerPoint users as one of our most popular articles, [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#), and one of our most popular webinars, [Using PowerPoint Litigation Graphics for the Win](#), demonstrate. This kind of work takes real time to develop. Just because a client can generate some imagery does not mean it can generate persuasive imagery or put it together in a way that is going to align with the decisions we're asking our fact-finders to make. At the end of the day, it is not about pictures, it is about presentation, and those two things are entirely different (if you're an expert).

Other articles and resources related to using litigation graphics consultants on A2L Consulting's site:

- [Run a confidential conflicts check](#)
- [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#)
- [Webinar: Using PowerPoint Litigation Graphics as a Litigator](#)
- [Webinar: Using Storytelling for Persuasion](#)
- [5 Surprising Areas Where Geography No Longer Matters in Trial Support](#)
- [12 Questions to Ask When Hiring a Trial Graphics Consultant](#)
- [7 Questions Will Save You Money with Litigation Graphics Consultants](#)
- [Free Download: Using Litigation Graphics Persuasively](#)
- [Free Download: Storytelling for Litigators: Building a Great Narrative for Judge & Jury](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)
- [12 Alternative Fee Arrangements We Use and You Could Too](#)
- [6 Triggers That Prompt a Call to Your Litigation Consultant](#)
- [11 Things Your Colleagues Pay Litigation Consultants to Do](#)
- [16 Litigation Graphics Lessons for Mid-Sized Law Firms](#)

9 Things I've Noticed About Effective Litigation Graphics After 20 Years as a Litigator

by **Tony B. Klapper** Managing Director, Litigation Consulting & General Counsel
Persuadius

I've recently joined the litigation consulting team at A2L as its Managing Director. This means that I will be working closely with top litigators to help them craft persuasive themes and stories, assist in the testing of a case during a mock trial exercise, and develop powerful demonstrative exhibits.



A2L Welcomes Tony Klapper

In my 20+ years working at Kirkland & Ellis and then Reed Smith, I have participated in many trials, arbitrations, evidentiary hearings, mediations, and board presentations. Almost without fail, I have been the attorney responsible for coordinating and developing the litigation graphics for these events. That did not mean putting mouse to screen in a graphics program or PowerPoint. Instead, I would put pencil to paper and sketch out a great idea that someone else transformed into a powerful litigation graphic. It is work that I have always been passionate about.

As I transition from working on graphics two or three times a year to developing them every week, I want to take a moment to reflect on what I've observed about trial graphics as a litigation partner at two major law firms.

1. **Janus-like slides.** Janus is the Roman god of gates and doorways. He is depicted as having two faces and typically represents beginnings and endings or contrasting experiences, such as war and peace. Although not one of your sexier Roman gods – clearly no Jupiter or Venus – Janus does inspire some effective litigation graphics: **A split-screen slide that reflects a cause on the left and an effect on the right**, or a representation or claim on the left and visual proof that the representation or claim is false on the right. A single, simple split-screen slide can instantaneously convey a powerful message without resorting to a series of dull, ineffective bullet-point assertions.
2. **The Timeline.** Effective stories are **not simply recitations of chronological events**. But “when” something happens and how that something relates to “when” something

- else happens is almost always a central feature in litigation and part of a good story. Stories have beginnings, middles, and endings. They transport us through a maze of actors and activities, all anchored in time. Instead of vertically listing from top to bottom a series of events -- as many that are fond of the easel and flip chart will do -- **a well-crafted and visually appealing timeline allows you to elegantly develop your narrative in a linear fashion.** But it's not just the narrative. A timeline that is chock full of entries may tell a completely different story than one with wide gaps of time, even without needing to read the fine print.
3. **The Hyperlinked Timeline.** Of course, reading the fine print may also be important. I have designed **interactive timelines** that employ hyperlinks to document call-outs. This allows the audience to remain anchored chronologically while at the same time digging into the supporting details that prove up your case. I have even used parallel timelines, each with hyperlinked call-outs, to compare and contrast, provide context, or simply rebut unsupported claims with evidence-backed truths.
 4. **The Timeline on Steroids.** One of the more brilliant lawyers I ever worked with was David Bernick, now a partner at Dechert. David taught me a tremendous amount about storytelling and graphics development. Of the many things that David was skilled at, I was always particularly impressed by his ability to design timelines. But not just any timeline. David would weave together multiple, interrelated concepts into a single slide that employed timelines (sometimes in parallel), trend lines with vertical and horizontal axes, and icons that conveyed a wealth of information and **brought focused simplicity to a sea of complexity.**
 5. **Photographs.** Of course, a graphic does not need to have bells and whistles to be effective. Some of the most effective PowerPoint litigation graphics I ever created were simply pictures that conveyed an important point: a picture of an incredibly dusty asbestos manufacturing plant from the 1930s to contrast with the well-ventilated and controlled facility in the 1970s. Or photographs of filthy hotel rooms where an older manager was fired to contrast with sparkly clean hotel rooms where the younger manager was retained.
 6. **Checklists.** There is nothing simpler than a "yes" or "no" answer. Whether organized around the elements of your case, key scientific or medical observations, or even the verdict form, **the simple "yes" or "no" checklist slide** is often the best way to orient a jury around critical bottom-line conclusions.
 7. **Process Charts.** In the majority of cases I have worked on, I represented the defendant. In the majority of those cases, an underdog plaintiff claimed my deep-pocketed manufacturing client had cut corners; put profits over safety; said one thing, but did something else; and/or just stuck its proverbial head in the proverbial sand and ignored known risks. These can be tough cases to win. But one thing I have always found to be effective in crafting my client's narrative in these types of cases was to spend time on the process. I would detail graphically all the steps and controls, *and people involved*, in the cradle-to-grave design, manufacturing and post-sale monitoring of my client's products. **These process charts would not only help the**

- [judge and jury understand a complex series of events](#), they would provide their own *implicit* message. The greater the complexity of that process (depicted with an array of arrows connected to boxes connected to more arrows) the easier it was to believe that the company and its employees were not taking shortcuts, but rather took pride in the products they made. This went a long towards de-demonizing [Goliath in those cases brought by David](#).
8. **THE Slide.** It does not happen in every case, but one of the more rewarding aspects of demonstrative design is to [be able to effectively convey your entire case and its central theme or themes in a single slide](#). I recently worked on a matter where the plaintiffs and their experts merely *assumed* that the defendant was the cause of the plaintiffs' harm. Actual proof required a series of steps, each of which the plaintiffs ignored in favor of a deceptively facile two-step explanation. Armed with that theme early in the litigation, I secured "assumption" admissions from critical witnesses and wove into the opening and closing decks a single slide that clearly conveyed the plaintiffs' short cuts.
 9. **Color.** As a young associate many moons ago, I learned that the color red can have a powerful effect on people. During a trial training program, a seasoned litigator stood up and demonstrated how to cross-examine a witness. When it came time to impeach the witness with prior testimony, the litigator prominently displayed a bound volume of that testimony -- supported with a bright red backing. Each time the witness strayed from his testimony, the litigator merely had to flash the red-backed volume, and the witness and the jury knew what was coming. Soon no impeachment was even necessary; once flashed, the red-backed volume, like an electric dog collar, served to keep the witness's testimony in line. From that day forward, I understood [the power of color](#). If you are trying to say something negative through a demonstrative exhibit, red is most certainly your color.

Other Persuadius articles related to the development of litigation graphics, the art and science of litigation consulting, and the development of a strong narrative for your case:

- [11 Things Your Colleagues Pay Litigation Consultants to Do](#)
- [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#)
- [6 Triggers That Prompt a Call to Your Litigation Consultant](#)
- [Run a CONFIDENTIAL Conflicts Check with A2L Now](#)
- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [12 Reasons Litigation Graphics are More Complicated Than You Think](#)
- [10 Things Litigation Consultants Do That WOW Litigators](#)
- [The 12 Worst PowerPoint Mistakes Litigators Make](#)
- [5 Trial Graphics That Work Every Time](#)
- [Litigator & Litigation Consultant Value Added: A "Simple" Final Product](#)
- [How I Used Litigation Graphics as a Litigator and How You Could Too](#)
- [7 Things In-House Misses When Litigation Consultants are Underutilized](#)
- [10 Types of Value Added by Litigation Graphics Consultants](#)

5 Trial Graphics That Work Every Time

by **Laurie R. Kuslansky**, Ph.D. Former Managing Director, Jury Consulting
Persuadius and
Kenneth J. Lopez, J.D. Founder/CEO **Persuadius**

Having conducted hundreds of mock trials and observed and polled jurors in hundreds of actual trials, we see the jurors asking the same questions over and over again – questions

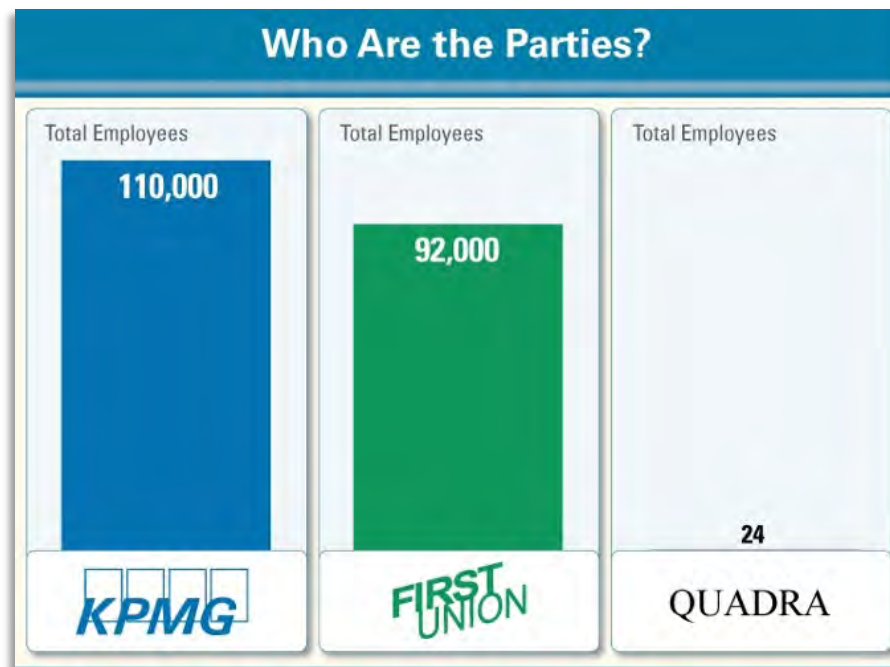


that the trial presentation should have answered.

In view of that, here are five different subjects for trial graphics that are almost sure to answer some jurors' question in every case. They are so standard as scene-setters that they almost always have a place in a trial. Without them, triers of fact often feel as if they have come in after the movie started and that they can't rewind to get the answers.

These five trial graphics fill in important blanks, prevent confusion, and create the foundation to tell your story, your way. Imagine the difference between being introduced to someone merely by name (“This is John Doe”), to whom you nod politely, but in whom you are unlikely to take interest -- and being introduced more fully (“This is Professor John Doe, who is in charge of research on meteors at M.I.T.”), whom you now likely have greater interest to get to know.

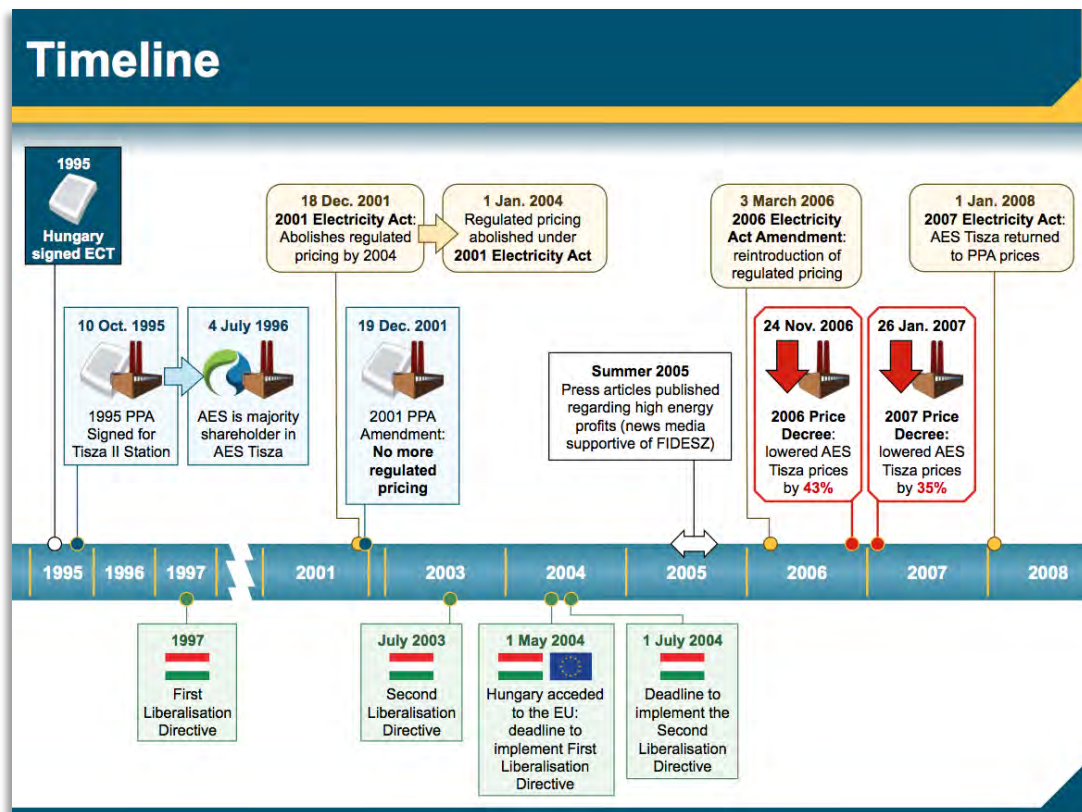
1. An organizational trial graphic or players chart showing the major players, their relationships, and their role in the case as you see them.



A players chart answers questions like:

- Who initiated the relationship?
- What did each need or bring to it? Why?
- Who is in charge?
- Who did what?
- Who knows whom?
- What are the coalitions and who are adversaries?
- Who was a good or bad actor?

2. A chronology and timeline of key events that shows what happened in what



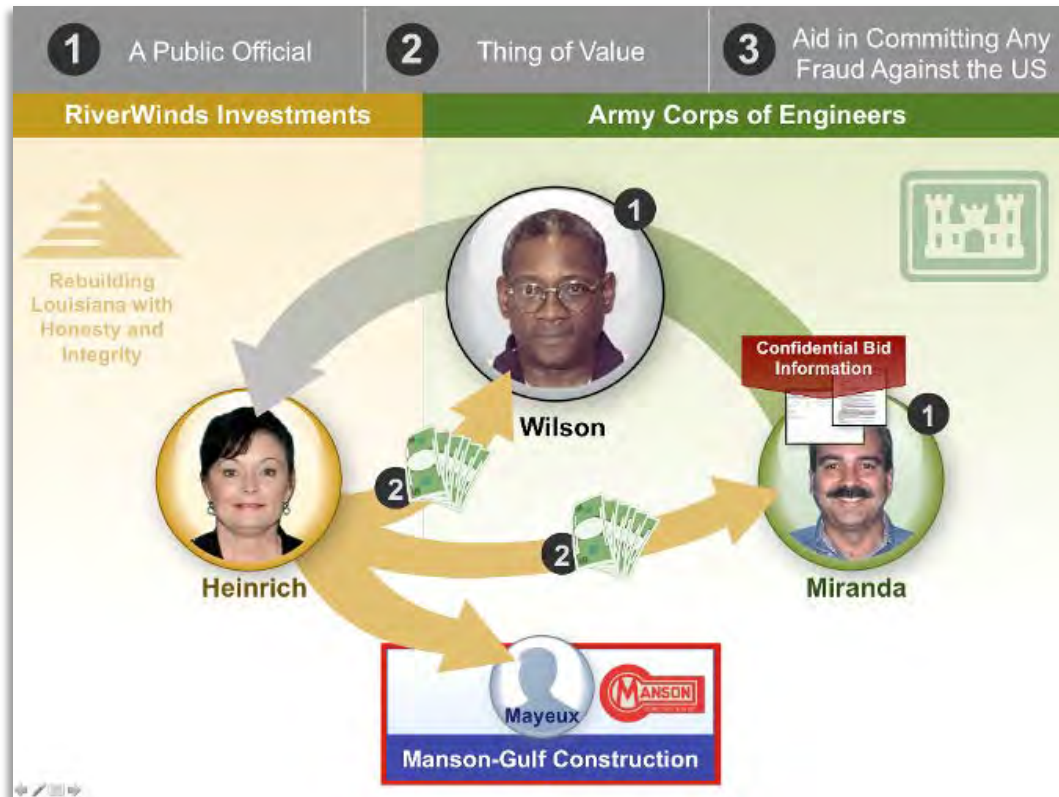
sequence, which leads to conclusions about cause and effect.

A timeline or chronology answers questions like:

- When did the relationship start?
- What happened during the "courtship" and "honeymoon" periods?
- When did things go wrong?

- When did the deterioration start?
- What happened just before or after it?
- When did the relationship end?
- How did each side react?

3. What each gained or lost from the events in the case. This shows motive or the lack of it, equity, value and other important points.



A gain/loss, events, or elements trial graphic answers questions like:

- What did each put in or take out of the situation?
- What was their value?
- Does it seem fair and balanced or not?

4. How the damages do or do not add up in a way that jurors can follow along by themselves, simply.

Damages Chart						
	Total Coar Ltd. Section 29 Tax Credits	Total Royalties Coar Ltd. Owes Haytu	Total Coar Ltd. Payments	Total Royalties Coar Ltd. Owes Haytu After Payments	Prejudgment Interest at 1% Per Month	Prejudgment Interest + Damages
1999	\$1,099,243	\$395,727	\$395,727		\$102,652	\$102,652
2000	\$26,852,835	\$9,677,020	\$218,143	\$9,448,877	\$4,718,238	\$14,167,115
2001	\$94,429,340	\$25,572,850		\$25,572,850	\$10,332,560	\$35,905,410
2002	\$115,781,594	\$32,502,590		\$32,502,590	\$9,339,038	\$41,841,628
2003 (Estimated)	\$117,170,976	\$32,892,622		\$32,892,622	\$5,503,993	\$38,369,615
2004 (Estimated)	\$118,577,026	\$33,287,333		\$33,287,333	\$1,565,574	\$34,852,907
TOTAL	\$473,911,014	\$134,318,142	\$613,870	\$134,318,142	\$31,562,057	\$165,266,329

If lay jurors cannot “do the math” in their own terms, it’s hard to convince them to award or mitigate damages. They can’t fight opposing views just by taking your word for it or decide the battle of the experts in the experts’ terms.

5. Who is...?

Fred Vonderant

21 YEARS

IFPPA

CISM

The World Bank

Recognized Expert:
Bloomberg TV, eWeek, Blogger

Charts that show the identity of the litigants or key players and play up or down their history, size, wealth or function can make or break how triers of fact view them, blame or credit them, determine who is the victim, apportion fault and damages, decide credibility and reach other important conclusions about liability and damages. Are they so rich that damages won't affect them? Are they so experienced that they



should have known better? Are they so well credentialed, that you should believe them, even if you don't quite understand them?

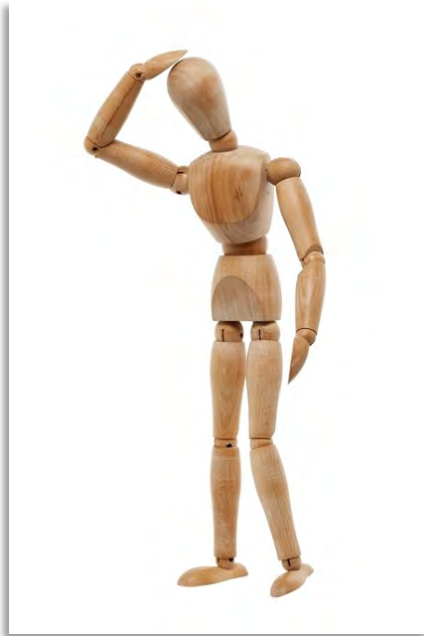
Without answering these essential who/what/where/when/why questions that accompany any case, you may not be able to satisfy the triers of fact when it comes to the more challenging questions of the case at hand. Instead of depriving them of this important information, make it handy.

Other articles and resources related to using a trial graphic, litigation graphics, demonstrative evidence, and winning using these tools:

- [Free Download: A 50-Page Guidebook of Example Trial Timelines](#)
- [5 Problems with Trial Graphics](#)
- [Why Trial Graphics are an Essential Persuasion Tool for Litigators](#)
- [Submit a conflicts check related to a trial graphics need](#)
- [Free Webinar: How to Use PowerPoint Trial Graphics for a Win](#)
- [Download: Using Trial Graphics in the Best Way Possible](#)
- [New Study: A Graphically Immersive Trial Presentation Works Best](#)
- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [12 Reasons Bullet Points Are Bad \(in Trial Graphics or Anywhere\)](#)
- [6 Studies That Support Litigation Graphics in Courtroom Presentations](#)
- [Why reading PowerPoint litigation graphics slides hurts your trial presentation's effectiveness](#)
- [Why shouldn't I just make my own PowerPoint slides?](#)
- [5 Problems with Trial Graphics](#)
- [12 Questions to Ask When Hiring a Trial Graphics Consultant](#)
- [Why Trial Tech ≠ Litigation Graphics](#)
- [13 Reasons Law Firm Litigation Graphics Departments Have Bad Luck](#)
- [7 Questions Will Save You Money with Litigation Graphics Consultants](#)
- [16 Litigation Graphics Lessons for Mid-Sized Law Firms](#)
- [7 Reasons Litigation Graphics Consultants are Essential Even When Clients Have In-House Expertise](#)
- [Download: The Role and Value of Litigation Consultants Explained](#)

3 Observations by a Graphic Artist Turned Litigation Graphics Artist

by Maureen Vogel Litigation Graphics Artist **Persuadius**



Before becoming an artist here at Persuadius, I was what you might call a typical graphic designer. I specialized in creating visual art, primarily for nonprofit organizations in the Washington, DC area. My primary focus was usually to visually convey a single important message with each graphic. I'd never concerned myself personally or professionally with the world of litigation.

When I was a graphic designer, the software platforms Photoshop, Illustrator and InDesign were my standard canvas. However, as a litigation graphics artist, I usually stick to PowerPoint as the fundamental visual presentation tool. Although graphics may often incorporate visual concepts developed outside the PowerPoint platform, this is the foundation for presentation, and much of my artwork is now done in PowerPoint itself (and sometimes in Keynote for Apple devices). PowerPoint is a surprisingly powerful tool. In

addition, I have noticed that there are quite a few differences between graphic design and litigation graphics art.

Here are some of the differences I have observed that I find most interesting.

1. Color psychology is very important in litigation-focused graphics.



Yes, color psychology is important in the graphic design realm as well. But in litigation graphics, using the wrong colors in court could offend your audience or negatively affect their mood. That would be a catastrophe.

One example I've encountered at work was when the client asked me to change a list of people's names on a PowerPoint slide from black to red. Red is a color we generally try to avoid in PowerPoint

slides because it can increase aggressive feelings in audience members (jurors). Also, I had my own personal aversion to red; depending on the culture, the color red can also invoke very different emotions. For example, in Japan, my home country, writing a person's name in red means that person will die soon. This would accordingly evoke a very specific emotion in the wrong audience. Because the client's goal in changing the black font to red was simply to make it more visible and not necessarily to invoke feelings of alarm or aggression

toward the people listed, we suggested a brighter blue font instead of red. Almost any color you can think of invokes a specific emotional response, so plan accordingly for your litigation graphics.

2. Litigation design tends to have uncertain or very tight deadlines



When I was a graphic designer and did freelance graphic design work, I usually had a good idea of when the project needed to be done. This is not the case with litigation graphics. But perhaps it should be.

As a litigation graphic artist, I sometimes feel like a doctor on call. Trial dates can be changed at any time, and projects that were once due in a week can all of a sudden be due much sooner.

If you want your litigation graphic artist to create very persuasive demonstratives, make sure to devote enough time to brainstorm what graphics are needed to support your client's story and also give the artist ample time to complete the work. This seems simple enough, but I see that that trial teams more often than not wait until what seems like the last minute to begin to develop the visual component of their trial presentation. From working with A2L, I know that this does not fit with the best practices. I suggest that trial teams begin thinking about how they'll present their cases to a jury (or judge) many months in advance of actually needing to do so. This gives them enough time to plan for the arguments and to have a professional team craft winning graphics to go with those arguments.

3. Creativity is often influenced by the judge

As a graphic designer, my task was to portray information in the most creative way possible. Litigation design, on the other hand, usually isn't a contest to see how artistic you can be (it helps, but that's not the main focus). The judge often will determine the level of creativity required or allowed for courtroom graphics.

Before clients hire us, they typically need to get permission from the judge for the types of demonstratives allowed at trial (e.g., PowerPoint, posters, videos, etc.). Once the types of demonstratives are decided upon, we begin creating graphics accordingly. Sometimes a set of visually pleasing graphics that we've created need to be reduced to what one might call "bland" visuals because according to the client, "the judge is very conservative."





For those who believe they will be shot down for being too creative, consider that sometimes an element of surprise is a good thing. Creativity can be conservative, and higher style can be more engaging to even the most conservative of audiences. Words don't persuade; arguments do. I suggest crafting visuals that convey ideas and emotions rather than pure language – asking an audience, be it a judge or juror, to remember words and more words is not engaging.

Overall, there are quite a few differences between graphic art and litigation-focused graphic art; however, in the end, they both require knowledge of the foundations of art and design – which are concepts appreciated by any audience.

Persuadius articles focused on demonstrative evidence, trial graphics, and litigation graphics consulting:

- [What Does A Case-Winning Trial Graphic Look Like?](#)
- [Good-Looking Graphic Design ≠ Good-Working Visual Persuasion](#)
- [How Much Text on a PowerPoint Slide is Too Much?](#)
- [7 Lessons of Design That are Universal \(in Trial Graphics or Anywhere\)](#)
- [The 12 Worst PowerPoint Mistakes Litigators Make](#)
- [New Webinar - PowerPoint Litigation Graphics - Winning by Design](#)
- [6 Studies That Support Litigation Graphics in Courtroom Presentations](#)
- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [7 Ways to Avoid Making Your PowerPoint Slides Your Handout](#)
- [Why reading PowerPoint litigation graphics slides hurts your trial presentation's effectiveness](#)
- [5 Inspiring Information Design/Data Visualization Sites for Lawyers](#)
- [Why shouldn't I just make my own PowerPoint slides?](#)
- [5 Problems with Trial Graphics](#)
- [12 Questions to Ask When Hiring a Trial Graphics Consultant](#)
- [Why Trial Tech ≠ Litigation Graphics](#)
- [13 Reasons Law Firm Litigation Graphics Departments Have Bad Luck](#)
- [7 Questions Will Save You Money with Litigation Graphics Consultants](#)
- [5 Trial Graphics That Work Every Time](#)

The Effective Use of PowerPoint Presentation During Opening Statement

by Lorraine Kestle Graphic Designer **Persuadius**



The age-old adage that there are two sides (at least) to every story is clearly evident in litigation. Both parties believe that the applicable law, when applied to the facts, supports their position, or they likely would not be going to court. The parties and the lawyers are familiar with the facts and the law. Everyone fully understands the nuances of their position.

Everyone, that is, but the judge and jury who are hearing the case for the first time. It is

these “novices to the case” who will ultimately decide which version of the facts or story is most persuasive.

For one day, I was a “novice to the case” in the courtroom as I helped our trial technician set up for a PowerPoint presentation in court. I observed both sides’ opening statements as well as the direct and cross-examinations.

Although I have been in the courtroom on numerous occasions, I had no prior knowledge of the substance of this matter and did not work on this presentation. Our client, the plaintiff in this case, delivered an opening statement that was enhanced with a PowerPoint presentation, while opposing counsel relied on typed or handwritten notes and an easel with a large paper tablet. After observing both approaches, I came away with what I think are interesting conclusions about the effect that the PowerPoint presentation had on my understanding of the case, the attorney’s arguments, and my initial impression of liability.

1. An Increased Perception Of Preparation, Competence And Persuasion

As a former paralegal, I know that preparation is one of the keys to success in litigation. And while I believe both sides were equally prepared, this was not the impression created in the courtroom by defendant’s counsel. What set the opening statements apart was the PowerPoint presentation used by our client. It served as a baseline of comparison for what followed.

The PowerPoint presentation not only emphasized key components of the opening statement, but it also added an air of competency and depth to the arguments being made. There was a clear, logical, and concise flow of information that was easy to follow. The visual presentation and callouts of relevant portions of emails and the employment contract clearly substantiated the verbal argument. This ultimately increased the impact of and the persuasive value of the opening statement. I have a clear visual picture of those emails and the contract that were the cornerstone evidence in the plaintiff’s case, even if I cannot recall the exact wording.



When defendant's counsel did not use any visual or graphic presentations to support the opening statement, my first thought was, "Why is that?" My focus was not where it should have been; it was not on what he was saying. In fact, I was distracted by the numerous sheets of paper defense counsel brought to the podium and the yellow Post-it notes that were on it. It gave me the impression that they were less prepared than the plaintiff, which may or may not be the case. Nonetheless, this was my initial impression and I think ultimately influenced my view of their argument.

2. Increased Retention of Evidence Presented

For me, the evidence presented had greater weight when I could actually see the email communications that were made and the contract that was signed by the defendant. The document exhibit callouts, in particular, which supported the plaintiff's arguments, became visually imprinted on my mind. And I received no other visual images from the defendant to compare or contrast them with. When I look back on that day, it is the callouts that I recall. This is what I remember, more than three days later.

3. Increased Attention to Arguments

When you are sitting behind the bar in the courtroom, you have a limited view of the exhibits and evidence being presented. However, when the PowerPoint slides were tied into the court's monitors, it was much easier to see the evidence being offered. I found that I paid closer attention to the arguments being made; I was actively engaged in "looking" at the evidence to see if I agreed with what the lawyer was saying. I could see that everyone, including the judge, was looking at the courtroom monitors.

On the other hand, when the defendant's counsel was creating a live, hand-drawn organizational chart during cross-examination, not only could I not see it due to its orientation in the courtroom, I felt that it was too far away from the individual who was testifying and the judge. It was more difficult to follow the argument being made.

In conclusion, when I left court that day, I felt that the opening statement set the tone for everything that followed. The effective use of a PowerPoint presentation during the trial enhanced the arguments being made and, at the end of the day, our client prevailed. I can't say I'm surprised at the outcome. They had me during opening statements.

Other Persuadius articles and resources related to persuading with graphics, opening statements and using words and pictures in a complimentary way:

- [5 Ways to Maximize Persuasion During Opening Statements - Part 1](#)
- [12 Ways to SUCCESSFULLY Combine Oral and Visual Presentations](#)
- [12 Reasons Bullet Points Are Bad \(in Trial Graphics or Anywhere\)](#)
- [Why Reading Your Litigation PowerPoint Slides Hurts Jurors](#)
- [6 Studies That Support Litigation Graphics in Courtroom Presentations](#)
- [Why Reading Bullet Points in Litigation Graphics Hurts You](#)
- [The 12 Worst PowerPoint Mistakes Litigators Make](#)
- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [16 Litigation Graphics Lessons for Mid-Sized Law Firms](#)
- [6 Trial Presentation Errors Lawyers Can Easily Avoid](#)



- [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#)
- [5 Problems with Trial Graphics](#)
- [10 Reasons The Litigation Graphics You DO NOT Use Are Important](#)
- [5 Demonstrative Evidence Tricks and Cheats to Watch Out For](#)
- [6 Trial Presentation Errors Lawyers Can Easily Avoid](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)
- [Trial Timelines and the Psychology of Demonstrative Evidence](#)
- [How Long Before Trial Should I Begin Preparing My Trial Graphics?](#)
- [Free Download: Storytelling for Litigators](#)
- [Free Watch: Using PowerPoint Litigation Graphics to Win Your Case](#)

10 Ways to Lose Voir Dire

by **Laurie R. Kuslansky**, Ph.D. Former Managing Director, Jury Consulting
Persuadius

Voir dire is an extremely important part of any trial. It's not hard to lose a case in voir dire. Here are 10 ways to lose voir dire.

1. Let your opponent take charge of the courtroom and leave you behind, sending the message to jurors that what you say or do don't matter as much as your opponent and that the jurors can rely on the opponent more than on you.
2. Don't take the opportunity to speak with prospective jurors and leave the talking to others even when you have the opportunity.
3. Let your opponent "rehabilitate" a favorable juror without fighting vigorously or quickly enough to keep them. When the opponent says, "But you can be fair, right?" and then rushes them back to the panel, if you don't intervene on the spot, you may not get another chance.
4. Waste precious time talking about things that don't matter. Ask questions only out of curiosity and spend prospective jurors' precious time irrelevantly. This will yield little useful information, yet elicit resentment and impatience from potential jurors before the case even starts.
5. Talk more and listen less. You will learn less about the panel members and then will have to decide whom to strike on insufficient information.
6. Don't ask the same questions to all prospective jurors so you can compare apples-to-apples. Instead of having the same yardstick, you end up with a mishmash that isn't very useful.
7. Ask personal questions without assurance of privacy. Most people are unwilling in open court to volunteer sensitive information, so they will remain below the radar and you will have an incomplete sense of their backgrounds.
8. Ignore body language, nonverbal behavior, writing samples – everything other than their words. Many times, someone's true nature comes out more in non-words than in words. How they dress, how they write, their spelling or misspelling, whether they are on time or late, what they read, whom they associate with, whether they go on breaks to smoke, etc.
9. Ignore social media. It turns out that people are more likely to present their real selves rather than their idealized selves on social media, which may thus provide a





more candid view of the panel members than their pat answers in an unfamiliar setting such as the courtroom.

10. Don't ask follow-up questions. For example, if you ask, "Who is an environmentalist?" many will raise their hands, but if you ask, "Who here pays dues to an environmental organization, or contributes time or money to it?" most drop their hands, and those who don't are the ones that matter. Or, if you ask if people believe there are too many frivolous lawsuits nowadays, many will raise their hands, but if you explain as plaintiff what your case is about, then ask who thinks that seems frivolous, most will drop their hands. If you rely on the first answer, you will be misled.

Other articles and resources related to voir dire, jury selection and jury consulting from Persuadius:

- [5 Questions to Ask in Voir Dire . . . Always](#)
- [5 Voir Dire Questions to Avoid](#)
- [The Voir Dire Handbook | Free Download | Persuadius](#)
- [Jury Selection and Voir Dire: Don't Ask, Don't Know](#)
- [7 Tips to Take "Dire" out of Voir Dire](#)

5 Things Every Jury Needs From You

by **Laurie R. Kuslansky**, Ph.D. Former Managing Director, Jury Consulting
Persuadius

1. To be able to like you.

Ever hear someone assume everything their ex says is a lie, even when it's true? Ever notice how gullible people seem when they find a new love, even when it's all a lie?

That's because we *want* to believe people we *like* and vice versa. So, you don't need the jury to fall in love with you (although that would be nice), but you can't afford for them to *dislike* you. There is research on what creates liking and disliking, but some highlights are:



- Speak in a way they can understand
- Don't overly out-dress them to show off how rich you are
- Show respect for their time by being organized and prompt on your feet and not wasting time
- Don't overload them with information
- Don't be presumptuous ("You all know what it's like to have a 401k.")
- Don't act angry *all the time*. It's exhausting to witness.

2. To trust you and your witnesses (*after* they like you/them)

- Don't over-promise and under-deliver.
- Don't make it too personal. It's "icky" to witness other people feuding and unprofessional, especially since they view counsel as the "grownups" in the room.
- Keep it simple for them to keep score, from opening, throughout the evidence, and closing, by being thematic and giving them reminders as the pieces fit together.
- Work with your witnesses to overcome arrogance or trying too hard to be perfect.
- Demonstrate that you are qualified and that your message stays the same over time.
- Show respect to the court.
- Don't act harshly to your adversary in court, only to act like buddies as soon as you leave the courtroom. Jurors will think you are playing a game and won't trust you.

3. To feel OK about you winning/the other side losing

- If you're Goliath, jurors need a message that makes it OK to find for you or against David.
- Alternatively, you may want to shape your message to explain why it would be wrong to find against Goliath.



- Assuming that a 2D explanation that is purely factual (“The evidence is not there for liability, so you cannot find for Plaintiff.”) is not a message.
- If finding for your client would feel bad to the jury, it’s your job to deal with it.

4. **What you actually need them to do, not vaguely, but exactly**

- Asking jurors to find for your client does little to guide them when it comes time to answer actual verdict questions.
- Provide them with the actual questions, the appropriate answers as you see them, a summary of the evidence that supports those answers (**ideally in graphic form**), and the reasoning.

5. **You’re saying and showing many things. What’s most important?**

Everything you say and do is not equally important. You know what is critical and what is not. While you are required to lay foundations and assemble the case from the bottom up, jurors are more likely to judge the case top-down. They tend to focus on a few key things that stand out to them and form their own story of what happened, then fit the choice things that fit well into that construct.

What happens if what stands out to them misses your point altogether? What if they have no idea why you went through all that information and didn’t pay as much attention because it was boring?

To avoid leaving your most important evidence – as you see it – as the stuff of their naps, reduce the risk by alerting them to vital points. Have witnesses repeat key answers. Ask, “What is the most important thing about that?” Fill your side of the courtroom with spectators when your star witness will testify. Thin out your spectators when opposing witnesses should not be seen as important. Use prefaces that alert jurors’ attention like a drum roll. Have your spectators wear their finest for special moments in the trial. Avoid being too cute, but be clear and send clear signals that help lead jurors to pay more attention to (or ignore) information so they get out what you put in to the trial.

Why Litigation Graphics at Mock Trials Make Sense

by **Laurie R. Kuslansky**, Ph.D. Former Managing Director, Jury Consulting
Persuadius

Do movie trailers include the most boring part of a movie?

Of course not. They include something to grab your attention quickly and show what the movie about and why you should be interested in it in a few words and images. In that brief window, many viewers decide if it is worth seeing or not.

An opening statement is similar. A common mistake is to assume that more equals more. It does not. A great presenter brings forth a winning story, including why the audience (jury) should care, and thematically gets and keeps their attention without excess words. The idea is to assemble the information into eye-catching visuals that do the work for the jury, take the guesswork out of their conclusions and aren't just a list of words in a PowerPoint being read aloud. There is no better way to summarize, simplify, organize, condense, and contextualize information than with good litigation graphics.

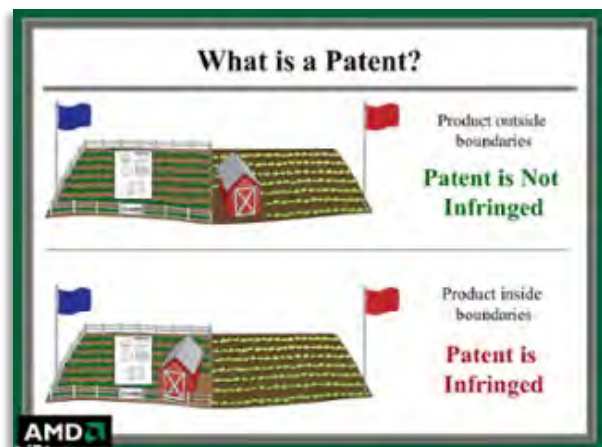


is

That holds true at mock trials as well. A mock trial requires condensing presentation material to fit within strict time limits. Mock jurors are burdened with receiving, understanding and remembering a lot of information in a little time. Graphics help them do so, so that their interaction with the facts is not random – based on limited information, cognitive overload and an overtaxed memory – but based more closely on the key facts, issues, legal questions and the law that the sponsor of the mock trial is hoping to test.

Winning a rigged contest isn't worth it.

A key consideration for conducting a worthwhile mock trial is to ensure balanced presentations for both sides or risk distorting the outcome because the deck was stacked in your favor. An unearned “win” is a false positive. It is better to do no jury research than to do bad jury research. Part of what is required to perform good mock jury research includes presenting good litigation graphics, for both sides, by as good a presenter for the opposing side as yours,



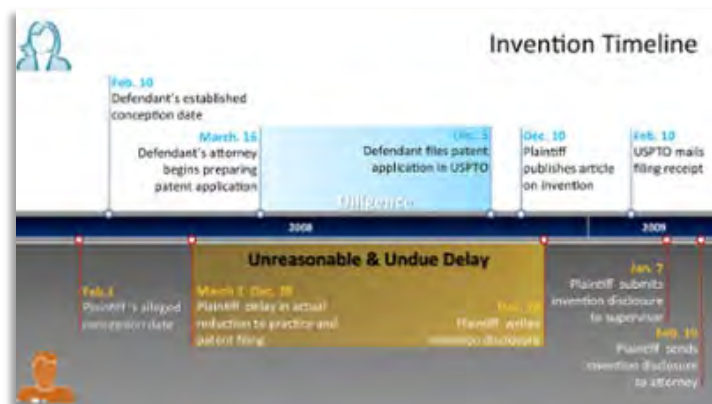
taking equal presentation time for both sides, and showing unlikable evidence as a minimum starting point to pressure test your case.

Being penny-wise, but pound foolish isn't worth it, either.

Anyone who rejects litigation graphics at a mock trial for budgetary or other reasons is probably litigation amateur. Top-tier litigators wouldn't dream of doing it that way at a mock trial. If money is the barrier, there are many ways to accomplish the goal cost-effectively, including a hybrid of in-house and outside professional support, re-allocating resources in a more productive manner, or providing the consultant with the total budget that can be apportioned for the mock trial and asking for their advice on how best to achieve the goals of the trial team and client within budget.

Don't get caught empty-handed.

The absence of litigation graphics at a mock trial creates easily avoidable problems. It is foolhardy to believe that no one will notice and it can wait "till the real trial." On the contrary: typically during mock deliberations, foreseeable questions arise that would have been so easy to remedy with basic graphics that were missing. "When did that happen? Who did that first? Who was he? What was the name of that agreement? What did it say?"



A lot of time is often wasted trying to figure out a simple fact that was missed because it was said, not shown -- and thus, not remembered or unclear. Counsel ends up looking foolish for omitting them. As a result, the expense "saved" in not providing graphics for the mock trial is eclipsed by the unfavorable distortions that result. Their absence and the "savings" are not applauded in the end. Better to provide them from the beginning.

Other free articles and free resources about mock trials, opening statements and litigation graphics from Persuadius:

- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [How I Used Litigation Graphics as a Litigator and How You Could Too](#)
- [6 Studies That Support Litigation Graphics in Courtroom Presentations](#)
- [Free Download: Storytelling for Litigators E-Book 3rd Ed.](#)
- [Podcast: 5 Ways to Maximize Persuasion During Opening Statements](#)
- [Podcast: 12 Things Every Mock Juror Ever Has Said](#)
- [Webinar: 12 Things Every Mock Juror Ever Has Said](#)
- [5 Ways That a Mock Trial Informs and Shapes Voir Dire Questions](#)
- [7 Ways to Draft a Better Opening Statement](#)
- [Why a litigator is your best litigation graphics consultant](#)
- [6 Reasons The Opening Statement is The Most Important Part of a Case](#)



- [How to Structure Your Next Speech, Opening Statement or Presentation](#)
- [10 Things Every Mock Jury Ever Has Said](#)
- [11 Problems with Mock Trials and How to Avoid Them](#)
- [Contact A2L with a question about a mock trial](#)
- [12 Tips for Getting the Most Out of Your Mock Trial](#)
- [Here are 6 good reasons to conduct a mock trial](#)
- [A2L Voted Best Jury Consultants by Readers of LegalTimes](#)
- [5 Things Every Jury Needs From You](#)
- [Is Hiring a Jury Consultant Really Worth It?](#)
- [12 Insider Tips for Choosing a Jury Consultant](#)

15 Things Everyone Should Know About Jury Selection

by **Laurie R. Kuslansky**, Ph.D. Former Managing Director, Jury Consulting
Persuadius

1. What makes a “bad” juror depends on your presentation plan.

It is easier to change your plan than to change the jury. Say you’re in Delaware (the headquarters of DuPont) and you plan to say at trial that your product is fine, and that DuPont makes a similar product, but yours is better than theirs. In that case, you might want to strike people with DuPont ties. The problem is that there are so many of them and they might otherwise be fine for your case, so instead of bashing DuPont gratuitously, drop this line of argument. Instead, frame the point more neutrally, e.g., that your client and DuPont make similar, perfectly fine products.



2. You are not there to make friends, but to spot enemies.

We often find stock questions among the list of favorites at law firms that are exactly ... wrong, because they ask questions that reveal who their good jurors are. If you’re defending an employer in a wrongful termination case, don’t ask if someone has ever fired someone. Ask if they’ve ever been fired.

3. Making friends is the best way to help your opponent know whom to strike.

If you sense you have a good juror, stop talking. Stop eliciting favorable information, but not so quickly that it signals a “tell” to your opponent.

4. How you ask questions makes all the difference.

Do you want the “PC” answer or the truth? If you ask a juror whether she can be fair, of course she will say yes.

Instead of asking if someone can be fair, perhaps ask:

“Can you think of a reason you might not be fair in this case?”

“Is there any reason my client should be uncomfortable with you as a juror in this case?”

“What haven’t we asked that we should know?”



“Is there even a little doubt that you could completely put that out of your mind when deciding this case?”

5. Asking open-ended questions yields better information.

“Can you describe your educational path?”

6. Asking why and how is more valuable than if, what and when.

It is more important to understand the reasons people chose to shift positions in their career path and how they felt about those changes than merely what jobs they had and when. Exploring transitions, whether professional or social, tells much more. Are they happy being retired? How did that come about – voluntarily or not? Is it the best thing or worst thing that ever happened to them? Why?

7. Making it easy to express bias takes more than just asking.

It requires setting the stage so that people are comfortable to admit to bias. For example, rather than saying,

“Does anyone here think that rich people like my client don’t deserve to get richer – even if they are right?”

Create comfort to admit it:

“Many people aren’t comfortable making decisions that result in awarding money, especially a lot of money, to people who are already rich, and we understand that. If you may be one of those people, that’s fine. Just raise your hand and let us know your thoughts (but don’t give them a chance to espouse their opinions in open court and risk polluting the panel).”

“If you’re even the slightest bit hesitant to award my client money because you may think he/she does not need it, you’d be doing us all a favor by letting us know now.”

8. Assume nothing.

Say your client is accused of mismanagement of money. You think that business supervisors will be your best friends. Think again. We often find that people with related knowledge and experience live to one-up your client and their opinion counts double to other jurors who see them as experts in deliberations. If you don’t ask pointed questions of them during voir dire, you won’t know if they are friends or frenemies until it is too late -- after trial.

9. Revisit stereotypes.



Assume your case involves the issue of whether a driver did the right thing or not. You hear that someone is a stay-at-home mom and dismiss their potential for leadership. Think again. If they are in charge of the family chauffeuring and car-pooling, they may spend more time on the road than anyone else with a “day job.” Ask questions that are specific about backgrounds and experience without making assumptions.

10. Judges are more willing to accept suggested voir dire questions from counsel that many lawyers assume.

Unless you ask, you won’t know, and sometimes a judge will vary his or her approach based on the case, so don’t assume that because they don’t usually permit this, or didn’t permit it the last time, they won’t this time.

11. Know the rules.

Many people assume they know the local rules for jury selection, but in fact, overlook a number of potential resources that can help, such as what constitutes improper rehabilitation, the impact of prior jury service in disqualifying a potential juror, affiliation with insurance companies, whether you are entitled to make a record, and so forth. Does the verdict have to be unanimous? If not, what is required? Review these in detail and have them available in court to cite as needed. Judges may not like it, but it’s your right to make a record and to enjoy your rights. You may be surprised to learn what they are. Here’s an example for New York State available on the state court website: <https://www.nycourts.gov/publications/pdfs/ImplementingVoirDire2009.pdf>.

12. Know the procedures in advance, e.g.:

How many peremptory strikes will each side get?

How many people will be in the voir dire pool?

How does voir dire proceed in that courtroom?

How many jurors will the judge put on the jury?

How many other jury trials are slated that week to pick from the same pool?

Will you be getting a fresh group or one that was already “picked over”?

Will there be alternates? How many? How many extra strikes does each side get for alternates?

What is the judge’s approach to hardship requests and excusals?

Who will ask the questions?



Will the judge permit the lawyers to speak to the prospective jurors directly?

Will he or she let the attorneys ask any follow-up questions?

What are the standard questions the judge or clerk always asks, if any?

What method does the judge use for reporting strikes – blindly, alternating, other?

How does the judge handle requests for strikes for cause?

What has the judge historically considered as a bias? Does the judge employ White's or the Struck method? Do you have a choice/preference?

Will alternates be designated or not? If you pass your turn, do you lose your strike(s)?

Is there back-striking?

Will everyone be voir dired before you report strikes or only some, in rounds?

What information – if any – does the Court provide counsel in advance?

How much time will the judge give counsel to review the information before reporting strikes?

Is there wi-fi in the courtroom so your team can access social media about prospective jurors?

Can counsel and staff bring their mobile devices to court as a backup for online searches?

13. Don't assume jurors are aware of all the information that the trial team knows.

We often find that when an opponent runs positive ads about itself or a litigant gets bad press, it is top-of-mind to our clients, while jurors are unaware of it or don't care. While such information is at the center of the client's world, it is not at the center of the jurors' world. You don't want to use voir dire to alert people who were not aware of this information, but you do want to find out if anyone is aware and if that biases them. One way to explore this is, rather than mentioning the press specifically, to ask generally whether anyone has heard, seen or read anything about the company and, if so, to explore their response -- but not in open court or, if the judge permits, in writing.

14. Check when proposed voir dire questions are due (in the pretrial motion? Another time?), leave time to review and edit, and don't assign the task to people with no jury-selection experience.

15. Sometimes getting no information is better than getting information.

Remember, whatever you reveal, your opponent reveals at the same time. Lawyers instinctively tend to want more information and believe that more is better. However, they may forget that someone invariably benefits more from the information. For example, say your client is a manufacturer accused of making a dangerous product or a chemical producer charged with polluting the local groundwater. How many prospective jurors are likely against you just walking into the courtroom? Is it 75%, 80% or 90%? That means that about 10-25% may be open to hearing your side. If you ask nothing and learn nothing about the pool, you have a 1 in 4 to 1 in 10 chance of keeping your good juror(s). If you ask questions, on the other hand, then your opponent is less likely to miss them and more likely to strike them based on information rather than chance alone. You'd be better off with your opponent striking in the dark. In that case, ignorance can be bliss.

Other articles and resources related to voir dire, jury selection and jury consulting from Persuadius:

- [5 Questions to Ask in Voir Dire . . . Always](#)
- [5 Voir Dire Questions to Avoid](#)
- [10 Ways to Lose Voir Dire](#)
- [Do I Need a Local Jury Consultant? Maybe. Here are 7 Considerations.](#)
- [The Voir Dire Handbook | Free Download | Persuadius](#)
- [Jury Selection and Voir Dire: Don't Ask, Don't Know](#)
- [7 Tips to Take "Dire" out of Voir Dire](#)
- [A2L Voted Best Jury Consultants by LegalTimes](#)
- [Can we work on your next case? Run a confidential conflicts check.](#)
- [\[New and Free Webinar\] 12 Things Every Mock Juror Ever Has Said](#)

21 Reasons a Litigator Is Your Best Litigation Graphics Consultant

by [Ken Lopez](#) Founder/CEO [Persuadius](#)



Since the founding of our attorney-led litigation consulting business 19 years ago, I've been asked this question hundreds of times: "why would I need an attorney to help me prepare my litigation graphics?" It's an understandable question, and I have a very good answer - indeed 21 good answers.

Before I explain why an attorney or litigator can help a fellow litigator better than others can, a review of A2L's history is in order.

I founded A2L (then [Animators at Law](#)) as a litigation graphics consultancy after I finished law school in the 1990s. After a few years in the industry, I recognized that litigators who build visual aides for trial and work with other creatively-minded lawyers to do so get better results than those who work alone or those who work only with a graphic artist. By the latter part of the 1990s, we started calling this work "litigation consulting," and an industry was born. Here is [a 1999 article about](#)

[how our piece of the litigation graphics industry developed.](#)

Back then, litigation graphics industry leaders were mostly engineering firms. They were great at illustrating and very poor at persuading. So, firms like A2L and others came to dominate the industry and were quickly relied upon by the legal industry's top trial attorneys.

Now, all these years later, with [the majority of litigation rapidly shifting from large law firms to midsize law firms](#), I'm again hearing questions about why lawyers should be helping other lawyers with litigation graphics and more. I think the frequency of questioning has increased because midsize law firms are trying to understand how best to win big cases without spending huge sums of money. Fortunately, litigation consulting services are quite inexpensive compared to legal fees or e-discovery fees, and the ROI is just enormous.

From some of these newer big-ticket litigation market entrants, we're hearing that they are planning to skip the litigation graphics development stage and just rely on their [trial tech](#) for visuals. Unfortunately, this means that some midsize law firms are making [the classic mistake of believing they are using litigation graphics when they are simply displaying electronic evidence and text PowerPoint slides via a projector in the courtroom.](#)

Some are planning to use [in-house law firm marketing graphics staff](#) or a freelance graphic artist. In most cases, that's about as likely to produce a successful result as hiring a 3rd year



law student to 1st chair a trial. Sadly, it's pretty common for us to be engaged to rescue a trial team on the eve of or even mid-trial that has made these mistakes.

These well-intentioned but misguided uses of "graphics" may not be actionable malpractice yet, but I bet they will be one day. If you think that statement is strong, consider that judges are already demanding that **litigators understand technology at a fairly complex level when it comes to e-discovery**. Can the expansion of the duty of competence to include competent visual advocacy be far behind?

So, to understand why a litigator is your best litigation graphics consultant, I offer 21 observations based on watching visually creative litigators on our team serving as litigation graphics consultants, how they work with trial counsel and the good results they regularly achieve:

1. **Using a Litigator as Your Litigation Graphics Consultant Saves Money.** Imagine being able to speak in lawyer short hand about amici, claim language, market power, causation, Rule 403, bioequivalence and hundreds of other concepts that you don't want to take five minutes to explain during the run up to trial. When you have a litigator serving as your litigation graphics consultant, you don't have to spend your client's money training someone about a legal concept or procedure. They already understand what the fact-finders will not, and they will automatically design this into the presentation.
2. **Using a Litigator as Your Litigation Graphics Consultant Saves Time.** Time is money, so the same reasons listed above for money apply here for time too. Additionally, commonsense should answer the questions: who is going to understand and process your case faster, a visually creative litigator with trial experience or a project manager/graphic artist? They're all good people, but only one will save you time.
3. **Using a Litigator as Your Litigation Graphics Consultant Removes Stress.** I have a couple of pet peeves, although the team at A2L might tell you the list is longer than that. One pet peeve of mine is that I really don't like having the same conversations more than once. I think most litigators feel similarly especially during pre-trial prep. A litigator turned graphics consultant is much more likely to recall details or be in a position to find the answer on their own. This saves the trial litigator time, money and most importantly, stress.
4. **Using a Litigator as Your Litigation Graphics Consultant Gets You Graphics + Trial Experience.** Nearly all good litigators tell me that they would love nothing more than to go to the courthouse and watch trials they are not involved in and learn from watching peers. Unfortunately, they cannot due to the incessant pressure to keep billing hours. Until the days comes when cameras are finally allowed in federal courtrooms and we can all learn from watching the best, one of the best ways to get meaningful training is to **use your litigation graphics consultant a bit like a coach**. Remember, they watch your peers all of the time, and they have been exactly where you are



5. **Using a Litigator as Your Litigation Graphics Consultant Is Like an Insurance Policy.** One hopes to not use insurance, but we're all grateful when it's there. The same is true for your litigation consultant. If you really rely on them and invite them to be there for all or part of your trial, you have a cost-efficient method to adapt as the trial unfolds. They can anticipate new visuals that need to be used and put their development in motion midday. They can offer new strategies at a peer level. They can be a non-judgmental sounding board.
6. **Using a Litigator as Your Litigation Graphics Consultant Helps You in the Venue.** Chances are we have spent time in your venue. We even write about [trying cases in popular venues like SDNY](#). Local counsel is a big help, but why not rely on a litigator who likely has expertise persuading the jury pool or judge using visuals and who has probably watched trial lawyers from many firms in the venue?
7. **Using a Litigator as Your Litigation Graphics Consultant Is a Bit Like Getting Graphics AND a Trial Consultant.** Litigators who are also litigation graphics consultants blur the lines between what is considered a trial consultant and a litigation graphics consultant. They are an especially nice fit when there is not enough budget for a proper mock trial.
8. **Using a Litigator as Your Litigation Graphics Consultant Means You'll Likely Get More Meaningful Feedback.** A lot of litigators say they like to get commonsense feedback from family and non-attorney staff. I agree that helps, but sometimes non-attorneys give bad advice like encouraging counsel to ask a jury to put themselves in the shoes of the injured and other rookie mistakes. A litigator knows what advice helps and what distracts.
9. **Using a Litigator as Your Litigation Graphics Consultant Means They're Not (as) Scared of You.** A lot of litigators I know appreciate that a good litigation graphics consultant is honest with them. Too often they are surrounded with too many "yes" people. Your litigation graphics consultant is trained to tactfully deliver honest feedback after asking permission to do so.
10. **Using a Litigator as Your Litigation Graphics Consultant Means Your Relationship With In-House Is Understood.** A good litigation graphics consultant who is a litigator will keep watch over your relationship with in-house counsel. It is not unusual to be approached by an in-house lawyer during a mock trial or during trial who wants our litigation consultant's opinion of outside counsel. A good litigation consultant knows how to support counsel even when no one is looking.
11. **Using a Litigator as Your Litigation Graphics Consultant Means that You Have Someone Who Understands Law Firm Politics On Your Side.** We all wish the workplace was politics-free, but that is not realistic. Whether there is a subtle battle for 1st chair, whether there are hidden relationships on the trial team, whether someone is underprepared, we have seen it all - and you'll never hear about it. Keeping yourself out of the politics is a task best left to those who understand it, and a litigator who has worked at a law firm knows best.



12. **Using a Litigator as Your Litigation Graphics Consultant Means You Know You Have Someone Who REALLY Understands Confidentiality.** I've heard trial techs and graphic designers talking about degrees of confidentiality, and I hope that we can all agree it's really a binary issue. When you have a litigator as your graphics consultant, your confidential information is better protected.
13. **Using a Litigator as Your Litigation Graphics Consultant Means They Have Ethical Obligations.** No matter where a lawyer goes, they have ethical obligations. This is certainly true when working in litigation, regardless of the role they are playing. Wouldn't it be nice to know your consultant has a higher duty when supporting your team?
14. **Using a Litigator as Your Litigation Graphics Consultant Means They Will Understand How to Treat a Judge and Clerks.** In law school, we were all taught to treat the court with honor and respect. A graphic designer may be a respectful person, but they have not been trained like us, right? I think it matters when we have to talk to clerks, interact with opposing counsel and in how we dress for court.
15. **Using a Litigator as Your Litigation Graphics Consultant Means You Have Another Warrior on Your Side.** I referenced one of the reasons I started our firm at the beginning of this article. In 1995, I was disappointed to see engineering firms playing such a large role in litigation as litigation graphics firms do. In retrospect, I was right. Having passionate advocates work in parallel with the trial team to develop a visual presentation is like having one more believer - as opposed to just one more follower - on your team.
16. **Using a Litigator as Your Litigation Graphics Consultant Ensures Appearance Will Be Considered for All Personnel.** I am very concerned with how people dress for court or even a client meeting. In my jurisdiction, shirts that are not solid and white are still frowned upon by many judges. A litigator will help make sure that litigation decorum is followed for the litigation support team.
17. **Using a Litigator as Your Litigation Graphics Consultant Helps Prevent Typos.** One of my pet peeves is shared by many litigators. I really cannot stand it when typos make it onto a draft of a demonstrative for trial. Of course, one can never occur at trial, because it would damage the credibility of the trial team. Who do you think is less likely to make a mistake, a litigator or a graphic designer? I can tell you from decades in this industry that the answer is the former, 100-fold to 1.
18. **Using a Litigator as Your Litigation Graphics Consultant Gives You an Observer Free from the Details of the Case.** Hard as we may try, we litigation consultants will never know the case as well as trial counsel. This is a feature, not a bug. Staying out of the weeds allows an attorney litigation graphics consultant to offer meaningful advice about how to persuade the fact-finder(s) while not getting lost in the details.

19. **Using a Litigator as Your Litigation Graphics Consultant Means You Have a Professional Storyteller at Your Disposal.** Good litigation graphics consultants are always pushing a trial team to clearly articulate a meaningful and emotional story in a case - even in a seemingly dry patent trial. If you have not watched our recent [storytelling in litigation webinar](#) yet, you should (or share it with someone you know).

20. **Using a Litigator as Your Litigation Graphics Consultant Gets You a Ton of Trial Experience at a Low Price.** If you are in house counsel, wouldn't you want to have the benefit of another trial lawyer in the room acting as a support system to the team. You might be surprised to learn that we could go to trial more than 50 times in a given year. That's more than any single major law firm. For a fraction of the price of another trial lawyer, you get the benefit of that experience plus the value created during the develop of litigation graphics.

21. **Using a Litigator as Your Litigation Graphics Consultant Means You Indirectly Learn from Your Peers.** As litigation consultants we see both good and bad trial teams. Cross pollination of good ideas and tactics between firms is pretty rare. If you want to learn from your peers, one of the best and least expensive ways to do so is to ask a qualified attorney litigation graphics consultant what they see that works well.

Our team at A2L includes the kinds of people I would want on my side if I were spending our firm's money on litigation. They are members of a small group of 5-10 creative-minded lawyers in the country with the experience, the training and the talent to meaningfully affect a trial team's experience going to trial. If you don't want to work with our firm for some reason, I would be happy to refer you to someone else who fits this description.

Try to remember this - when you fail to find and locate a litigator who can be your creative guide when developing litigation graphics, you are failing to follow what are now common best practices, and you put your case, client and reputation at risk. Again, it's commonsense . . . who would you trust to give you advice, a litigator with millions or billion of dollars of jury verdicts, the experience of working with your peers and a creative background or a twenty-something artist who does not understand the impact of their advice? I believe that using a litigation graphics consultant who is also an experienced trial lawyer puts you in the best position to win a case.

Other Persuadius articles related to litigation consultants and litigation graphics:

- [6 Triggers That Prompt a Call to Your Litigation Consultant](#)
- [11 Small Projects You Probably Don't Think Litigation Consultants Do](#)
- [9 More Things Midsized Firms Should Know About Litigation Consultants](#)
- [11 Things Your Colleagues Pay Litigation Consultants to Do](#)
- [16 Litigation Graphics Lessons for Mid-Sized Law Firms](#)
- [The Very Best Use of Coaches in Trial Preparation](#)
- [Accepting Litigation Consulting is the New Hurdle for Litigators](#)

Do I Need a Local Jury Consultant? Maybe. Here are 7 Considerations.

by Ken Lopez Founder/CEO Persuadius

Do I really need a local jury consultant? It's a question that I hear our clients struggle with frequently. The answer is maybe you do, maybe you don't.

The gut instincts of many are that a jury consultant who regularly works in the jurisdiction will provide special insights that trial counsel, often admitted *pro hoc vice* for purposes of trial, could use to persuade the jury more effectively and have first-hand knowledge that will help in jury selection because of specific, local nuances. I understand the instinct, since - when going to trial - you naturally want every single advantage, and it's natural to fear that there are some things you just don't know about your potential jurors, your judge, the courthouse or the local community.



While I understand the rationale, both emotional and logical, I've come to believe that such beliefs are now outdated and reflect pre-Internet thinking. Much like the need for 8-glasses of water a day, waiting an hour after eating to swim, or humans using 10% of their brains, I think these beliefs about local jury consultants are mostly stubborn old wives' tales.

The reality is that human beings make decisions following the same principles, regardless of where they may live, and the psychology of persuasion, as well as individual and group decision-making does not need to be reinvented from place to place. What you need and can rely on is the best consultant with the best skills, regardless of their location.

I'd like to offer seven ways of working through this challenge with a solution for you, whether you believe a local jury consultant helps or whether you believe hiring the best jury consultant is best for your case.

1. **99 times out of 100, a local jury consultant is not actually going to add anything you need to win.** I'm not saying there won't be good trivia, a story about your judge or the added knowledge of the best local diner. They *will* provide that. I ask though, will these things and related wisdom really help you persuade better compared to all the other bits of preparation that you could do? Furthermore, is there anything you can't figure out with a few minutes of Internet research and a conversation with local counsel that your neighborhood jury consultant might otherwise provide? You could easily learn about **demographics** (which are historically the least relevant to verdict preferences), **insider details about your trial judge**, the **best local diner**, an **iconic local landmark**, or topical issues and local news using very basic Internet search skills. You have to ask yourself, is getting local color and flavor worth it to choose to not use the very best consultant you can find? If your answer is yes, fast-forward to solution number 7.



2. **No jury consulting firms, good or bad, have high-quality jury consultants in all the places you need them.** I encourage you to ask the same question as above, "would I rather hire a very reputable jury consultant and firm whose brand depends on repeat business, good reviews and positive social comments or do I want to gain some small benefit and bet on a one-off relationship with little real accountability?" See, [5 Surprising Areas Where Geography No Longer Matters in Trial Support](#)
3. **It's the data, not the consultant, that matters most.** In the old-style of jury consulting, one would often see a jury consultant tell trial counsel to act a particular way, because they say so. The experience and opinion of the jury consultant was what was relied upon, especially in an unregulated industry where there were no barriers to entry. For the most part, I think this was a lot of hooey, sprung from an era where Dr. Phil, yes, that one, was one of the top jury consultants. This era, let's call it the guru era, has long since passed. Now, top jury consultants let the data speak, and work very hard to make sure an appropriate jury pool is represented and opinions are effectively substantiated by facts. That said, the data are not enough. Different abilities to interpret and apply the data set great consultants apart from the rest. See [12 Things Every Mock Juror Ever Has Said webinar](#).
4. **It's science, not magic.** You need a great scientist, not a great TV personality, and great scientists are hard to find! The leader of A2L's jury consulting group has more than 30 years of experience, has overseen more than 400 mock trials, has a Ph.D. Former from Columbia University and lost count of the number of litigation engagements she's been involved in somewhere after 1,000. See, [6 Secrets of the Jury Consulting Business You Should Know](#)
5. **Local counsel is probably all the advantage you need.** It's not to say that local insights aren't valuable. They are. Most of the time, local counsel or a local colleague can provide everything you need to maximize persuasiveness, however, especially when combined with the resources I listed in item 1 above.
6. **Hiring the best matters.** Not all jury consultants are created equal. If you were going to build an iconic billion dollar building in your city, you wouldn't hire the best local architect. You'd hire the best architect. Well, we routinely deal in cases with a billion dollars at stake. But even for a case with tens of millions at stake, you wouldn't want to hire anyone but the best expert witnesses, and you wouldn't think local. Why would you do so for someone with arguably more impact on the outcome of the case like a jury consultant? It's the same reason that clients hire lead counsel in addition to local counsel. The best may not be based in the trial venue, but are worth importing into it. See, [A2L Voted Best Jury Consultants and Best Trial Graphics Firm by the Readers of LegalTimes](#).
7. **But, if you really think local is critical for your case or the client is adamant about it, and that's 100% okay with us, here's how we get you the best of both worlds.** Every mock trial where a larger group of jurors is broken down into smaller groups for deliberations requires the use of more than one consultant to serve as moderators for the separate panels. We can simply engage a local resource to be a part of the team and work with them to integrate local advice. It's a good compromise approach that gets you the right quarterback and coach plus the right player to match



your opposition and local challenge. Fortunately, our reputation attracts such professionals and their collaboration.

Other articles related to jury consulting, local trial consulting resources and litigation consulting on A2L Consulting's website include:

- [No Advice is Better Than Bad Advice in Litigation](#)
- [6 Secrets of the Jury Consulting Business You Should Know](#)
- [Free View: 12 Things Every Mock Juror Ever Has Said](#)
- [Is using a jury consultant really fair to your opponent?](#)
- [Free Download: The Voir Dire Handbook](#)
- [\[New and Free E-Book\] Litigation Storytelling and Persuasion - 3rd Ed.](#)
- [10 Things Litigation Consultants Do That WOW Litigators](#)
- [5 Voir Dire Questions to Avoid](#)
- [7 Tips to Take “Dire” out of Voir Dire](#)
- [Why Do I Need A Mock Trial If There Is No Real Voir Dire?](#)
- [Your Trial Presentation Must Answer: Why Are You Telling Me That?](#)
- [Is Hiring a Jury Consultant Really Worth It?](#)
- [21 Ingenious Ways to Research Your Judge](#)
- [12 Insider Tips for Choosing a Jury Consultant](#)
- [7 Reasons In-House Counsel Should Want a Mock Trial](#)
- [5 Questions to Ask in Voir Dire . . . Always](#)

25 Things In-House Counsel Should Insist Outside Litigation Counsel Do

by [Ken Lopez](#) Founder/CEO [Persuadius](#)

The relationship between in-house counsel and outside litigation counsel has changed dramatically over the last 20 years. Technology and the Internet have been the driving forces for many of the changes.

Technology growth has forced outside litigation counsel into a quasi-technology consultant role in the way they deal with e-discovery and case management. Technology has made litigation more complex as the underlying subject matter of cases has become more complex. The availability of information via the Internet has made in-house counsel a more savvy shopper and a better informed manager. Technology has surely changed the way outside litigation counsel tries cases and has forced trial counsel to be trial-technology savvy. There are many more examples of how the fast flow of information is altering the balance of power between in-house and outside counsel, but you get the idea. Reflecting these changing times, the 25-point list below offers useful best-practices that in-house counsel should be demanding from outside litigation counsel.



1. **Alternative fee arrangements.** At A2L, we have all but left the billable hour behind as a measurement of delivering value—mostly because it does not measure value at all. In July of 2013, we wrote about the [12 different alternative fee arrangements we use at A2L](#) as a guide for anyone selling professional services. Not all clients want AFAs but they probably should. There's no better way to align the value of services delivered to the size of the problem solved.
2. **Mock trials.** As we wrote in [7 Reasons In-House Counsel Should Want a Mock Trial](#), there are so many good reasons to conduct a mock trial and almost no reason, except for budget, not to. Dollar for dollar, I think a mock trial is the single best investment in-house counsel can make in trying to win a case. Since outside counsel may be hesitant to request budget for it, it may very well be up to in-house counsel to recommend it.
3. **Story development.** Although many great trial attorneys used the technique 20 years ago, the science of why storytelling helps persuade was not fully understood. Today, it is recognized as essential for trial. See, [Storytelling Proven to be Scientifically More Persuasive](#). All trial counsel should be able to articulate a clear story well before trial that succinctly explains the case and why your side should win. See also, [14 Differences Between a Theme and a Story in Litigation](#) and [5 Essential Elements of Storytelling](#)

and Persuasion.

4. **A story that people care about.** Not just any story will do. Trial counsel must develop a compelling story that both judge and jury will care about. See:
 - [Free webinar: Storytelling for Litigators](#)
 - [5 Keys to Telling a Compelling Story in the Courtroom](#)
 - [Every Litigator Should Watch Scott Harrison Deliver This Presentation](#)
 - [Your Trial Presentation Must Answer: Why Are You Telling Me That?](#)
 - [Free download: Storytelling for Litigators E-Book 3rd Ed.](#)
5. **Open practice.** In addition to a mock trial, good trial counsel will want to schedule structured practice sessions and invite in-house counsel to attend. See [3 Ways to Force Yourself to Practice Your Trial Presentation](#) and [Practice is a Crucial Piece of the Storytelling Puzzle](#).
6. **Accept coaching.** In this era where the highest profile litigators only go to trial rarely, using a coach, usually in the form of a litigation consultant is a best-practice. These professionals spend most of their time preparing for trial and in the courtroom, perhaps working on dozens of trials per year. See, [Accepting Litigation Consulting is the New Hurdle for Litigators](#) and [Working in Parallel vs. Series with Trial Presentation Consultants](#).
7. **Abandon the last-minute when it comes to trial.** The era of the litigator who swoops in at the last minute and tries a case, occasionally needing to be reminded of the client's name, is largely over. In-house counsel must be prepared to communicate the expectation that a case should be trial ready well before trial. See, [The 13 Biggest Reasons to Avoid Last-Minute Trial Preparation](#).
8. **Use technology well.** Litigators should be so well-practiced in their use of trial technology that it should look seamless. Missteps in the use of technology destroy credibility, and they must be anticipated and avoided. See:
 - [5 Tips for Displaying Documents Well at Trial \[CVN Video\]](#)
 - [24 Mistakes That Make For a DeMONSTERative Evidence Nightmare](#)
 - [Will Being Folksy and Low-Tech Help You Win a Case?](#)
 - [6 Tips for Effectively Using Video Depositions at Trial](#)
 - [12 Ways to Avoid a Trial Technology Superbowl-style Courtroom Blackout](#)
9. **Use trial technicians well.** There may come a time when trial counsel controls their presentation just as on-air meteorologists do with a simple clicker, but we're not there yet. Courtroom presentations are dynamic and unpredictable. If trial counsel is to look like a professional, they must learn how to work with a trial technician well. See:
 - [Making Good Use of Trial Director & Demonstratives in an Arbitration](#)
 - [Why Trial Tech ≠ Litigation Graphics](#)
 - [11 Traits of Great Courtroom Trial Technicians](#)
 - [5 Tips for Using TrialDirector and Trial Technicians Effectively](#)

10. **No more surprises.** I used to have a competitor that would low-ball every bid, bill 3x at trial and then write down their invoice by 10% when a post-trial dispute arose over the invoice. Once one of the top brands in the industry, they now lay in shambles, not surprisingly. We have always lived by a no-surprises model when it comes to pricing and billing. It is reasonable to insist on the same from outside counsel and legal consultants like us. See, [17 Tips for Great Preferred Vendor Programs](#).
11. **Post-trial lessons-learned sessions.** Elite organizations spend lots of time planning and lots of time debriefing after the mission. Litigation should be no different. See, [9 Questions to Ask in Your Litigation Postmortem or Debrief](#).
12. **Be upfront about trial costs.** To be fair, I've said this more than one way already, but it is worth emphasizing. If your vendor or outside counsel can't tell you what it is going to cost, how much experience do they really have? Very often, it is the job of in-house counsel to make outside counsel comfortable spending what is needed to win. Trust me, they're often afraid to ask. See, [Learn How to Get Value in The New Normal Legal Economy](#).
13. **Proof they are staying current.** How do you know your outside counsel is staying current with modern best-practices? If they are trying cases just like they did 20 years ago, they are going to see diminishing returns. Insist on proof that they are improving their game outside of simple CLEs and the like. See, [19 Ways in Which the World Has Changed Since 1995](#).
14. **Research your judge.** No longer do we have to rely on vague tips from local counsel. Outside counsel should understand what really makes a judge tick and exploit that knowledge. Ask them what they know and push them to learn more. See, [21 Ingenious Ways to Research Your Judge](#).
15. **Anticipate non-legal implications.** For litigators to really be trusted advisers, they need to demonstrate that they understand that things said in a courtroom can have a profound implication for the company, from reputation to stock price. Some day, cameras will be allowed in all courtrooms, and this will only accelerate the need to take a more global view of the client. Make sure your outside litigators understand the big picture. See, [10 Web Videos Our Jury Consultants Say All Litigators Must See](#).
16. **Really prepare the witnesses.** Whether expert or fact witnesses, all witnesses should be professionally prepared. There is simply too much riding on their testimony. Litigation consultants and jury consultants may be better positioned to do this than lawyers at the firm. See:
 - [Witness Preparation: Hit or Myth?](#)
 - [The Top 14 Testimony Tips for Litigators and Expert Witnesses](#)
 - [Witness Preparation: The Most Important Part](#)
 - [7 Things Expert Witnesses Should Never Say](#)
 - [7 Smart Ways for Expert Witnesses to Give Better Testimony](#)
17. **Work well with others.** Litigators must also be leaders, and they must set an example for how to behave. They are representatives of the company and must remember this



- whether in an elevator, at a restaurant or on a subway. See, [5 Tips for Working Well As a Joint Defense Team](#), [10 Signs the Pressure is Getting to You and What to Do About It](#), [Download: Leadership for Lawyers](#).
18. **Don't push boundaries.** Whether ethical, legal or business boundaries, ask your outside counsel not to get too close to any boundary. In recent years we have seen such decisions bring down major law firms, and you don't want a scandal to land on your doorstep.
 19. **Don't say "my client."** Modern litigators should know how to personalize the company and tell the company story in the best way possible. See, [7 Things You Never Want to Say in Court](#).
 20. **Don't melt down.** I've seen plenty of partners melt down at trial, and I have seen plenty of partners sleep soundly on the eve of trial. A meltdown is usually a sign of poor preparation, and it is most certainly the role of in-house counsel to ensure that preparation is done early and done well. See, [When a Good Trial Team Goes Bad: The Psychology of Team Anxiety](#) and [5 Signs of a Dysfunctional Trial Team \(and What to Do About It\)](#).
 21. **No condescension about what they know.** Of course trial counsel knows more about trying a case than in-house counsel. If they didn't, you wouldn't need them. However, the best outside litigation counsel include in-house counsel in the process of trial preparation and never talk down to the client.
 22. **Body language and appearance.** Outside trial counsel should understand the impact of body language and how best to appear in the courtroom. Even tie color makes a difference. See, [7 Videos About Body Language Our Litigation Consultants Recommend](#) and [Litigation Graphics, Psychology and Color Meaning](#).
 23. **Use litigation graphics well.** Yes, we have written the book on this topic, and A2L was once again just voted #1 demonstrative evidence consultants. This litigator-authored article describes the state-of-the-art thinking surrounding litigation graphics: [How I Used Litigation Graphics as a Litigator and How You Could Too](#).
 24. **Likability.** In the courtroom, it matters a great deal that people like you. Make sure that your outside counsel knows how to appeal to judge and jury. See, [Like It or Not: Likeability Counts for Credibility in the Courtroom](#) and [5 Things Every Jury Needs From You](#).
 25. **Subscribe to this blog.** Really, it may be the easiest (and certainly the cheapest) way to know that your trial counsel is staying current with best practices. Here's [a free subscription that you can share](#).

In-house counsel, I can tell you that based on hundreds of conversations I have had over the years, outside litigation counsel is scared to make you unhappy. This means they hesitate to ask for budget for things that will help win the case. Part of your role has to be to insist on superb trial preparation as you have the most riding



on the outcome. Help guide outside counsel, and make them comfortable asking for the tools they need to win. You'll win more cases if you do.



The 13 Biggest Reasons to Avoid Last-Minute Trial Preparation

by Ken Lopez Founder/CEO Persuadius



When someone first works in the litigation consulting industry, the last-minute nature of trial preparation very often shocks them. In my experience, about **half of all trial teams spend months or years preparing** and testing themes, rhetorical strategies, and different approaches to their visual trial presentation. The

other half of trial teams jam all trial preparation into the last month or two before trial.

No one approach is right for everyone, and I have certainly seen both approaches work well. After all if you are forced to prepare at the last minute, you're forced to simplify a case, and that's a good strategy for bench and jury trials. On the other hand, the ability to test and refine elements of the case is now a real science, and any case can benefit from a **mock trial, the recommendations of litigation experts** and **other sophisticated testing**.

While both strategies can work, when possible, I think slow and steady trial preparation wins the race more often. Still, **we do great work in the last month before trial all the time**, and sometimes there is just no other option. For those times when you have a choice, below are 12 reasons why last minute trial preparation might just set you back far enough to warrant starting now.

1. **Last-minute costs more.** I fear that some litigators believe that fewer hours available means lower cost for trial preparation. The opposite is usually true. Last-minute means your litigation consulting consultants have to use available staff rather than the ideal staff for a project. Often this leads to the use of more expensive staff and higher costs. Further, last minute trial preparation normally means using many more people to achieve the same result within a safe margin of error.
2. **Building a good story takes time.** We've written quite a bit about **storytelling in the courtroom**, we've published a **book about storytelling in litigation**, and we even have a **webinar you can watch any time devoted to courtroom storytelling**. The connection between storytelling and persuasion is a close one as scientific studies are increasingly proving. Unfortunately, like a fine wine, crafting a persuasive story is not something that should be rushed.

3. **Maximizing persuasion in your litigation graphics takes time.** Anyone can make a PowerPoint presentation quickly using a template and a few bullet points. However, as I wrote recently, [Good-Looking Graphic Design ≠ Good-Working Visual Persuasion](#). If it's done well, it will be hard to do, require expertise and it will take time. I've written before about how [the litigation graphics you don't use contribute enormously to your presentation](#), and an indicator of a good presentation is how full your trash can of unused litigation graphics is. To get to the point where you can reject some and keep others requires time for the creative process. See also, [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#).
4. **Getting your trial technology configured takes time.** Rush or ignore your technology set up and months of preparation can be for naught. There's no winning back your credibility after [a technology flub](#), [a courtroom delay](#) or [an outright technological failure](#).
5. **Mock trials really work.** Mock trials are not about predicting precisely what will happen at trial as many lesser jury consultants might suggest. Rather, mock trials are useful for understanding how a judge or jury will react to the case, learning how an expert will perform, learning from practice what really works in your approach, learning your ideal juror profile, understanding your opposition's case and for helping to find those levers that will give you an edge at trial. See [7 Reasons In-House Counsel Should Want a Mock Trial](#), [Why Do I Need A Mock Trial If There Is No Real Voir Dire?](#), [6 Good Reasons to Conduct a Mock Trial](#) and [11 Problems with Mock Trials and How to Avoid Them](#). We have done a mock trial two-weeks before trial, but it is not an ideal approach. It is normally best to complete your final mock months before trial to give time for analysis and adjustment.
6. **You wouldn't play a World Cup game without practicing (Congratulations to the U.S. team for advancing to the final 16 today!), why would you go to trial without some serious practice?** See [The Magic of a 30:1 Presentation Preparation Ratio](#), [The Very Best Use of Coaches in Trial Preparation](#), [3 Ways to Force Yourself to Practice Your Trial Presentation](#), and [Practice, Say Jury Consultants, is Why Movie Lawyers Perform So Well](#).
7. **Failing to understand the courtroom layout is a problem.** Every court is different. Some will not accommodate an electronic presentation. Some do not easily accommodate a printed trial board. Some judges won't allow either. If you don't know these things in advance, you're setting yourself up for trouble and this all takes time to sort out.
8. **There's every chance you'll win or lose in opening, so it's critical to get it right.** See [6 Reasons The Opening Statement is The Most Important Part of a Case](#). Taking time to prepare your opening using modern approaches for drafting an opening statement requires ample lead time. See [7 Ways to Draft a Better Opening Statement](#) and [How to Structure Your Next Speech, Opening Statement or Presentation](#).



9. **Too much gut.** When trial preparation time is limited, a litigation team has to rely too heavily on its gut instincts and not enough on a scientific analysis of what will work. The good news is that successful litigators have the best people-focused gut instincts I've ever seen. However, great instincts coupled with great analysis, science, an outside perspective and modern trial expertise are always better.
10. **You'll never be as confident as when you're well-prepared.** Many in the litigation industry are great actors when it comes to feigning belief, indignation, and passion. It's part of the job. However, people can read subtle clues. If you're truly prepared and you know you are, confidence will come through. There's just no substitute for it, and it's not something that can be downloaded Matrix-style.
11. **Settlement is less likely.** As my colleague Dr. Laurie Kuslansky wrote in [Don't Be the 2% - 6 Ways to Encourage Settlement with Trial Prep](#), there are so many ways to prepare for a case that simultaneously encourage settlement. When you prep a witness and test them and when you run a mock trial and understand strengths and weaknesses of a case, you are necessarily in a strong position to consider settlement. These steps take time.
12. **Fewer Choices:** When a student skips college, there's no reason they can't be as or more successful than a college graduate, but their options for success are more limited. The same is true with trial preparation. A trial team who waits until the last minute to prepare has fewer choices for how to prepare. I always prefer more choices, and I think most litigators and clients feel similarly.

Other Persuadius articles relating to trial preparation, litigation graphics and mock trial work:

- [7 Reasons It's Okay to Procrastinate on Your Trial Preparation](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)
- [Sample One-Year Trial Prep Calendar for High Stakes Cases](#)
- [Litigation Consultant: Embrace a Two-Track Strategy & Win the War](#)
- [17 Trial Consulting and Jury Consulting Tips for Midsized Law Firms](#)
- [The BIG List of All 337 Litigation Consulting Report Articles](#)
- [7 Ways to Prepare Trial Graphics Early & Manage Your Budget](#)
- [10 Reasons The Litigation Graphics You DO NOT Use Are Important](#)
- [What Does Using a Trial Technician or Hot-Seater Cost?](#)
- [13 Revolutionary Changes in Jury Consulting & Trial Consulting](#)
- [Witness Preparation: Hit or Myth?](#)
- [6 Good Reasons to Conduct a Mock Trial](#)

Witness Preparation: Hit or Myth?

by **Laurie R. Kuslansky**, Ph.D. Former Managing Director of Jury Consulting
Persuadius



Have you ever helped a witness get up to speed, or interviewed a witness who seemed all put together, only to see him or her take the stand and unravel? For example, had Mark Fuhrman been able to appropriately acknowledge his regrettable actions of the past in the O.J. Simpson criminal trial, how many days of courtroom drama would we have been spared?

Recent high-profile cases suggest the need to rethink basic assumptions about witness preparation – to, in effect, probe the essentials of this fine art more deeply than is encouraged in most litigation skills training.

There are two fundamental levels of witness preparation:

- **Witness Prep Level 1:** Surface, which includes observable outward appearance, demeanor, body language, and delivery of verbal testimony.
- **Witness Prep Level 2:** Subsurface, which includes the emotional/ personal/professional conflicts that act as an undercurrent to the surface level.

Witness Preparation Level 1 – Surface

Many practitioners (lawyers and others) attempt to modify the exterior aspects of witness testimony (i.e., the surface level) by rehearsing the “correct” responses with witnesses, admonishing them about incorrect responses, and telling them how or how not to look (i.e., cosmetic fixes). It is common to discuss the selection of the appropriate suit and tie for a male witness or the right style of dress and accessories for a female witness.

It is also common to provide witnesses with lawyer-generated outlines or scripted responses for Q & A sessions, and to ask them to study and internalize the scripts. Efforts of this type require witnesses to perceive, attend to, comprehend, store and recall information. In other words, they must use their perceptual and cognitive abilities.



However, traditional witness preparation tends to yield unreliable results because it is superficial and does not address subsurface conflict. For example, we have often heard counsel advise a witness, “Don’t worry about this particular issue in your testimony,” without knowing what the witness actually does have to worry about.

Progress made through surface-level preparation alone is transient and highly susceptible to being reversed in the absence of constant reinforcement. Conflict tends to undermine surface-level preparation because it interferes with the perceptual and cognitive skills involved in processing and recalling the information. Distractions or emotional concerns may cause the witness to simply forget the answer due to limited recall of the “correct” response when under pressure. Second, even when the witness recalls the “correct” response, the delivery can unwittingly communicate unaddressed, underlying discomfort or conflict and betray the intended message. In other words, the delivery (through intonation, choice of words, facial expression, body language, posture and eye contact) can sabotage the response (for example, when the mouth says “no” but the head nods yes).

Finally, since rote feeding of responses cannot predict every possible question, it cannot supply every possible answer. The witness may progressively fail to hold up under attack on cross examination because he or she does not know the prescribed response to an unanticipated question. If, in the face of the unexpected, a witness senses that they’ve lost control, it will throw them off track and into a tailspin.

Witness Preparation Level 2 – Subsurface

The surface-level approach thus ignores two powerful sources of potential witness failure:

1. The inability to predict every possible question and thus to model every possible response for the witness.
2. The fact that, in some way that relates to the case or the experience of testifying, the witness is conflicted. Such conflict tends to undermine surface level preparation because it interferes with the perceptual and cognitive skills involved in processing and recalling the information necessary for effective witness performance. In addition to pondering and reviewing legal or technical facts, almost every witness is likewise preoccupied by internal and personal issues. These may pertain to his or her real or imagined vulnerabilities, may or may not be case-related, and may be known or unknown to the trial team. Usually they are *unknown*.

For example, there was “the man who bent over backwards,” a caring, hardworking disaster-claims adjuster with an impeccable professional record who had an extramarital affair during a claim assignment. The handling of that claim later became the issue of a lawsuit. The adjuster’s diligence might be a positive issue under cross, but because of his affair (not the work he had done), he experienced great angst while preparing to testify. The consequences of being exposed threatened to undermine his testimony. It was only by bringing the issue of his affair to light, discussing possible consequences and solutions, and reconciling them in the context of the case that the witness was able to cope with it. Once free of his dark secret, he was prepared to assert affirmative points, focus on his proper handling of the disputed claim, and present himself with dignity. In fact, further dialogue revealed that, in some instances, his on-the-road relationship may have actually benefited the insured because he had offered extra assistance to his coworker paramour (crawling into difficult-to-reach inspection sites, for example), which he would not have done had they not been so close.

The sources of conflict are typically not cognitive, but emotional or personal in origin. Since one's emotional state affects perception and memory as well as overall competence and performance, it is risky to engage in preparing a witness on the surface level until the covert, subsurface-level issues are addressed first and fully. The conflicts must be explored, revealed and resolved before a witness can come to a state of optimal competence and reliable performance in which he or she is fully able to process and handle information.

During typical preparation sessions, witnesses are unlikely to voluntarily bring their personal conflicts and concerns to the surface and reveal them to the trial team, either because they are unaware of the conflicts themselves or because they experience shame, regret, dread of repercussion, or self-recrimination. This is particularly so for expert witnesses who often fancy themselves (or believe others should see them) as invincible. Admitting a problem could shatter that image.

The goal is to prepare a witness to be conflict-free. The term "conflict-free" does not mean "problem-free," in which witnesses would be reassured by simply playing down the challenges to overcome in the testimony. Instead, it means a witness free of unaddressed emotional dread about undisclosed issues. Internal conflict is fueled by anxiety and is then unwittingly disclosed on the stand in a variety of self-defeating behaviors. These include defensive preempting of, or sparring with, the cross-examiner; anticipating questions; interrupting the examiner; becoming antagonistic; misstating known facts; failing to recall memorable facts; or contradicting prior testimony.

Solving Conflict: Important Steps

Being conflict-free is achieved by:

1. Establishing rapport and trust with the witness;
2. Empowering the witness with knowledge about the case, the process, procedure, case progress, and expectations; and
3. Exploring and addressing internal personal fears by providing concrete coping strategies and helping to reframe issues. It is not necessarily a "bad fact" that undermines a witness; rather, it is how the witness views and reacts to the bad fact that determines his or her credibility and durability as a witness. One senior engineer had a habit of jotting down highly provocative and inflammatory comments in the margins of his company's internal memos. In a lawsuit years later, he was terrified those notations would come back to haunt him. The day was won by shifting his focus from the notations to his behavior, and by getting him to acknowledge outright that he had a bad habit of writing "cockamamie" things which were immature, impudent, and intended to get a rise out of his superiors, but which did not relate to the plaintiff's allegations of fraud.
4. Establish rapport and trust. Ask fundamental questions that show concern for witnesses. Who are they outside the context of the case? What are their family histories and backgrounds? Place in birth order? Role in family, role in business, role in the case? How has all of this affected their personal and professional lives? What makes them angry or worried or upset? What is the best and worst outcome they could expect? How do they feel about the possible consequences? What is their prior experience testifying? What from that experience still applies? What's different



now? What, if anything, do they regret regarding this case? How, if at all, can it be remedied? What would they have done differently if they knew then what they know now?

Maximizing contact between the witness and the trial team helps to maintain the established rapport and sends a message to the witness that the trial team is receptive and values their participation. Individuals such as junior or lower level associates and staff who are capable of building rapport with witnesses can act as communications liaisons between witnesses and senior members of the trial team. Such liaisons are commonly more accessible and less threatening. Witnesses are apt to ask them questions or express concerns to them. These contacts can be especially valuable during the pretrial countdown days when what the witness considers important can be superseded by the trial team's priorities.

Empower the witness with knowledge. Even a seasoned professional can be reassured by a review of fundamentals and details of what is expected in an upcoming procedure (whether deposition, hearing or trial). Make sure witnesses are kept up to date regarding the status of the trial and changes that may impact the order and substance of their testimony. The communications liaisons discussed above can assure that witnesses are continually apprised of developments. Address areas of conflict and provide coping strategies. Particularly troublesome witnesses who have difficult dispositions, attitudes, and/or substantive problems can be significantly aided with the help of professionals.

Appropriate professionals to consult include those who specialize in psychology and law, who have an astute understanding of trial tactics as well as the know-how to deftly elicit and manage witness conflict. Psychologists who lack an understanding of trial context and strategy will be of limited value. Explore, through nonjudgmental dialogue, how the witness witnesses reframe issues to alleviate undue stress and resolve internal conflict. Perhaps most importantly, do not supply answers before hearing out the witness. Here are a few specific coping strategies:

Reframe Difficult Issues

From: "I did the wrong thing."

To: "Knowing what I knew at the time, I did my best under the circumstances: I made a reasonable choice and took reasonable action. I did not know and could not have known then what I know now."

Overcome Anticipated Criticism or Exposure

From: "I fear this issue is going to come out. I pray it doesn't. I don't know what to say. I should have done a better job/more/shouldn't have done what I did."

To: "That issue may very well come out. If it does, I can respond with x, y and z. It is not really relevant because it has nothing to do with this case. It is simply intended to make me look bad. Knowing that, I can prepare for it. In any case, I can bring the focus back to my main point."

Modify Unrealistic Expectations

From: "I wish I had read everything, knew what everyone else was going to say or said, and could remember everything so I don't get tripped up and look stupid."



To: “No one can read, know or remember everything. I can reasonably review what’s important, make a plan and be diligent. After that, it’s perfectly fine to ask to see documents to refresh my recollection, to take my time and contemplate questions, and to say I don’t know/remember’ if that is the case. I do not have to be perfect, I just have to be myself and do my best.”

Take Reasonable Control

From: “No one is really looking out for me. The lawyers don’t even know the right questions to ask. I’ll have to straighten them all out.”

To: “I’m part of a relay race. I have my part, no more and no less. My part is a-b-c. If my lawyers choose not to ask for a certain detail, that’s based on their expertise. They probably know something I don’t, so I’d better do my job and let them do theirs. “I’ll just stay cooperative and answer the questions asked as best I can. If the other lawyer asks a poor question or a mistaken assumption, I will simply offer accurate information and not attack the lawyer. I’ll have another chance on redirect to respond if my lawyer thinks it is necessary. If not. I’ll have to trust their judgment. They’re running the show, not me.”

Learn Where to Pick Fights

From: “I’d really like to show up (opposing counsel). He really gets my goat. I’m not going to give him an inch.”

To: “I’d rather win the war than the battle. When I respond cooperatively and make my point, I show real strength instead of showing I have something to be afraid of by playing tug-of-war. If I let go of the rope, my opponent will fall, not me. Otherwise, I’ll be sending a red flag and creating smoke. That hurts me, not them. “Conceding minor points is sometimes appropriate. Otherwise, it will seem like I am difficult and combative, which is unpleasant and not persuasive. What really matters in this case is that the jury understands x, y and z. I can help send that message.”

How Not to Take It Personally

From: “If I don’t blow it on the stand, I’ll be a hero; if I do and we lose, it will all be my fault.”

To: “I know what I know, I’ll prepare well and do my best. My goal is to communicate two points, ‘a’ and ‘b.’ Beyond that, I have no control over what happens. I am only one part of the case. I will let the lawyers and other competent witnesses do their part. I will make a sincere effort. Whatever happens, I’ll be the same person afterward as I was before.”

In sum: To present a witness who is well-prepared, it is vital to reveal and remove conflicts which, like hidden land mines, can cause irreversible damage.

More jury consulting and witness prep resources on A2L Consulting's site:

- [A2L Voted #1 Jury Consulting Firm by the Readers of LegalTimes \[pdf\]](#)
- [3 Ways to Handle a Presentation-Challenged Expert Witness](#)
- [7 Smart Ways for Expert Witnesses to Give Better Testimony](#)
- [Social Media & Jury Consulting](#)
- [Who is a Litigation Consultant?](#)



- A2L Consulting's Trial & Jury Consulting Services

Witness Preparation: The Most Important Part

Ryan H. Flax (Former) Managing Director, Litigation Consulting **Persuadius**



Winning at trial is largely about the juror’s gut reactions to you as an attorney and to your witnesses, as well as their gut reactions to the counterparts on the other side of the courtroom. Trial testimony and videoed deposition testimony are the lenses through which jurors (and the court) will get to know those individuals that know the most about your case. These situations are often the make or break moments during a litigation that either ensures your victory or defeat. So, you absolutely must prepare your witnesses for these situations by educating them on the process, what to expect, how to behave, and the goals of your client.

As litigators responsible for the task of witness preparation, we should all be familiar with the basic rules our deposition witnesses should follow:

1. **Always**, always tell the truth
2. **Always** understand the question before you answer it and say so if you don’t
3. **Never** offer extra information, aka just answer the question asked
4. **Never** guess/speculate – if you don’t know the answer, say so
5. **Always** answer based on what you remember accurately - if you really can not remember, say so
6. **Never** testify about a document without reading it – all of it, take your time
7. **Always** have a strategy
8. **Always** comport yourself with decorum – remember, you’re testifying (on video) in a surrogate courtroom

When I prepare a witness for deposition I explain the things above and give them a routine for answering questions that they MUST adhere to on every question. That routine is: (1) listen carefully to the question asked; (2) identify whether you understand it; (3) formulate the complete answer to that specific question in your head; and (4) take a breath and then say the answer you

just formulated. This accomplishes several things. It forces your witness to take his or her time. It forces the witness to think about each question. And, it creates a pattern for the deposition. All this will help your witness get through the process and should help you not suffer overwhelming damage during the deposition - you can't win a deposition, but you can definitely lose one.

What brought this to mind is the recently-released video footage of Justin Bieber being deposed in relation to a lawsuit brought against him by a paparazzi photographer (apparently, Mr. Bieber's bodyguard roughed up the photographer, allegedly at Mr. Bieber's order). Here's the released video (courtesy of TMZ), which is about six and a half minutes of Mr. Bieber's deposition(s), if you're a litigator, watch it:



To say that this fellow will be an unsympathetic witness at trial seems to be a severe understatement. After watching the video above, I'd put him right up there with [O.J. Simpson](#) and [Alec Baldwin's character in Malice](#) as a bad witness. He oozes arrogance, he's belligerent with the deposing attorney, he's not wearing a suit, his posture is terrible, his hair is ridiculous, he's rude, he's evasive, he's a smart-aleck, and he is overstepping his witness role and actually objected to a question. If the jurors at this trial aren't 12 year old girls, he's going to lose. Worst of all, now that this is public, anyone with a lukewarm legal gripe against this "kid" (he's 20 years old) will be chomping at the bit to sue him.

Justin Bieber is either unteachable or was not properly prepared for this deposition (he might be unteachable). How would I have handled the witness preparation?

First, he should have been educated about what a deposition really is – it's a surrogate for the courtroom and what you do and say during a deposition should portray you as you'd want the court or jury to know you. I doubt Mr. Bieber understood what testifying under oath means, what perjury is, that the video of the deposition could be played in court as testimony or for impeachment purposes. He showed no understanding and less respect for the process and judicial system.

Mr. Bieber was not prepared to keep his cool – he was totally flustered by the mere mention of his on-again-off-again girlfriend Selena Gomez. I'd guess he wasn't ready for the types of questions he was asked in the clip you saw above, but he should have been. It's our duty as counsel to give our witnesses whatever mental/psychological tools they need to do a great job.

Mr. Beiber should have been forced to practice tough deposition questions, should have been educated how to answer questions strategically, and should have been prepared so he didn't look like a fool. Effective witness preparation should have been conducted. Like I said, though, maybe it's him.

Let's take a look at a clip from the deposition of a guy that might be a bit more intelligent than Mr. Beiber. Below we have a few minutes of the deposition Bill Gates gave the Department of Justice when defending Microsoft against antitrust charges:



Was Mr. Gates much better than Mr. Beiber? He may sound smarter, but still looked like a jerk (and will, forever, on video). What Mr. Gates didn't understand, but should have been educated on prior to being deposed, is that **YOU CANNOT WIN A DEPOSITION**. You can't. You can only survive one and mitigate your damage.

To prepare a witness to do just that, survive and mitigate, they must know the eight rules I set out above. Moreover, they must have a strategy for answering deposition questions that serves to end the deposition more quickly rather than draw it out.

What do I mean by this? Well, while Bill thought he was being smart and challenging the deposing attorney on question after question and pointing out ad nauseam why he thought the attorney was doing a bad job deposing him what was he accomplishing? Nothing, but extending his time in the witness chair.

What should Bill's counsel have told him? "Don't try to win this deposition, that's impossible. Just answer the questions you're asked truthfully and specifically. That will speed things along and any arguing or expanding or offering information you do will make this exercise longer and more painful."

Let's see another testimony and decorum failure to the tune of \$10,000 and jail time.



OK, so technically this is not a deposition, but it's entertaining and emphasizes a point. You must treat a videotaped deposition like a court appearance and if you screw around during a court appearance you're going to have a bad day.

Are all celebrities terrible deposition witnesses? Let's take a look at another (Rated R):



Here's another guy that's not prepared for his deposition. This is Dwayne Michael Carter, Jr., better known to consumers of hip hop music as "Li'l Wayne." Here's a guy that needs to be convinced to take this exercise seriously. He shows absolutely no respect for the deposing attorney or the process, and, hence, for the court.

Does Li'l Wayne seem truthful? Does he seem credible? Does he seem like someone you'd, as a potential juror, want to help or see fail?

Li'l Wayne might be a tough witness to help prepare because he doesn't fear much: not the lawyers, not the press, not even jail time (the jail time he received may have even helped his street "cred" and career). So, what do you do to help him get through this experience? Perhaps it's his time that he values, so appeal to his desire to have the deposition be as short as possible and teach him how to listen to and answer only the questions asked, clearly, straightforwardly, and briefly.

Finally, here's an all-time favorite deposition video (Rated R).



Had he been prepared for this video, this "gentleman" would have known this subject would come up and could have been ready to keep his emotions under control. The middle of this tirade would have been a good time for his counsel to reach over and put his hand on him and say, "calm down and just answer the question asked." Even though representing counsel is not supposed to intervene during questioning, the deposing counsel would have probably preferred not to be sworn at by the witness.

Sometimes, when the deposition or court witness to be prepared is familiar to the attorney preparing him, such as a client or expert witness, it can be difficult for the attorney to fully prepare the witness alone. It's often hard for an attorney in such a relationship to give the "tough love" needed. Sometimes, having had to fully imbibe the Kool-Aid for the case, the shortcomings of the witness may be glossed over by counsel. This is where engaging a 3rd party witness preparation consultant can help.

Much of what I know about witness preparation I learned from the great [Dave Malone](#). He was a terrific guy and a terrific help when I prepared my own witnesses for deposition and then trial testimony. Dave was taken too soon and too young and I'll always remember him fondly.

Other Persuadius articles related to witness preparation, depositions and testimony:



- [Witness Preparation: Hit or Myth?](#)
- [How NOT to Go to Court: Handling High Profile Clients](#)
- [The Top 14 Testimony Tips for Litigators and Expert Witnesses](#)
- [6 Tips for Effectively Using Video Depositions at Trial](#)
- [10 Web Videos Our Jury Consultants Say All Litigators Must See](#)
- [8 Trial Technician-Related Tips for Midsized Law Firms](#)
- [The Jodi Arias Trial, A Case Study in Experts, Witness ...or Witless?](#)
- [Like It or Not: Likeability Counts for Credibility in the Courtroom](#)

Practice is a Crucial Piece of the Storytelling Puzzle

by [Ryan H. Flax](#), Esq.(Former) Managing Director, Litigation Consulting [Persuadius](#)



This article is the last in a series of six articles about storytelling and trial preparation. Parts 1-5 are linked at the bottom of this article.

What is a trial attorney supposed to do after he or she has developed a theme and a story plus some graphics to support them visually?

The answer is, **test them**. I encourage you to use mock juries, not to predict the outcome of your trial, but to see what themes and facts resonate with the jurors. Doing so will help you decide which facts and story lines

are worth building your case around. You can test what images and litigation graphics help make your case and which documents really make a difference when you show them to the jurors. Finally, testing with mock juries can help you figure out what type of juror you do and don't want in your actual trial.

If using a mock jury is not in your budget, find some folks at your firm that are far removed from your case and test with them. Administrative assistants, receptionists, family members, paralegals, and junior associates are good for this testing. Enlist the services of local high school students to perform as mock jurors (they'll gain experience and you'll have about the right educational demographic for your jury, but consider how to deal with confidentiality).

A mock trial and testing on your peers are fancy forms of practice in litigation. Practice may not make perfect, but it will make "as good as possible." By the week of your opening statement, you should have tried out your presentation dozens of times. So many times that you can recite it without notes, without looking at your graphics and so that you are speaking and showing in perfect synchronicity. Practice it until you could sing it.

The bottom line is that to win in litigation you usually first need to win the trial. To do this you'll need to convince jurors, who are biologically programmed to respond to stories and used to learning by watching TV and surfing the internet, that your position is the better one. To persuade such an audience, you must communicate on their terms and in their language (to a degree). By framing your case in storylines and traditional themes and by using well-crafted visual support, you will be able to teach and argue from your comfort zone – by lecturing -- but you will provide the jurors what they need to really understand what you're saying and give them a chance to agree with you.

Jurors who understand you are more likely to agree with you, because they feel that their emotionally based opinions are founded in logic and reason.

Although I've strenuously urged you to put a lot of effort into the [persuasion track of trial preparation](#), I'm not suggesting that the other, the law track, should be abandoned or even diminished. You must dot all your "i"s and cross all your "t"s and address every important fact



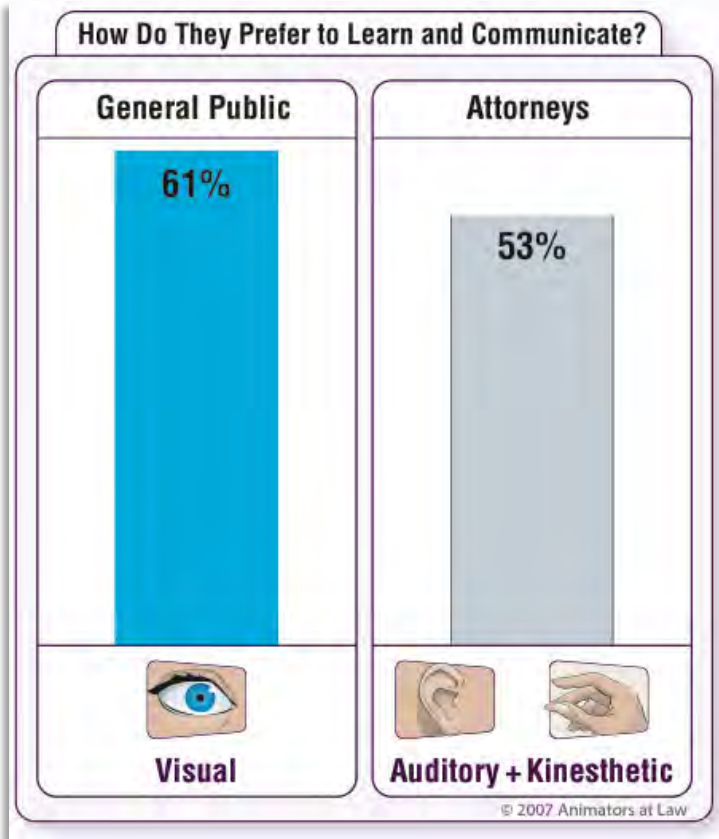
that may become essential to a favorable appellate decision in your case. But, you should split your litigation prep into these two tracks early in the case and rigorously develop both for a winning litigation strategy.

Other articles in this series and resources related to mock trials, storytelling and trial preparation on A2L Consulting's site:

- [Part 1: Planning For Courtroom Persuasion? Use a Two-Track Trial Strategy](#)
- [Part 2: Storytelling at Trial - Will Your Story Be Used?](#)
- [Part 3: Storytelling Proven to be Scientifically More Persuasive](#)
- [Part 4: 5 Essential Elements of Storytelling and Persuasion](#)
- [Part 5: Why Trial Graphics are an Essential Persuasion Tool for Litigators](#)
- [Part 6: Practice is a Crucial Piece of the Storytelling Puzzle](#)
- [10 Things Every Mock Jury Ever Has Said](#)
- [11 Problems with Mock Trials and How to Avoid Them](#)
- [12 Astute Tips for Meaningful Mock Trials](#)
- [6 Good Reasons to Conduct a Mock Trial](#)
- [Mock Trials: Do They Work? Are They Valuable?](#)
- [The 13 Biggest Reasons to Avoid Last-Minute Trial Preparation](#)
- [The Magic of a 30:1 Presentation Preparation Ratio](#)
- [11 Surprising Areas Where We Are Using Mock Exercises and Testing](#)
- [Accepting Litigation Consulting is the New Hurdle for Litigators](#)

6 Studies That Support Litigation Graphics in Courtroom Presentations

by [Ken Lopez](#), Founder/CEO [Persuadius](#)



When we started A2L in 1995, our focus was on educating the legal market about the value of using visual aids in courtroom presentations. It may seem hard to believe now, but twenty years ago, most people did not believe visual aids would help much with a jury. As one partner famously said to me in a *Paper Chase*-esque voice, "I went to Harvard and Yale, I'm pretty sure people understand me when I speak."

Since then, the vast majority of litigators have come to realize that the litigation graphics used in courtroom presentations are not used to make up for poor communications. Rather, these visual aids, in the form of demonstrative evidence, trial exhibits, trial boards, scale models, courtroom animation and

trial director generated visuals are used to increase the likelihood of winning cases.

Visual aids help win cases for many reasons including 1) nearly two-thirds of jurors (and many judges) are visual learners who process visual information far better than information delivered orally; 2) people forget most of what they hear; 3) visual aids simplify cases and speed them up; 4) visual aids are known to increase persuasion.

Below are 6 studies and articles that support the science behind using litigation graphics and visual aids of all types in courtroom presentations.

1. [The Wechsler Memory Scale \(1946\)](#): First developed in 1946, this standardized measure of memory has come to be used to measure everything from the progression of Alzheimer's to juror memory and retention. It has been used to authoritatively show that **people quickly forget about two-thirds of what they hear**. Many studies draw similar conclusions.
2. [Enhancing Juror Comprehension and Memory Retention \(1989\) \[pdf\]](#): "[t]rial attorneys unknowingly present arguments and issues that exceed jurors' capacity to understand. . .



- . being confused or feeling intellectually inferior is psychologically uncomfortable, and jurors may respond with resentment and antagonism toward the presenting attorney. . .
. **Present as much of your case as possible using visual aids."**
3. **The Persuasive Effect of Graphics in Computer-Mediated Communication (1991): Those exposed to graphics are more persuaded to act than those who are not.** The test constructed here was whether graphics (either static or dynamic) made someone more inclined to pledge a donation to their alma matter than someone who was exposed to only text.
 4. **A2L's Communication Style Study (2003):** Practicing attorneys and non-lawyers prefer to learn and communicate differently. A majority of non-lawyers prefer visual communications. A majority of attorneys prefer non-visual communications. Thus, **litigators must bridge this communication gap with visual courtroom presentations.**
 5. **Visual Evidence (2010) [pdf]: Visual aids in courtroom presentations enhance juror attention and recall** and improve recall of key events. Charts and diagrams improve comprehension of quantitative information, and animation improves understanding of a dynamic process.
 6. **Broda-Bahm Study (2011):** We referenced this study in a previous article. It found that **an immersive (as opposed to an occasional or absent) use of graphics during courtroom presentations yielded the best results.**

One cautionary note about vaguely cited studies and especially the often cited 1992 Weiss-McGrath Report courtesy of [Pepper Hedden, a detail-oriented reference librarian in the New York County District Attorney's Office \[pdf pp 27-30\]](#). The results of the Weiss-McGrath study are impressive - a 650% increase in juror retention when oral and visual evidence are combined. Many in the courtroom presentations business have cited this study for decades. Google returns millions of results for it.

However, it turns out that the study does not actually exist. Rather, in 1992 an article was published in the ABA Journal which cited this study. Weiss and McGrath did write an article in 1963 that mentioned similar results, but they were quoting an 1856 internal corporate presentation and not a study at all. The 1856 reference does in fact note that a study was done, but it is not cited.

Please post links to additional studies and references in the comments section below. Your email address is never shown, published or used, and you do not need to enter your full name.

Other Persuadius resources related to courtroom presentations:

- [Download: The BIG Litigation Interactive E-Book](#)
- [Directory of Courtroom Presentation Examples from A2L](#)
- [Courtroom Presentations, Tips & Whitepapers](#)
- [7 Ways to Draft a Better Opening](#)
- [Learn more about A2L's Litigation Graphics consulting services](#)

Don't Be the 2% - 6 Ways to Encourage Settlement with Trial Prep

Laurie R. Kuslansky, Ph.D. Former Managing Director, Litigation Consulting
Persuadius



While we have seen a decline in the number of cases that actually get tried, as opposed to the ones that get dismissed or settled, it is a small fraction. What does it take to be in that roughly 2% of cases that make it to trial?

1. An unreasonable party or two, whether because it is personal, unrealistic expectations of a client unwilling to listen to counsel's opinion, a desire to avoid finality without the ability to appeal, and the like.
2. Parties play chicken and wait too long to initiate a settlement dialogue.
3. Parties are too far apart in settlement discussions.
4. Clients fear the impression a settlement may make for the future.

If you don't want to be in that 2% and you want to encourage settlement, what are your options to avoid it successfully?

There are various choices one can make before reaching the courthouse steps to avoid getting into the courtroom. What we find is that until trial, "preparation" in earnest and the investment in it are not as significant as they may warrant if avoiding the courtroom is the better option. For example, the better your client comes out of discovery, the better armed you will be for settlement. What can you do to emerge with the upper hand during the trial preparation phase?

1. **Spend more time preparing and more time practicing with the witnesses** who will be deposed. Instead of spending just the few days prior, reviewing stacks of documents and cramming for the "test," consider earlier preparation to address the witness' concerns, addressing their bad habits and anxiety so that the final preparation is more successful.
2. **Videotape practice sessions** and have someone unfamiliar to the witness, but familiar with the opponent's case, handle the mock deposition questioning so that you can see the witness' reactions under fire and preserve your relationship with the witness.
3. **Consider early mock-jury testing** of the case in a *de minimis* fashion, at least, in order to test the issues that would matter if it got to trial so you can approach discovery more strategically. In addition, if your client over-estimates the power of their case, a mock exercise can be a powerful reality check that helps you to manage them and their expectations.

4. **Early research** can also arm counsel, while there's still time, to identify the types of experts that would be sought by jurors, the testimony that would matter, and vice versa. Sometimes, an area of expert testimony that can fill a gaping hole isn't identified until it is too late to add to the line-up of witnesses.
5. **Consider testing how mock jurors react to key witnesses** and their expected testimony to learn where they fall short, opportunities to exploit opposing witnesses' weaknesses and to shore up those in your witnesses.
6. Instead of having a paralegal or associate who isn't trained in graphics prepare what you submit to the court for key hearings or settlement, **hire a litigation graphics professional** to put your best foot forward to gain an early advantage by making your positions clear and more compelling.

In hindsight, the cost of these options pales in contrast to the cost of trial. In addition, if you do conduct proper pretrial mock-jury research and the results are favorable, you can select the helpful data to share with a mediator to support your position with objective information rather than just optimism, opinion or paid advocacy. A common challenge from your opponent may be that you underrepresented their position at the research, so it would be wise to make sure to do a robust presentation for them, record it, and consider providing a copy of the presentation to the mediator so you can back up the fact that you did a solid test. It will also send your opponent the message that you are and plan to be very prepared for trial and will be strategically armed to the gills if it gets there. The jury consultant can, if you wish, also provide a signed affidavit with the information gleaned from research with the appropriate information (without disclosing information you wish to keep private and confidential).

Check the rules that govern the discoverability of information from mock-jury research and witness preparation from an outside trial consultant regarding attorney work product and attorney-client privilege to guide your decisions, and to be clear to the trial consultant what the appropriate procedures must be in order to protect the confidentiality of their work for you. It is typically considered core work product if handled properly. See the decision of the Third U.S. Circuit Court of Appeals which ruled that the attorney work product privilege protects trial consultants' work from discovery based on *In re Cendant Corp. Securities Litigation*, No. 02-4386 <http://caselaw.findlaw.com/us-3rd-circuit/1330648.html>.

After trial, the party that lost would likely have a different opinion about settling and avoiding being in the 2% that went to trial, ... but lost.

Other articles related to settlement, jury consulting, mock exercises and trial preparation from Persuadius:

- [5 Settlement Scenarios Where Litigation Graphics Create Leverage](#)
- [6 Triggers That Prompt a Call to Your Litigation Consultant](#)
- [6 Secrets of the Jury Consulting Business You Should Know](#)
- [10 Things Every Mock Jury Ever Has Said](#)
- [12 Astute Tips for Meaningful Mock Trials](#)
- [11 Problems with Mock Trials and How to Avoid Them](#)
- [7 Questions You Must Ask Your Mock Jury About Litigation Graphics](#)
- [6 Good Reasons to Conduct a Mock Trial](#)



- [7 Reasons In-House Counsel Should Want a Mock Trial](#)
- [11 Surprising Areas Where We Are Using Mock Exercises and Testing](#)

7 Questions Will Save You Money with Litigation Graphics Consultants

by Ken Lopez Founder/CEO Persuadius

I have been running an organization that offers **litigation graphics consulting** as one of its services for nearly 20 years. I've worked with both large and small law firms, I have worked with clients in many countries, and I have worked on large and small cases.



After all that experience, spanning thousands of cases, I can split up the clients who engage Persuadius for litigation graphics consulting work into two camps:

- "Do This" Clients
- "Help Us" Clients

Some clients come to A2L and say, this case is complicated, we've been working on it for years,

and we're just too close to it to be able to explain it in a way that everyday people can understand. These are the "help us" clients.

Some clients come to us and say, "I litigate four patent cases a year, and I know what works. Can you make something like . . ." or "we need a **litigation animation** that shows exactly what our environmental expert says." These are the "do this" style clients.

Both types of clients are warmly welcomed at A2L and at other litigation graphics consulting firms. However, there is a real risk of wasting time and money when litigation graphics consultants are trying to "help" advise a "do this" client and vice versa. Thus, it is very valuable when a litigator knows what type of client they are before they engage litigation graphics consultants.

There are many firms in the litigation graphics business, however the truly great litigation graphics consulting firms are led by former litigators with meaningful and significant trial experience. You can count the number of these firms worldwide on one hand, and I really only know of A2L and our good friends at Cogent Legal. Firms like ours are capable of helping to develop themes, helping to craft opening statements as well as helping to design a presentation that will teach and persuade a jury in a complex case.

Our firm has personnel to support both the "help us" and "do this" clients. Not surprisingly, they come at different price points, though. Thus, in the beginning of an engagement, our litigation graphics consultants are trained to assess what type of client they are going to be supporting.



Then, we staff accordingly. This works well unless the trial team shifts from "do this" to "help us" in the middle of case preparation. That's not uncommon.

I think it is possible for a litigator or trial team to self-assess and communicate their preferred style to their litigation graphics firm of choice. Doing so will save time and money since the litigation graphics firm can staff the project correctly from the beginning.

If there are opposing styles on a trial team, conducting a self-assessment of your team's style is critical. When there are opposing styles, it presents a challenge to a litigation graphics firm that they are not always in the best position to solve.

To self-assess and decide whether your team is taking a "do this" or "help us" approach to your upcoming trial (or mock trial or ADR event), ask yourselves these seven questions and keep track of your score out of seven:

- Does our trial team know exactly what the judge and/or jury will understand about our case and what they won't. If no, give yourself one point.
- Would most people consider our case complicated? If yes, give yourself one point.
- Has our trial team sufficiently prepped our experts so that just about anyone can understand them and be persuaded by them? If no, give yourself one point.
- Has our trial team developed a meaningful and emotional story, narrative and theme that the fact-finder(s) will relate to? If no, give yourself one point.
- Does our team have access to most of the visuals we plan to use for the case already from our experts and clients? If no, give yourself one point.
- Has our trial team simplified our case to the point where one could explain it convincingly to a driver in a short cab ride? If no, give yourself one point.
- Could our lead litigator explain why we deserve to win to my Mom in five minutes or less? If no, give yourself one point.

If you have scored three points or higher, your team would likely benefit from a consultative "help us" approach to developing litigation graphics. If you scored a one or a two, you can safely tell your litigation graphics consultants that you know what you need, and you just need them to listen and get it done.

If you are in that three points and higher consultative "help us" category, remember that you have very few real expert litigation graphics firms that you could rely on to offer science-proven advice (as opposed to the gut instinct of an artist or project manager). If you are serious about the consultative approach and are passionate about winning, I recommend using a firm that will offer a former litigator as your lead consultant. It is an amazing experience to be supported by someone at this level, and it saves time, money and energy.

Here are some articles related to litigation graphics, trial graphics and demonstrative evidence from A2L that you may also find helpful:

- [21 Reasons a Litigator Is Your Best Litigation Graphics Consultant](#)

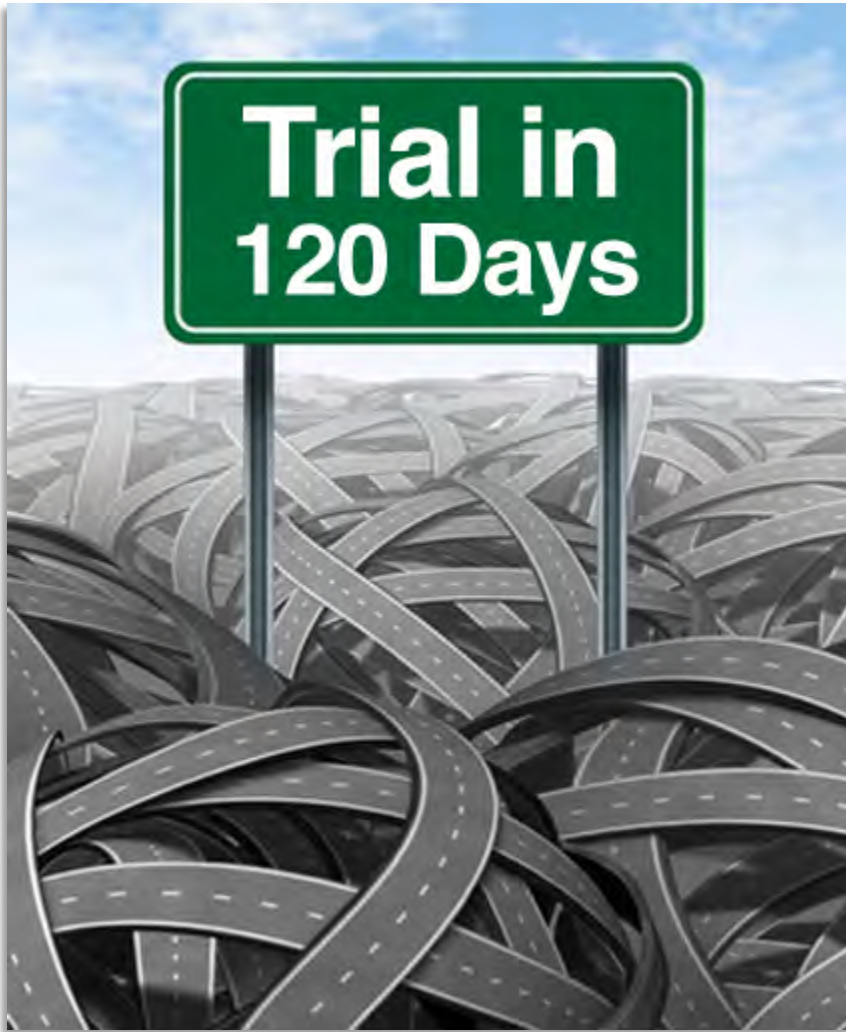


- [16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint](#)
- [The 14 Most Preventable Trial Preparation Mistakes](#)
- [12 Alternative Fee Arrangements We Use and You Could Too](#)
- [6 Triggers That Prompt a Call to Your Litigation Consultant](#)
- [11 Things Your Colleagues Pay Litigation Consultants to Do](#)
- [16 Litigation Graphics Lessons for Mid-Sized Law Firms](#)
- [DOWNLOAD: Using & Creating Litigation Graphics to Persuade](#)
- [WATCH: Storytelling as a Persuasion Tool](#)
- [WATCH: PowerPoint Litigation Graphics - Winning by Design](#)
- [Accepting Litigation Consulting is the New Hurdle for Litigators](#)
- [10 Ways Timely Payment Helps You Save Money On Litigation Consulting](#)

10 Key Steps After: "I've Got a Case I Might Need Help With"

by [Ken Lopez](#) Founder & CEO [Persuadius](#)

"I've got a case I might need some help with." That's how it usually starts when someone, usually a first or second chair litigator, reaches out to me at Persuadius.



What happens next is not something that I have discussed publicly a great deal. But there's no reason not to. It actually represents a well-honed process that we have developed over the last 18 years that helps trial teams try cases more effectively. Our process is unique and special.

I want to share an overview of that process, because when you understand it, you can appreciate how we, as jury & trial consultants and as trial graphics experts, help many of the top trial lawyers in the nation prepare for trial.

Step 1: We request as many documents as will be helpful and relevant –

pleadings, briefs (both sides), outlines, proof charts, key pieces of evidence, bad docs -- anything that has been developed by the trial team that will be useful in proving their case.

Step 2: We conduct an initial brainstorming session, sometimes using [mind-mapping tools](#). Our goal is to understand the case and appreciate its basic strengths and weaknesses. This helps us craft a recommendation about how we should use [mock trials](#) and [demonstrative evidence](#) in our trial preparation.

Step 3: We meet with the trial team to hear the case from the team's perspective. Very often we learn at this meeting that certain points warrant more emphasis than others in the trial presentation. We also find out what the key strengths and weakness of our client's case may be, as opposed to what they may have said in their briefs. Litigators will often tell us that this step



was critical to their success as it was the first time they had to try to convince someone of the merits of the case, and we helped them do this much earlier than they would have naturally done.

Step 4: We return to our office and form a team generally comprising between three and 10 people. The team will be made up of some combination of Ph.D. Former jury consultants, former litigators, information designers, trial technologists, and others. Then we organize a formal brainstorming session that includes members of this team as well as others from A2L who have no familiarity with the case. At this point, we present quickly both sides of the case and highlight key strengths and weaknesses. From this effort we gather common-sense reactions and learn more about the emotional triggers in the case.

Step 5: We brainstorm an initial trial graphics list and start to make decisions about what might work and what might not. We often share this list with counsel at this early stage to keep costs down and to get their feedback. Given the attorneys' extensive familiarity with the case, our initial exhibit list will also prompt them to add other litigation graphics, possibly to delete some graphics, and to come up with other creative ideas at this point.

Step 6: We share our thoughts with the team and get some feedback on which **demonstrative evidence** and **litigation graphics** to move forward with.

Step 7: We prepare the initial litigation graphics as a sort of test run. We run them by the trial team to make sure that we are on the right track and haven't missed anything important. At this stage, we are usually preparing the basic litigation graphics like **litigation timelines**, **players charts**, **document call-outs**, **checklist exhibits**, etc, but we might also produce **physical scale models** or **courtroom animations**.

Step 8: We test our exhibits in a mock setting of some sort. This can be a **full mock trial** with "jurors," or it can be a less complicated version like our **Micro-Mock format**.

Step 9: We refine and retest our approach and our litigation graphics based in part on the results of the mock event.

Step 10: We sort out and execute our courtroom technology plan. Pretty soon after this step, we will be ready for trial.

So, as you can see, what seems like a complex process from the outside actually follows a well-defined set of steps designed to produce the best possible result.

Sometimes we execute this process over the course of two years. Sometimes we do a more accelerated version of this process in two weeks. When executed with a great trial team, this process will produce order out of chaos and help litigators **tell a simple and persuasive trial story** - proof of a job well done.



4 Tips for Using Trial Graphics in Motions and Briefs

By [Theresa Villanueva](#)

Most people, when they think of [trial graphics](#), focus on exhibits to be used at trial. But graphics can also be used in motions and briefs presented to judges, even if jurors will never see them. After all, if you are using graphics to make your argument or tell your story at trial, why not use them at an earlier stage to make your argument convincingly in your brief?

In addition, a lawyer who introduces graphics early in a proceeding can lay the groundwork for later use at trial or in another aspect of the case. This can also give the lawyer a sense of how receptive the judge is to the use of trial graphics in the case.

Here are some tips for using graphics in your brief:

First, keep it simple. The judge is, after all, reading a document, and the images need to be easily incorporated into the document. Motion pictures and similar animations obviously won't work well -- unless of course you are submitting an [e-brief](#).

Second, consider the amount of space you have to work with. The image needs to fit into the space appropriately.

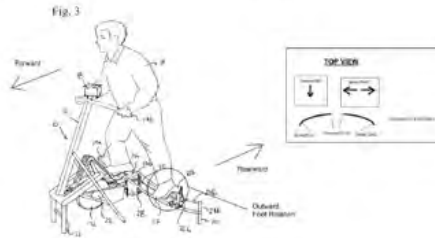
Third, using color is OK; just because a trial graphic is embedded in a court document doesn't mean it has to be in black and white.

Fourth, using [trial graphics](#) to simplify a complex aspect of the case is one of the best possible uses.

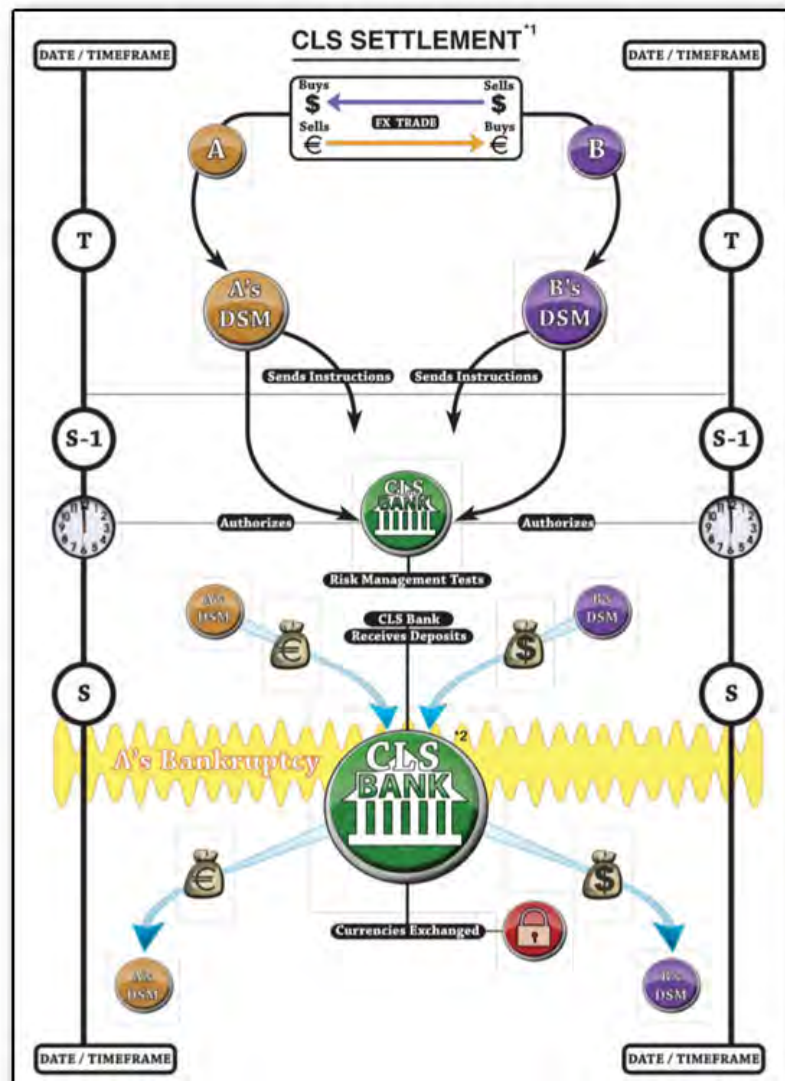
Trial graphics can effectively be used to illuminate motions in a number of areas of law, including bankruptcy, patent litigation, and litigation involving highly technical areas of scientific research.

In the first example below, the issue regarding the patent was the curvature of the rails in the equipment. As a portion of the case itself involved graphics in the form of the geometric curve, the curvature was hard to explain verbally but was much easier to delineate in a sketch.

curvature depicted in the patent is only a “preferred embodiment.” However, the Defendant does not wish to limit the invention to a *preferred* embodiment, but rather to the *claimed* embodiment. Rearward curvature is included in the claims, and the question is, “how should the term be constructed?” Should it be given the meaning set forth in the specification, or should it read on any curvature even if the curvature contradicts the express language of the disclosure and prosecution history? The patent shows one specific curvature:

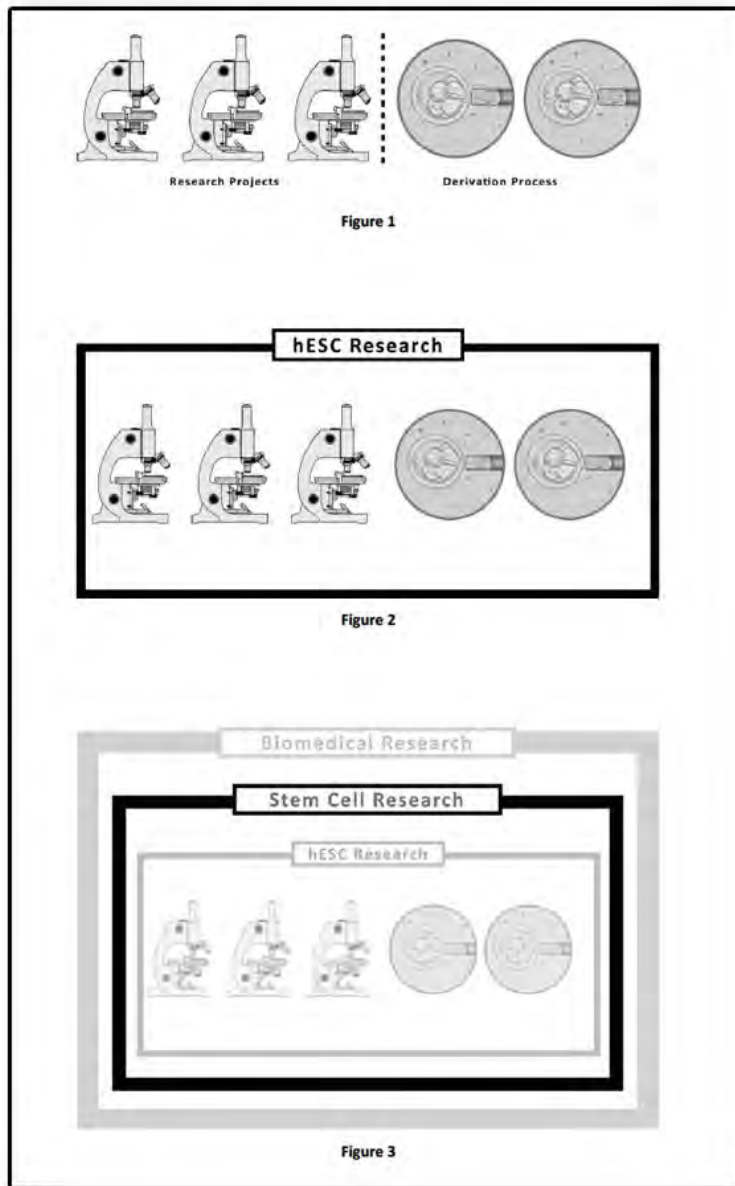


Second, in a bankruptcy matter, a law firm needed to explain the Continuous Linked Settlement (CLS) system that was carried out by CLS Bank to provide settlement services. The CLS settlement process is very difficult to explain, so we developed a series of graphics for use in a brief that explained the settlement and clearing process.



Finally, in a pro bono assignment that we undertook involving the interpretation of a prohibition on the use of federal funds for stem-cell research, a key issue emerged regarding the definition of the term “research” in an amendment passed by Congress.

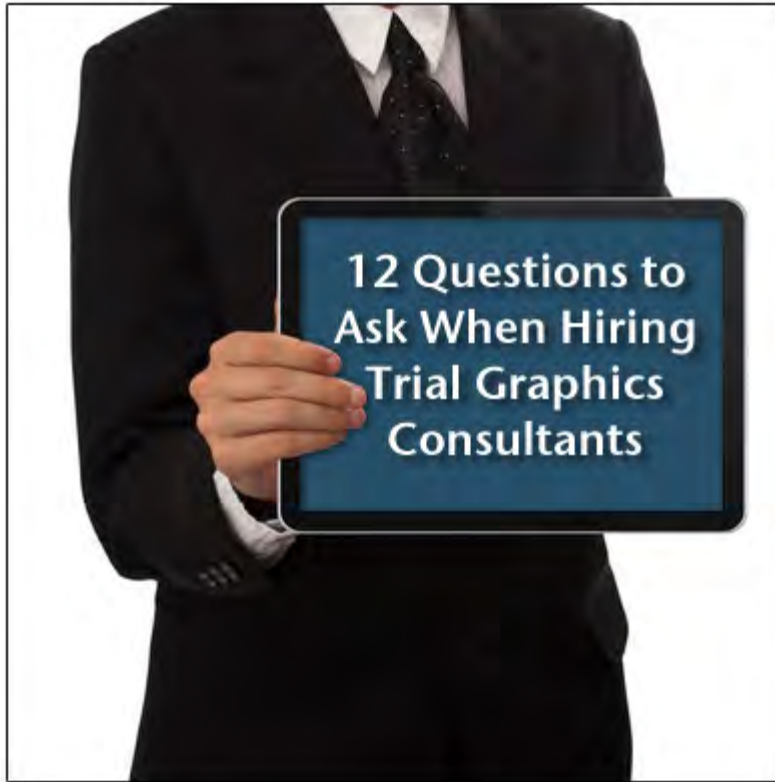
Through a series of graphics that were incorporated in a memorandum in opposition to a motion for summary judgment, we illustrated our client’s position that the term “research” can be conceptualized in many different ways and that the opposing brief, in selecting just one of those interpretations, was interpreting the term arbitrarily.



In Figure 1, for example, we showed that stem-cell research can be defined as separate from the derivation of embryonic stem cells and is not identical with the derivation process. In Figure 2, we showed that the opposing brief was trying to group stem-cell research and the derivation process together, a conclusion that was not justified by the statute. And in Figure 3, we showed that it is even possible to interpret the term “research” to encompass an entire area of inquiry, thus preventing federal funding of a whole type of research in a way that Congress could not have intended.

12 Questions to Ask When Hiring a Trial Graphics Consultant

by **Ken Lopez** Founder/CEO **Persuadius**



The choice of a trial graphics firm is one of the most important decisions that a trial lawyer can make. Since experts widely agree that about two-thirds of jurors and many judges prefer to learn visually, it can literally make the difference between winning and losing your case. However, many lawyers still use the wrong approach to the selection of a trial graphics consultant.

For example, they may choose a provider based on familiarity (“I know someone who does graphics . . .”), price (“the client has a tight budget . . .”), or proximity (“they’re right around the corner . . .”).

There are better ways to choose a consultant. Think of hiring a trial graphics provider as similar to the hiring of an expert witness. If you are hiring an expert witness, you are delegating a portion of the case to someone who has specialized knowledge and experience that you may not.

You would hire an electrical engineering expert witness to discuss the workings of a patented device. Similarly, you should hire a trial graphics provider, who is an expert in the field of information design, to create effective trial graphics for your case.

Here are 12 questions that you should ask any trial graphics provider that you are considering. The answers to these questions will, in all probability, lead you to the right decision.

1. **What kind of experience does the trial graphics consultant have in providing trial graphics consulting for cases like yours?** (i.e. Can you show me examples? Cite case names? Provide litigator references?)
2. **Since the attorneys will be working with the provider on a daily or hourly basis, how easy will the trial graphics provider’s employees be to work with?** (i.e. How do you feel about working weekends? How do I get in touch with you after hours? Does the

- provider's team have their mobile phone number on their business card?)
3. **How responsive will the trial graphics provider be to unexpected developments in the case that may require quick turn-around time?** (i.e. How have they rapidly scaled a project team? Can you provide specific examples?)
 4. **Is the trial graphics provider ready to work long hours at night or on weekends to help the attorneys?** (i.e. Tell me of three instances where you have had to do this? Who can I call to verify these events?)
 5. **How familiar are the trial graphics provider's employees with the concepts behind your case and with the basics of courtroom procedure and evidence?** (i.e. Some firms are run by lawyers and Ph.Ds while others are run by high school grads or computer scientists. Choose the right provider for your case.)
 6. **Is the trial graphics provider able to suggest creative visual approaches to your case rather than merely accepting your initial thoughts and putting those into practice?** (i.e. Will the provider be a true partner in your trial effort or merely an "order-taker"? Can you provide references who can speak to this?)
 7. **Who will lead the project on the trial graphics consultant's team?** (i.e. Will I have more than one point of contact to deal with? How many projects has the project lead managed previously? How will the provider update our team on critical path requirements, key deadlines and issues that could put timing in jeopardy?)
 8. **Will the trial graphics provider be honest enough to be able to step back and provide an outside perspective on your case and its strengths and weaknesses?** (i.e. What is the provider's value-add? How might the provider identify potential additional case themes? Are attorneys involved in the creative process throughout the project lifecycle?)
 9. **Is the trial graphics provider able to discuss the cost of a project from the outset as well as the factors that may increase or decrease that cost as time goes on?** (i.e. Will the firm consider a fixed price arrangement? If not, why not? Remember, [if] they provide these services all the time, they should be experienced enough to accurately estimate average costs).
 10. **Will the trial graphics consultant keep you up to date on changes in the scope of the project that may affect the budget?** (i.e. Can they talk comfortably about money? Do they know how to keep you out of hot-water with your client?)
 11. **How long has the firm provided trial graphics services?** (i.e. Are they an overseas e-discovery provider masquerading as a trial graphics consulting firm? Will your client's confidential information be sent to India?)
 12. **Are the references the trial graphics consultant provides - like you?** (i.e. If the case involves billions of dollars of toxic torts, is the trial graphics consultant providing references to high-profile but low-dollar disputes or vice versa?)

Making Good Use of Trial Director & Demonstratives in an Arbitration

by **Ken Lopez** Founder/CEO **Persuadius**



TrialDirector, a trial presentation software package produced by InData, is an indispensable aid to the presentation of electronic and other evidence at trial. There is a reason why this product has claimed the majority of the market share for trial presentation software for more than 10 years: It can actually make it interesting for a jury or other fact-finder to listen to a witness testify about corporate balance sheets, long-ago emails, and other documents that can be fatally boring and lose the attention of the fact-

finder.

At Persuadius, we have been using TrialDirector to support our presentations and to help our clients win cases for more than a decade. The combination of this software and a well-trained “hot seat operator” makes presentations interesting and sprightly. We generally pair TrialDirector with PowerPoint, other specialty software, specially constructed scale models, and the occasional printed large-format foam core trial board to put together a full trial presentation. We use TrialDirector for more than half the cases we support.

For example, in the case of *Railroad Development Corporation v. Republic of Guatemala*, we worked with the Railroad Development Corporation and with the international law firm of Greenberg Traurig to make an arbitration case at the International Centre for Settlement of Investment Disputes, the leading international arbitration institution devoted to investor-State dispute settlement. This was a two-week arbitration.





The video here shows how closely integrated the witness's testimony is with the document that he is describing (an excellent use of [TrialDirector](#)), as well as the use of a carefully designed PowerPoint to show the status of the Guatemalan railroad at issue and the work that was done to improve that railroad. Using Trial Director, our hot seat operator brings up documents in real time and highlights them in color to point out the key aspects that we want to emphasize.

The video also briefly shows part of the opposing side's low-tech presentation (begins at 5:15), which is based on "sticky notes" and a PowerPoint template that is not tailored to the case at hand. Our presentation is much more likely to capture the attention of the fact finders in what otherwise might be seen as a dry-as-dust case.

The basic point is that all cases benefit from the thoughtful presentation of evidence. The more haphazard the presentation, the less credible the presenter will be. Our TrialDirector operators are specifically trained in the use of that powerful software – but the key to success for a trial technician is not just the software savvy but also the ability to work on the fly, to suggest creative ways of presenting evidence, and to work long hours for weeks at a time.

Below are some other resources about TrialDirector and Trial Technicians on our site:

- [Trial Director Related E-Book: 20 Questions to Ask Before Engaging a Trial Technician](#)
- [TrialDirector Certified Trial Technicians: Request Pricing or Availability](#)
- [Trial Technicians: A2L Articles Discussing Trial Technicians and Trial Director Generally](#)
- [Using TrialDirector and Trial Technicians: Why We Know Technology Won't Make You Look Slick](#)
- [Trial Technicians: What You Must Know Before Using One](#)

Trial technicians using [TrialDirector](#) are normally responsible for the following at A2L:

- creating a trial exhibit and document database before trial starts;
- making deposition clips and syncing them with a transcript;
- helping the litigation team to prepare witnesses to build their comfort with an electronic presentation;
- setting up a war room and electronic courtroom with trial presentation technology;
- helping to finalize the case-in-chief and demonstrative evidence presentations;
- running the trial presentation technology in the courtroom so any document is accessible instantly;
- creating on-the-fly demonstrative evidence to be used with a witness on cross examination;
- running the entire trial presentation using Trial Director;

Some additional trial technology, trial graphics and trial technician articles that you may find useful include:

- [The iPad Friendly Courtroom - The View of Daniel Carey, a Seasoned Trial Technician](#)



- [A2L's Trial Technicians and Trial Technology - Main Page](#)
- [A2L Pioneers Fixed Price Contracts for Trial Technicians \(as Animators at Law\)](#)
- [More Information About Trial Director in the Courtroom](#)
- [5 Ways to Research Your Judge's Likes and Dislikes](#)



Hyperlinking Briefs: Be More Persuasive Using The iPad

Ryan H. Flax, (Former) Managing Director, Litigation Consulting

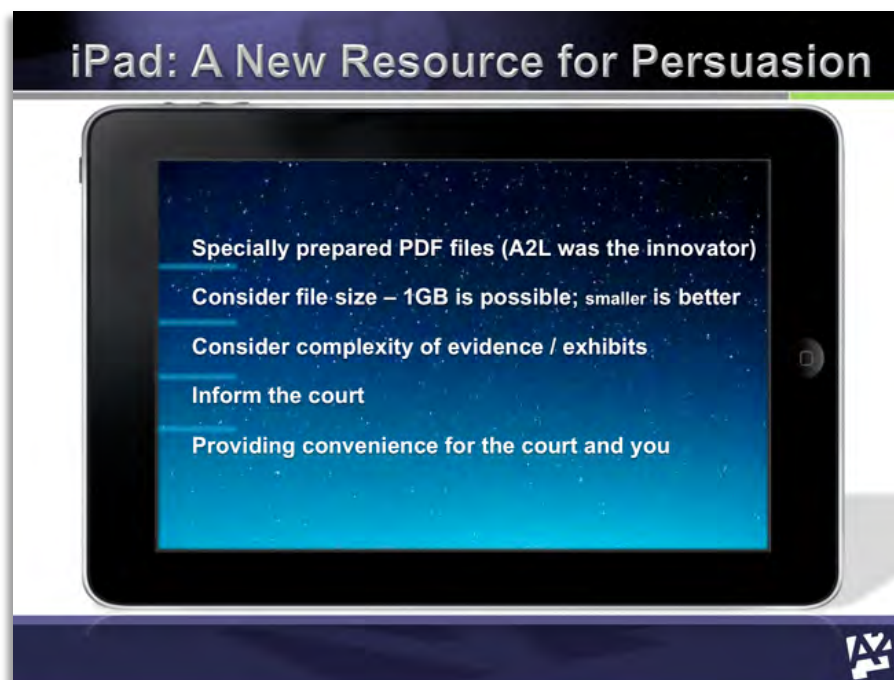


I recently participated in a CLE presentation to the chief appellate counsels of the Attorney General offices of each state in the U.S. (and a few U.S. territories) and got a big surprise.

I was there to discuss the virtues of **hyperlinking briefs (aka e-briefing)**, a subject well covered by **other A2L blog posts**, but specifically focusing on designing for the iPad (and other tablets). My co-panelist preceding me in presenting actually called several judges on

the phone live to ask them what technology they used when reading briefs. To my astonishment, **every one of them** uses an iPad to read briefs!

I knew it was common, but I had no idea it was THAT common. What a segue to my talk – I couldn't have planned it better! Suddenly, without me having to even try, every lawyer in the room was convinced of the importance of what I was about to say.



My main points were that hyperlinked briefs/e-briefs (some even call them ibriefs) are a super persuasion tool and are a “simple” step beyond the typically court-required electronic filing for briefs and that it’s possible to design an e-brief to be specifically compatible with iPad (and other tablets) use. Doing so provides a streamlined and convenient way for you to present your arguments to the court and also allows your writing style to shine through because the reader need not put your brief down to peruse the evidence and law you’ve cited.

It’s also possible to style your writing and brief presentation to be designed with an electronic-media-reading audience in mind. Attorney Robert B. Dubose [commented on this subject \[PDF\]](#), "The most important lesson . . . is that screen readers usually do not read thoroughly. . . [A]most none of the readers read all of the words on the screen. When words are located toward the end of a paragraph, further down the page, or further to the right, they are less likely to be read."



Beyond being a terrific convenience for the court, having hyperlinked e-briefs prepared is a major convenience for you as a litigator. Imagine you’re in trial or a hearing and the subject matter of your hyperlinked brief becomes a contentious situation, e.g., you’ve filed a motion to preclude the opposing expert from straying from his report and he’s doing just that on the stand. Now you can object and approach the bench with your iPad loaded with your motion that is hyperlinked to the expert’s report, which is also hyperlinked to its own exhibits. Your objection will stand a far better chance of being sustained, and quickly, if you can show the judge exactly what the expert did and did not say in his report (instantly).



The bottom line is: because the courts' usage of tablets is so common, if you're not filing iPad-focused hyperlinked briefs, you're leaving a persuasive tool in the shed. You can find a sample of such an e-brief here <http://www.a2lc.com/download-sample-ebrief/>

Materials Related to Hyperlinking Briefs on A2L Consulting's Site:

- [How to hyperlink a brief?](#)
- [How can I learn more about A2L's ebriefing services?](#)
- [Who produced one of the first iPad compatible hyperlinked briefs?](#)
- [What is new with ebriefs?](#)

6 Tips for Effectively Using Video Depositions at Trial

by [Ken Lopez](#) Founder/CEO [Persuadius](#)



The old-fashioned deposition, with the court reporter recording every word and producing a written transcript, is giving way to the video deposition, which permits a jury and judge to actually see the witness and get a feeling for his or her style and credibility that can't be obtained by looking at a printed page. In addition, the witness's body language, which was completely opaque in a written deposition, is now available to the jury.

Video depositions are now used in most large trials – and as much as the rules of evidence will allow, they are used both in direct testimony and on cross-examination. As a legal employment website notes, [“With the prevalence of multimedia technology, video depositions are now preferred over simple transcript.”](#)

We polled our [six national trial technicians at Persuadius](#) with more than 500 courtroom appearances between them for their tips on using video depositions at trial and using [TrialDirector](#) most effectively at trial.

Here are six good tips to follow:

1. **PREPARE DEPO CLIPS EARLY:** Daniel Carey, our lead “hot seat” trial technician, suggests that it’s always important to leave a lot of lead time for preparation, if there’s some possibility that an opposing witness will say something at trial that contradicts his or her deposition testimony. Possible impeachment clips need to be created in advance, then reviewed and saved in such a way that they are able to be pulled up on the fly in the rare occasion that they are actually used in court -- usually with a witness that wasn't prepped to the best of opposing counsel's abilities.
2. **KEEP DEPO CLIPS SHORT:** Keep deposition videos short and sweet. You run the risk of losing jurors if they are too lengthy. This especially holds true if you play them after lunch, when everyone’s attention tends to flag.
3. **USE THE SCROLLING TRANSCRIPT SELECTIVELY:** Some attorneys think that subtitling (placing the witness’s words on the screen and scrolling down as he or she speaks) can be distracting, but, like much in the law, it depends. Seeing and hearing the words simultaneously can cause [memory retention problems due to the redundancy effect](#). We recommend using the text only when the sound quality in the courtroom is poor, the sound quality on the recording is poor or the accent of the deponent is unfamiliar to the jury panel.



4. **AVOID COURTROOM OBJECTIONS:** Try to get advance agreement from all parties on any depositions to be played in place of live testimony and any objections ruled on by the court before trial begins.
5. **LIMIT THE NUMBER OF DEPO CLIPS USED:** Using video depositions for impeachment can have a powerful effect, but using the transcript for most answers is sufficient. By saving the most powerful clips for video, they do not become routine. Quality is better than quantity.
6. **MAKE GOOD DEPOSITION VIDEOS IN THE FIRST PLACE:** Train your witness to move forward in his or her chair rather than leaning back or slouching. This form of body language has been shown to provide greater credibility and authority.

Litigators, You Deserve Ritz-Carlton-Level Service

by [Ken Lopez](#) Founder/CEO [Persuadius](#)



Some companies have justifiably built a reputation for extraordinary customer service. Ritz-Carlton is one of them, but not everyone has had the opportunity to test that reputation in real life. As it happens, I recently put Ritz-Carlton to the test while I stayed at the Ritz-Carlton in Maui, Hawaii. It's a lovely place, and my wife and I chose the [Club Level](#) for our stay.

But as can happen even at a Ritz-Carlton, some things went wrong. Actually, a lot of things went wrong. The

club level was unexpectedly bought out by an unnamed VIP, and when my wife and I checked in for what was supposed to be our first real vacation without our triplets since our honeymoon in 2006, the front desk staff let us know that we would not be receiving the five meals per day and adult beverages associated with a Ritz-Carlton club level stay.

Well, I am a Ritz-Carlton vet, and I knew what this meant. I didn't need to switch into lawyer mode. On the contrary, I knew that I just needed to give them the room to make things right. And that is exactly what they did.

We were upgraded (big time), we received free meals, free drinks, discounts on what was already paid for, and, most importantly, the personalized touch of the managers, who worked diligently to make things right.

Vacation for me is a time of reflection, and I could not help but reflect on how Ritz-Carlton has systematized this level of service and indeed made it the focus of its culture. And this made me ask: As my own firm's founder and CEO, how well would [Persuadius](#) live up to Ritz-Carlton standards?

Here are several of the Ritz-Carlton's principles of service, a subset of their [Gold Standards](#) that I think are especially relevant for litigators, trial teams and a litigation consulting firm like ours. Can everyone in my company say these things as well? I hope they can.

- I build strong relationships and create guests for life.
- I am always responsive to the expressed and unexpressed wishes and needs of our guests.
- I am empowered to create unique, memorable and personal experiences for our guests.
- I own and immediately resolve guest problems.
- I am proud of my professional appearance, language and behavior.
- I protect the privacy and security of our guests, my fellow employees and the company's confidential information and assets.



As a litigator or litigation support professional, imagine if every one of your outside support firms exhibited only these six principles (translated for our industry of course) in every engagement. How good would that feel? I know I would love it if I could get this level of performance from vendors that we rely on - but all too often it's hard, right?

Well, I'm definitively declaring that any customer of A2L can expect to receive litigation consulting services, whether [jury/trial consulting](#), [litigation graphics](#) or [courtroom technical support](#), that are consistent with these Ritz-Carlton values. I think we get it right most of the time, and when something goes awry, we work hard to make it right - as quickly as we can. And I ask, why wouldn't you expect that from a litigation consulting firm?

Remember, you probably know what Ritz-Carlton-level service looks like, right? Well so do I, and it's what I ask our social scientists, litigators, information designers and trial techs to provide.

Other articles and resources on A2L Consulting's site that you may find helpful:

- ["I have a case I might need help with" - So what happens next?](#)
- [A2L voted #1 in litigation graphics and #1 in jury consulting](#)
- [5 Problems with Trial Graphics](#)
- [6 Lessons Our Trial Consultants Have Learned from Business Development](#)
- [Who are the Best Litigation Graphics/Demonstrative Evidence Firms?](#)
- [How to pick jury consultants or litigation graphics consultants](#)

9 Trial Graphics and Trial Technology Budget-Friendly Tips

by [Theresa D. Villanueva, Esq.](#) Former Director, Litigation Consulting [Persuadius](#)



It is undisputed that [trial graphics](#), [trial technology](#) and working with [trial consultants & litigation graphics specialists](#) give the modern litigator an edge when walking into the courtroom. This is true for many reasons. First, today's juror expects some type of interactive presentation, whether it is a [legal animation](#) or [demonstrative exhibits](#). Second, trial consultants can step into the case with a fresh set of eye's and perspective, and can provide valuable insights into the key themes that the team has identified and even

sometimes pointing out themes or ideas the team has not thought of.

In today's economic climate [litigation support consulting companies](#) have seen a shift towards a more economical approach towards litigation. Law firms and their clients (from large firms to solo practitioners) are looking to keep trial costs under control. With many different options and approaches to trial presentation graphics and trial technology available today, lawyers and their client's can still head to trial armed with these essential tools.

Let's take a look at 9 ways you can use trial presentation graphics and trial technology while managing costs.

1. Focus on Key Trial Themes and a Simple Narrative

One way to keep trial graphics costs low is to choose a small number of important themes that you want to emphasize and that you want the jury to pay particular attention to. By focusing on these key themes, you can limit the number of trial graphics to be created. Utilized effectively you can make a significant impact with even just one or two demonstrative exhibits.

The key here is to utilize your Trial Consultant to narrow the scope of what trial graphics will be created. This will eliminate the creation of unnecessary graphics and streamline the development process.

See [Using a Two-Track Trial Strategy \(trial presentation + a solid appeal record\) to Win](#)

2. Use Printed Trial Boards and Blow-ups

Using boards in lieu of electronic presentations is a great way to save on costs, and it is still by all standards a highly effective presentation method. With the introduction of PowerPoint 2003, trial graphics became more advanced and began to move in the direction of electronic

presentations. However, over the last couple years, the pendulum has swung back in the direction of using trial boards. Today, it is not uncommon to see a mix of boards and electronic presentation. Boards are a great way to use trial presentation graphics on a lower budget. Another bonus of using boards is the savvy litigator can sometimes find a way to leave the board up throughout trial keeping their message consistently in front of the Judge or Jury.

See [Printed Trial Boards Making a Comeback](#)

3. Receive Training on Presentation Software (e.g. TrialDirector, Sanction or an iPad app)

Having a [trial technician on-site](#) is always favored, but the reality is that it is not always feasible from a budgetary standpoint. One of the great things about [trial presentation software](#) is it is user friendly. For a shorter or smaller engagement the presenter or another team member can receive training from an [experienced Trial Technician](#) to learn the basics.

Certain situations in which this might be a budget friendly alternative include: shorter trials, smaller document databases, trial databases that contain no deposition video or databases that will not require a lot of last minute changes or video editing.

See [\[Free E-Book\] Finding the Best Trial Technician for Your Case](#)

4. Limit Your Trial Database to Key Documents

Similar to developing key demonstrative exhibits, we can build a database of the key documents you plan to use - whether it is for cross, a particular witness or documents that are crucial to your case. Sometimes using the Elmo just doesn't have the same impact as having the flexibility and technological advantage of using presentation software such as Trial Director or Sanction.

See [How Indata's TrialDirector Makes Litigators Look Like Stars](#)

5. Have Your Deposition Video Edited and Burned to a DVD

If video is all you need, and editing clips can be done in advance, playing them on a DVD in court is a great budget saver. In a recent case, I had a client that was on a very tight budget but still needed to play some video deposition clips at trial. They really wanted to have a Trial Technician or use Trial Director but cost was a major concern. We discussed several different options including the option to edit the clips in trial director and export the clips onto a DVD they could play through their own computer at trial. This was a great solution all around. We still had the flexibility of editing in Trial Director, and the client ended up with a budget friendly way to show their video.

See [Using Video Depositions in the Best Way at Trial](#)

6. Streamline Your Trial Presentation

When trial presentation graphics are needed but budget is limited, you may be faced with the question of where do I need trial graphics the most? Is there an expert witness with a difficult concept to explain? Do you need litigation graphics to counter the opposing expert's testimony? Perhaps you feel that opening or closing statement is where you need to make the biggest impression with the judge or jury. If you know there is one area that is the core of your case, focusing a set of demonstrative exhibits here not only can not only save on cost it can also add value to your case.

See [\[Free eBook\] The BIG Litigation Interactive E-Book](#)

7. Create Your Own PowerPoint and Use Litigation Graphics Consultants to “Polish” the Work

Just as your hairdresser would not recommend cutting your own hair, generally, we do not encourage our clients to create their own PowerPoint presentations. There is just too much at risk and things can quickly go awry. However, if cost is a major concern, creating your own PowerPoint and asking for help can be an economical option. Once you layout out the basics of your presentation one of our consultants will work with you to enhance the presentation. From something as simple to creating a new template, formatting each slide for uniformity, or even adding some animation sequences. These, among other tricks can add a solid finish and give your slides the polished look they need.

See [\[Free eBook\] The Trial Team's Guide to Creating Great Timelines for the Courtroom](#)

8. Have a Trial Tech on Certain Key Trial Days

In many instances it is essential to have a Trial Technician on-site with the team, but the team just does not have the budget for a trial tech to be on-site for the duration of the trial. Perhaps there is one witness that will truly benefit from the interaction of using an electronic presentation, or maybe there is an opposing witness you know you can impeach with video clips from their deposition. On these occasions having a trial technician there only for certain stages of the trial can be a huge cost savings for the budget conscious team, while still benefitting from a Trial Tech's expertise.

See [Free Guide to Finding and Engaging the Best Trial Technicians](#)

9. Keep Litigation Graphics Simple - No Courtroom Animation

One of the cost drivers in the creation of demonstrative exhibits can be the addition of animation – or making a piece of the graphic move. Some animation such as “building” in certain elements is very simple and does not necessarily drive cost up. However, complex animation can be very time consuming, require more edits and can lead to higher costs. One way to avoid this is to have Litigation graphics with little to no animation. It is very easy to get caught up in the idea of using legal animations in presenting your case, but a non-animated trial graphic can have just as much of an impact on your audience.

See [A2L's Complimentary Biggest and Best E-Book for Trial Attorneys](#)

If cost is a concern, **demonstrative exhibits and trial technology no longer have to be the first items to scratch off your list** – you simply need to work with the right trial consulting firm who will find the best solution for your team and budget.

21 Secrets for Using Litigation Consultants on a Tight Budget

by [Ken Lopez](#) Founder & CEO, [Persuadius](#)



In Part 1 of this article, we discussed how to use litigation consultants to win a case when there are no budget constraints.

Here in Part 2, we tackle the opposite end of the budget spectrum: how to best use litigation consultants when budget is severely constrained.

The good news is that in any case that has more than \$1 million at stake or is a possible example of pattern litigation, there is a litigation consulting strategy that can fit the budget and deliver high value, regardless of budget. While every case has different needs,

and there is a big difference between bench and jury trials, here is a prescription for utilizing litigation consultants in a tight budget.

The primary cost difference between a small litigation budget and a large litigation budget will be the amount of time spent on testing and varying strategic approaches to the case. In a tight budget scenario, rather than relying on feedback from mock jurors and judges to help guide which themes to emphasize and the best ways to explain elements of the case, you will likely have to rely heavily on gut instinct. Of course, that is not always a bad thing.

Looking at the three primary types of services that litigation consultants provide -- [trial consulting](#), [litigation graphics](#) and [courtroom technology support](#) -- our general recommendation would be to spend your money where you most need to. In the majority of cases, the money is best spent on litigation graphics. A small budget generally rules out meaningful trial or jury consulting. Further, you can ask your litigation graphics firm to create your graphics primarily in PowerPoint to avoid the need for specialty trial presentation software or personnel. Here's our specific recipe of do's and don'ts on a limited budget:

- Don't conduct any formal mock trial work whether online, in person or otherwise
- Don't use courtroom technology support or hot-seat operators
- Do use the court's technology when possible
- Do split technology costs with opposing counsel when possible
- Do use your own laptop in court with a rented projector and screen if necessary
- Do bring a 2nd (backup) laptop with a copy of your presentation(s)
- Do work with highly experienced litigation graphics experts and ask their advice



Why Work With Persuadius?

- Do expect the highly experienced litigation graphics experts to provide added value by virtue of their extensive litigation graphics previous experiences
- Do provide a refined list of trial graphics you are hoping to use
- Do prioritize the trial graphics that are most important
- Don't be afraid to hand draw a rough version of any image that you want if you feel so inclined
- Do give your graphics firm the latitude to add new graphics that they may come up with, as much as 25 percent more of them (as long as costs were discussed up front)
- Do insist on a fixed price for the work
- Do ask your client to consider an alternative fee arrangement with the graphics firm (i.e. contingencies, success fees)
- Do work with a firm that is highly recommended
- Do work with a firm that will provide ideas not just pretty pictures
- Do insist that everything be created in PowerPoint
- Do insist that all text subject to potential changes is in modifiable form versus pictures of text that requires the litigation graphic provider's intervention for editing
- Do update your system to the latest version of PowerPoint
- Do provide high quality / high resolution documents whenever possible for the litigation artists to use
- Do prepare an outline for the litigation graphics firm to work from

By following this advice, you will almost certainly get the best results for a relatively small dollar investment.

Victory at Any Cost! Using Litigation Consultants to Dominate

by [Ken Lopez](#) Founder & CEO, [Persuadius](#)



These days, only a very few cases can be said to have an unlimited litigation budget, but some still do. As the amount at stake in toxic tort, technology patent and product liability cases soars into the billions of dollars, we do hear from clients that they must win at all costs. Indeed, at Persuadius, it is common for us to work on multi-billion dollar disputes. Thus far in 2012, we have already consulted on cases with over \$30 billion at stake.

In this [two-part series](#), we share the menu of options available to a law firm and its client in situations at the opposite ends of the litigation consulting budget spectrum. **What is possible when budget is not an issue, and what is possible when budget is severely constrained?**

By far the biggest difference between unlimited budget cases and limited budget cases is the amount of time that can be devoted to the discussion and testing of alternative strategies.

There are three key areas of trial and pre-trial work: [trial consulting](#), [litigation graphics](#) and [courtroom technology support](#). A high-budget case can involve several [trial consultants](#), a dozen or more artists, hundreds of [demonstrative exhibits](#), [several mock trials](#), months of work and an overall onsite litigation consulting and trial technology team with between four and 12 people.

TRIAL CONSULTING

In [trial consulting](#), the goal is to try to reach a successful result in a trial by testing and refining various components of the case to see what works and what does not. The core of this work is usually the [mock trial](#). Most mock trial exercises involve either one or more retired judges or 30 to 40 mock jurors. In an unlimited budget case, we might perform the following services:

Early case and theme assessment with production of a wall-sized litigation [mind map](#)

Assistance in the development of mock openings and the preparation of [mock trial graphics](#) for both sides of the case

An actual **mock trial** with “jurors” from the trial venue representative of the jury pool who will hear the evidence and come up with a “verdict”; this can be repeated several times

A mock voir dire, showing attorneys how to pick the best jury

A juror questionnaire (if approved by the judge) to test attitudes in the potential jury pool

Work with expert witnesses to help them with their presentation and evaluate it with video and develop “jury friendly” graphics for complex concepts supporting these expert witness’ testimony (while experts often bring their own visuals, these are not typically suited to a trial environment where lay people are expected to learn from what is presented)

Background research on selected jury pool to determine potential influences and any ongoing or prior influential commentary occurring through social media

A shadow jury or shadow judge during the trial itself, providing nightly feedback to help adjust the presentation and guide the development of the case

LITIGATION GRAPHICS

For **litigation graphics**, in an unlimited budget case, we would obtain ideas for graphic presentations not only from the trial team and from our own resources but also from the feedback of mock jurors or judges. This can take months. **Graphics should ideally be tested in front of a mock jury**, and when they are, very likely new ideas for graphics will be generated. When winning at all costs is a requirement, the litigation graphics approach should allow for the greatest volume of test graphics:

With time and budget allowance, litigation graphics can be created by the hundreds and refined down to the most effective possible – a no holds barred approach to creativity leveraging the significant trial experiences of our litigation consultants and litigation graphic artists

Development of sophisticated **printed trial boards**– with layered / interactive additions that potentially can be taken into the deliberation room and in the hands of the jury.

Create physical models that can be handled and manipulated by the jurors

COURTROOM TECHNOLOGY SUPPORT

For **courtroom technology support**, in a major case it is common to have two or more **hot-seat operators** working on our team. Before trial, these operators and others will:

Set up a secure war room for effective operation while on site for trial

Assure effective equipment set up and configuration (often involving a pretrial site survey well in advance of trial)

Help witnesses work through their direct testimony

Build the trial database so that one of a million documents, video clips and accompanying transcripts can be displayed on a moment's notice



Cut 30-second deposition clips from days long video depositions

Develop new exhibits for cross and closing statements

Obviously, a level of service like this costs six if not seven figures, and only a few firms in the world are capable of it. It is not appropriate for every case, but when it is appropriate, even these seemingly high levels of expense can be very cost-effective in forestalling a verdict in the nine or even ten figures.

Additional Related Persuadius Resources:

- [Research Your Judge's Likes & Dislikes Online](#)
- [Top 5 Trial Timeline Tips](#)
- [10 Videos Our Jury Consultants Want All Lawyers to See](#)
- [Lists of Analogies and Metaphors for Lawyers](#)
- [Persuadius Contact Information](#)
- [Free Subscription to The Litigation Consulting Report](#)

Trial Presentation Too Slick? Here's Why You Can Stop Worrying

by [Ken Lopez](#) Founder & CEO, [Persuadius](#)

In our 16 years in the **trial presentation business**, and after consulting on more than 10,000 cases, we still hear litigators concerned that their trial presentation/litigation graphics might somehow look “too slick” and will distract the jurors, or will somehow focus attention on the relative wealth of our client who is able to afford “fancy graphics.”

In the early 1990s, this was a valid question. No one had used PowerPoint, no one had a cell phone – let alone a smart phone -- few people had personal computers, and most of those had black screens with green text.

That is no longer the case. Technology has penetrated into every part of the United States and indeed into most of the world. A 2011 report from the Pew Research Center’s Internet and American Life Project indicates that 85 percent of U.S. adults own a cellphone, 52 percent own a laptop computer, four percent own a tablet, and only nine percent do not own any of these or other devices covered in the study. Those numbers will only increase.

According to Robert Gaskins, the creator of PowerPoint, more than 500 million people worldwide use PowerPoint, with over 30 million PowerPoint presentations being made every day.

Trial consultant Robb Helt, at the end of a trial in rural Arkansas, was able to talk with the jurors about the use of trial presentation technology/**trial technicians** in their just-completed trial. Helt found that the theory that jurors are uncomfortable with technology had been “blown away” by this “down home” jury. These jurors were not only comfortable with trial presentation technology – they expected to see it.

“Today is technology. That’s what it’s all about,” one juror said.

Hear what else these rural jurors had to say below:





In their “Litigation Services Handbook: The Role of the Financial Expert,” authors Roman L. Weil, Michael J. Wagner, and Peter B. Frank write:

“Some lawyers and witnesses worry about appearing too slick. They worry that nicely designed and colorful exhibits or the use of high technology will reinforce the image that the party they represent has substantial resources and thus does not need to be awarded damages or would have little difficulty in paying them. Post-trial interviews we have conducted demonstrate that this is a needless worry. . . . Jurors often see visual communication – for example, on TV or on their own computers – that is superior to anything they see in the courtroom.”

Jurors expect **trial presentation technology** now. The fear of looking “too slick” is dead, and it is time to put it away for good.



Litigator & Litigation Consultant Value Added: A "Simple" Final Product



Thomas F. Carlucci
Partner
Foley & Lardner LLP



Ryan H. Flax
(Former) Managing Director,
Litigation Consulting
Persuadius



John E. Turlais
Senior Counsel
Foley & Lardner LLP

There is a certain irony in providing high-level litigation and litigation consulting services. Namely, if we, as litigators and litigation consultants, do our jobs correctly, the end product – whether it be a presentation to a jury or to the government – should be simple.

For this reason, it can be difficult for some clients to appreciate the value of the process required to create that end product, even when that end product serves the ultimate goal of a trial win or a favorable settlement. **A simple end product, however, most often signifies a deliberate, detailed, and thoughtful process.**

Foley & Lardner LLP and **Persuadius** recently collaborated on a project relating to an elaborate fraud carried out through numerous, complex transactions. The fraud was executed over many years and related to dozens of contracts and hundreds of thousands of pages of documents. Complicating matters further, the case proceeded on parallel litigation tracks, with civil claims being pursued by numerous sophisticated entities, while the U.S. Government investigated criminal charges. From all this, a presentation had to be prepared boiling down the complexities and complications to a simple, straight-forward, and persuasive position.

Crafting a winning litigation presentation, including the accompanying litigation graphics, can be analogized to writing a song. Take most anything the Beatles ever wrote, for example. Once you have heard the song, it seems simple – so simple, in fact, that you might proclaim: "I could do that, I could write a song." Until you actually try doing it.

The Beatles created world-changing art, and **they made it look easy**. What winning litigation teams and litigation consultants strive to do is similar in that, to achieve their goals,



they must take complex fact patterns and legal positions and make them **both easy to understand and persuasive**. They must make the case look easy.

Simplify the complex is the first rule in developing both a litigation narrative and the litigation graphics that elucidate it. Unlike the trial attorneys or line prosecutors, a jury has not “lived” with a case for many years. Nor, for that matter, do government attorneys high in the chain-of-command necessarily have the same deep understanding of the facts and intricacies of a case as do their investigators or line prosecutors. Dumping all of the facts on the table in the hope that the audience will latch on to a winning argument almost invariably leads to another result – confusion and, ultimately, failure. The key is to present the evidence and information in a manner that can be easily digested by those who, based on limited time and/or limited exposure to the case, want and need to see the big picture.

Making the complex simple, however, takes time, creativity, and hard work. As **Blaise Pascal** (French mathematician, physicist, inventor, writer, and philosopher) famously said, “**I would have written a shorter letter, but I ran out of time.**” (often also-attributed to Mark Twain and Abraham Lincoln). But it is through this process that value is generated.



Ideally, and when a litigation team employs a litigation consulting and litigation graphics firm, the process involves a bit of a witches’ brew. A lot of facts, ideas, theories, and storylines get thrown into the pot, and the attorneys, litigation consultants, and litigation artists must work together to explore and decide what facts fit and which story lines are most persuasive. The process is rarely straightforward and smooth, and it involves occasionally wandering down dead ends to find the right path. But this process is **necessary** to chip away at

marginal, unnecessary, and/or potentially distracting and detracting portions of the case.

The team of litigators must deal with thousands of discrete and related facts, sometimes millions of pages of documents, and, often, multiple interested parties forwarding their own versions of the case to the same target audiences. The litigators must figure out how to refine the mountains of information into a neat and compact outline of evidence that **tells a compelling narrative**. The litigation consultants and graphics firm must then take the evidence that the attorneys believe most important, understand the narrative forwarded by the trial team, and push the attorneys to further hone and sharpen the presentation of their case. The graphics must be developed with equal precision so that a narrative emerges from the slides that not only emphasizes the key evidence, but also provides **simple and persuasive themes**.

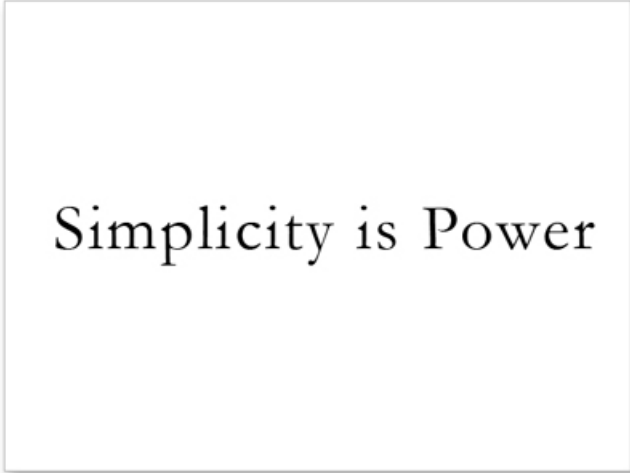
At the end of the process, the team is left with a streamlined and seemingly simple presentation that the audience can readily understand and, more importantly, be compelled to agree with on some level. This streamlined and simple end-product, however, is often all



the client sees as well. The work that goes on behind the scenes – the effort and expense needed to develop the themes, to frame the evidence, and to refine the message to its basic core – constitutes the majority of the work that goes into the case. When done correctly, it *should* look easy, as if anyone could have done it. Most importantly, clients should recognize that this is precisely the **value added** by their litigators and litigation consultants.

In simplicity, there is power.

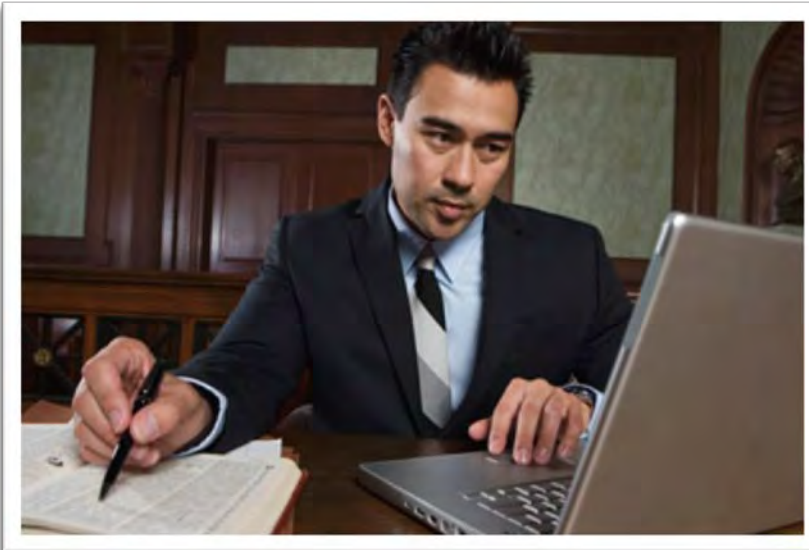
Give the right people the power to create simplicity, and you, as client, will get astonishing results (that look easy).



Simplicity is Power

What Does Using a Trial Technician or Hot-Seater Cost?

by [Ken Lopez](#) Founder/CEO [Persuadius](#)



Are you a litigator who tries big cases, needs to present a lot of evidence, but still likes to have your trial presentation look like a perfectly choreographed play? If that's you, you will likely enjoy using a trial technician to help coordinate your courtroom technology and trial presentation.

The role of a trial technician, sometimes called a hot seater, trial tech, or even trial consultant, is to manage the

moment-by-moment display of evidence in a trial. This role can vary considerably, but it usually involves bringing up deposition video that has been synced with the transcript of that deposition, finding a specific trial exhibit, showing judge and jury a particular demonstrative exhibit, and being able to bring up one of thousands or even millions of documents on a moment's notice.

The term hot seater has been aptly applied to this position. Typically the trial tech works with the trial team to help practice the overall trial presentation in a mock trial and in the days or weeks leading up to trial. With the right trial tech, a litigator feels like an expert producer is anticipating their next move and is able to respond to commands almost instantly while not drawing the focus away from the litigator or evidence.

We have written about the role of the trial technician before. We have described [how challenging this job can be](#) and [how to do the hot-seater job well](#). We have even written an entire e-book on the subject [of finding the right trial technician](#). However we've never really been specific about what a trial technician costs in most cases.

As with any professional service, the costs vary considerably. On the low end of the spectrum I have seen trial techs charging about \$100 per hour. While on the high end there are a handful who charge more than \$400 per hour, although I don't think the cost reflects talent as much as it reflects those particular trial tech's lack of desire to do what is a very difficult job.

The most common rate I see in the industry is about \$200 per hour. I'd say 90% of all trial techs are charging within \$25 per hour of this amount. However, the hourly rate is hardly the end of the analysis one should perform.



Obviously, chemistry, talent, skill and experience should be weighted more heavily than a 10% or even a 50% variance in cost. Generally speaking, you get one bite at the apple in a trial, and the trial tech is a relatively inexpensive insurance policy to make sure that things go well and that you look good as a litigator. After all, the consequences of not having a good trial tech are extremely high.

In a recent case our very experienced trial tech sat wide-eyed in court while the opposing counsel's trial tech fumbled in silence for 10 minutes trying to get a presentation going during opening. Needless to say, this left a very poor impression with the jury, and I think this contributed to the eight-figure loss their side experienced.

When considering trial techs, the terms are just as important as the hourly rate. Many charge daily minimums, many charge cancellation rates, many charge for equipment rental, many charge for local travel, and there are some who insist on being paid in advance. I think a typical arrangement is similar to what we offer: we charge for out-of-town travel, we ask that the client pay the hotel fees directly whenever possible and we normally charge an eight hour minimum during while at trial. When it fits the situation, we offer a fixed price for the entire engagement and other [alternative fee arrangements](#).

The use of a trial technician is a luxury for many. However if the client has the budget, it is a necessity for most. A great trial technician can leave you looking like a star and help you build credibility and trust with the jury. The wrong trial technician can contribute to the loss of your case. This is not a situation in which to be penny wise and pound foolish.

Other Persuadius articles related to trial technicians and hot seat operators:

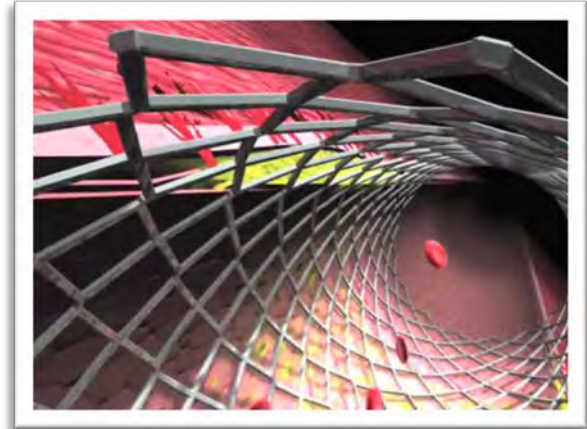
- [Free E-Book Download: How to Find and Engage the Best Trial Technician](#)
- [Will using a trial technician make me look too slick and high-tech?](#)
- [A video of George Zimmerman's lawyers taking a do-it-yourself approach](#)
- [12 ways to avoid a Superbowl-style tech failure](#)
- [See a video of a trial technician in action](#)
- [5 Trial Director Tips for great presentations](#)
- [6 ways to use video depositions](#)

What Does Litigation Animation Cost? (Includes Animation Examples)

by Ken Lopez Founder/CEO Persuadius

Our firm, **Persuadius**, is a national litigation consulting firm with a wide range of trial-focused services from jury consulting to mock trials to trial graphics to courtroom trial technology services. However, most people don't know that I founded A2L 18 years ago after I had taught myself computer animation while in law school.

To me, it made sense to try to fit these two subjects together. In retrospect it was quite smart. At the time, though, my friends and family looked at me with a somewhat perplexed gaze.



You see, animation was just emerging on the scene with movies like *Jurassic Park* and *Toy Story*. In the courtroom the first litigation animations were being used in a handful of cases in the late 1980s and early 1990s.

Back then, people would quote animation costs at as high as \$1,000 per finished second of animation. These numbers seem preposterous today, as production costs have plummeted and prices more along the lines of \$1,000 per finished minute are not uncommon.

However not all litigation animations are created equal. Indeed there are many types and there is a flavor for every case and every budget.

In a previous article I described the **types of litigation animation used typically in the courtroom**. To summarize, they are PowerPoint animation, 2-D animation, and 3-D animation. There are several variants of 2-D animation, and one looks convincingly similar to 3-D animation.

There are a variety of tools used to produce animation from PowerPoint on a laptop to Flash on a desktop PC or to Maya on a workstation. Not only do the costs of hardware and software vary dramatically but the kind of people who produce these animations vary in their availability and demand.

Suffice it to say that PowerPoint animators are the most readily available and can work on the least expensive hardware-software combination. At the other end of the spectrum are 3-D animators. Good ones are few and far between, and they require high-end software and hardware and lots of experience to produce good work.

Not only is there variability in cost of production, but there is significant variability in the time required to produce a finished product. Some PowerPoint animations can be done in a few

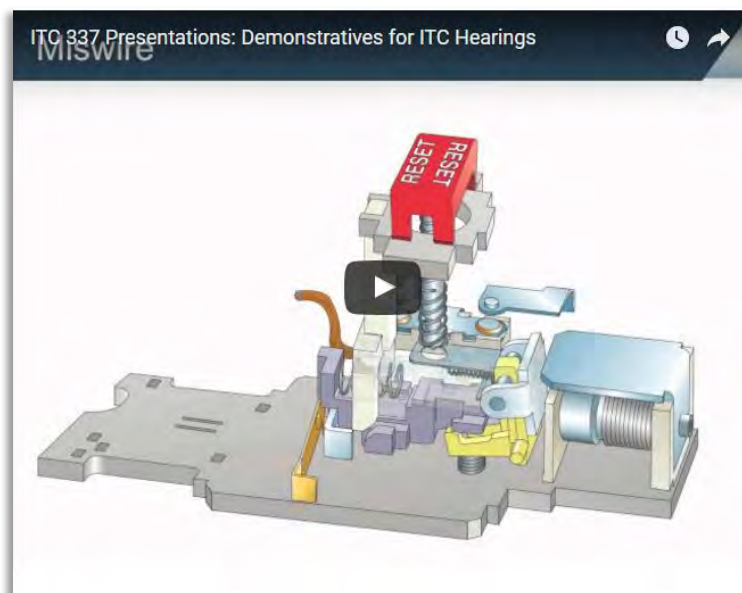
minutes and may be all you need for your case. Other 3-D animations may require weeks or months to develop a finished product for trial.

Below is a guideline for what a trial team should expect to pay for three types of typical litigation animation projects.

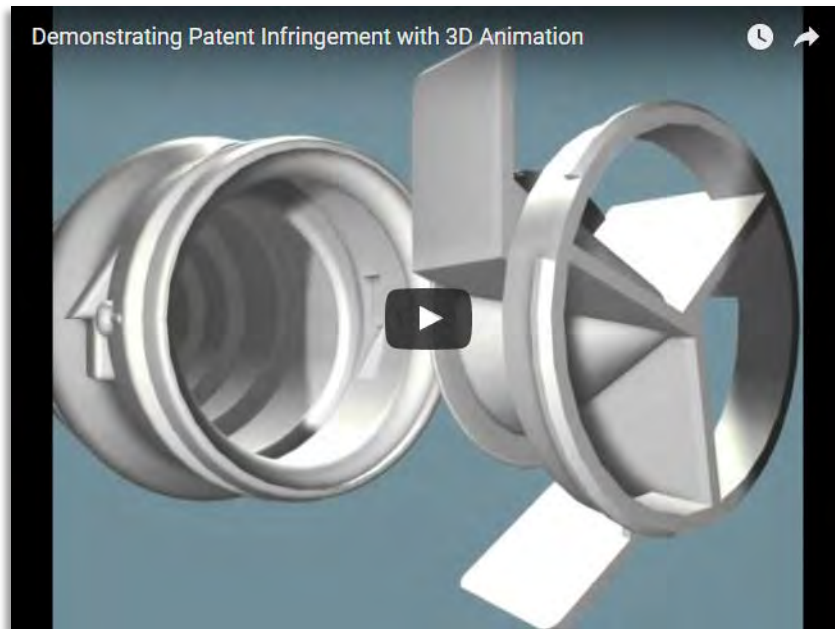
1. **Five minutes of a PowerPoint animation-style exhibit with average complexity.** For something along these lines, I would expect to invest between \$5,000 and \$15,000, with the variability explained by the amount of complexity and the amount of back-and-forth. Here is an example of project like this where video playback patents had to be explained at trial:



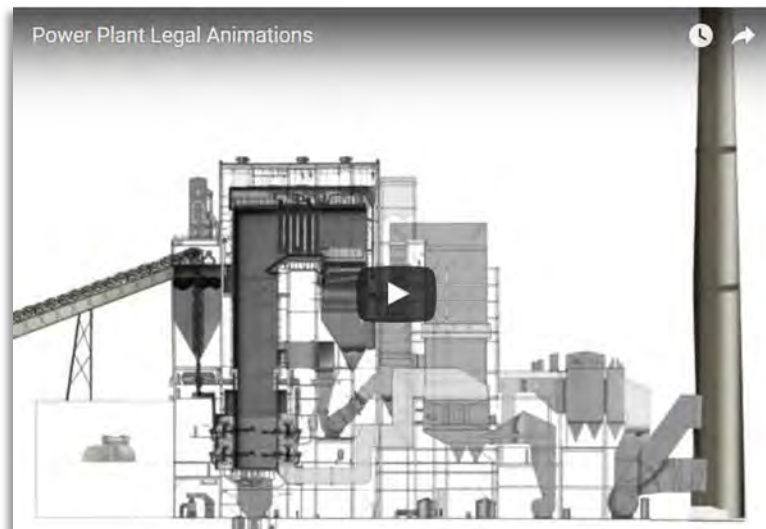
Below is an example of another PowerPoint-style animation used in an ITC case involving ground fault circuit interrupters.



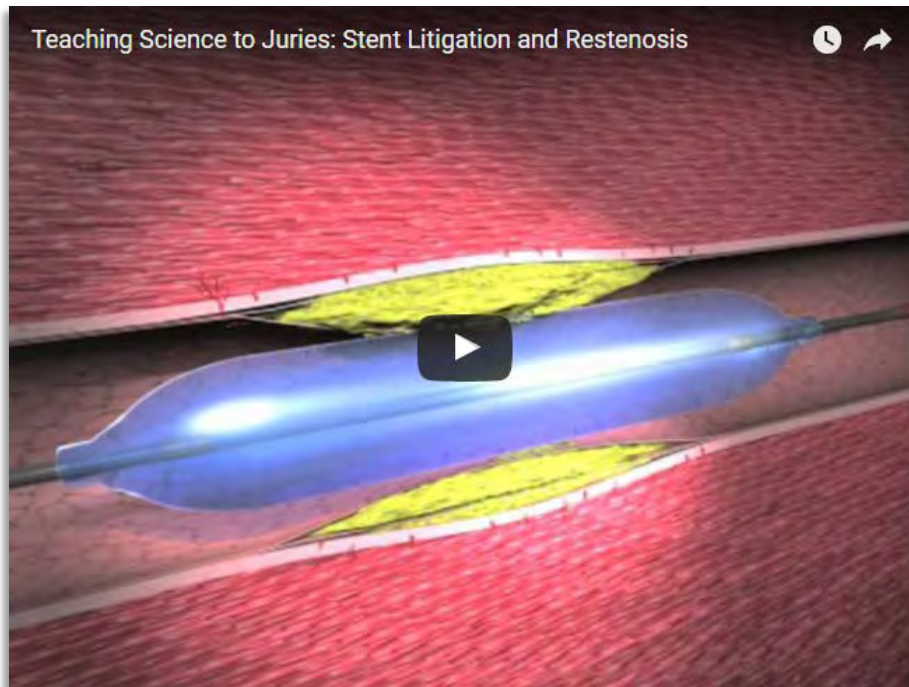
- Ten minutes of animation built from drawings or schematics**, perhaps of **an environmental spill or plume**, **an architectural drawing** or a **bringing a patent drawing to life as we explained in this article**. For this project, which likely requires more technical skill in the use of a product like Adobe After Effects or perhaps Flash, I would expect to invest between \$10,000 and \$35,000. Below is an animation of toner tubes from a patent case. The models were built from existing CAD technical drawings which sometimes saves considerable time and money on litigation animation costs.



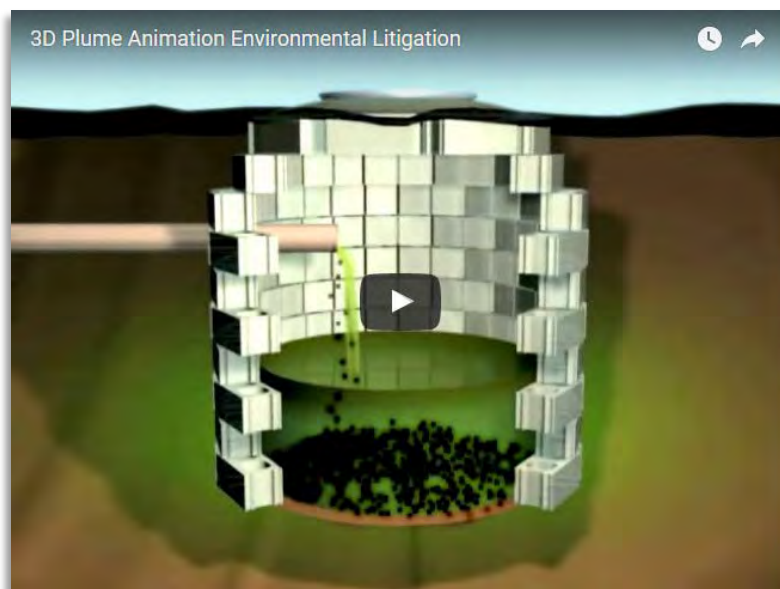
Below is an example of 2-D animation used to explain how a power plant works and give a sense of its scale:



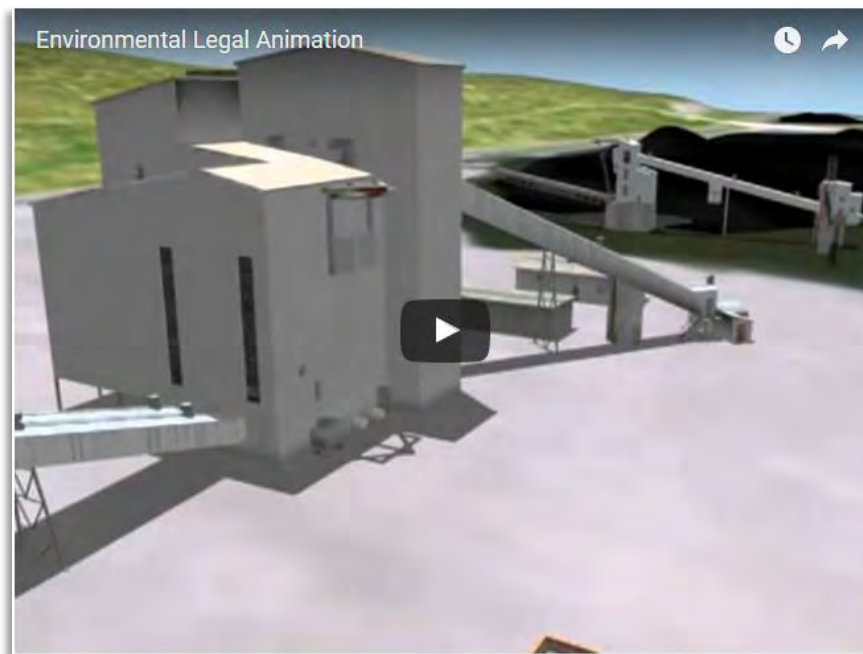
3. **A 15-minute 3-D animation of a complex subject** like **a highly technical patent**, **a structure collapse** or perhaps **a complex aviation accident**. Assuming the animation was still considered demonstrative in nature rather than a simulation, which requires an entirely different level of complexity, I would expect to invest between \$40,000 and \$150,000 for this type of product. Below is an example of a 3-D animation used in a patent trial that resulted in the 6th largest verdict in patent litigation history:



Below is another 3-D animation used in a mediation for an environmental insurance coverage dispute:



In the 3-D litigation animation example below, the layout of a coal-fired power plant is explored:



Of course all of these costs are highly variable but they provide broad guidance for what to expect and how to look at your projects as you think about trial. Below are some additional materials related to animation for use at trial.

- [Free Download: Using Animation & Litigation Graphics Effectively at Trial](#)
- [Animation and Graphics in Patent Litigation](#)
- [A2L's Litigation Animation Services Homepage](#)
- [Use of Litigation Animation and Objections](#)
- [How to explain a complicated process with litigation animation and trial graphics](#)
- [Explaining pharmaceutical cases with courtroom animation and litigation graphics](#)
- [Animation and trial graphics in mining cases](#)
- [Litigation animation in architecture and construction cases](#)
- [Litigation animation in automobile litigation](#)
- [Using courtroom computer animation in aviation cases](#)
- [Using litigation animation to create patent technology tutorials](#)

12 Alternative Fee Arrangements We Use and You Could Too

by **Ken Lopez** Founder/CEO **Persuadius**

These days, alternative fee arrangements (AFAs), agreed upon between major law firms and their clients, have become commonplace as part of the “new normal” relationship between corporate America and their law firms. The old days of the billable hour are coming to an end, if they haven’t already ended. Although some commentators think AFAs are more discussed than actually used, there’s no question that they are here to stay.

The same can be said of the relationships between law firms and vendors such as litigation and trial consultants. At **Persuadius**, we are pioneering the use of AFAs in our dealings with law firms, and both sides are very pleased.

We recently conducted a survey of people who downloaded some of our e-books and asked: What is your biggest fear about using litigation consultants? Of five options, fully 62 percent said they were concerned about the price for litigation consultants’ services.

We are listening. In 2008, we pioneered fixed price arrangements for the **preparation of trial graphics**. It was a revolutionary approach that won A2L a lot of loyal customers who prefer predictability over uncertainty. In 2010, we announced **fixed pricing for trial technician/courtroom technology support**. In 2012, we announced fixed pricing for **mock trials and some other jury consulting services**.

These fixed price arrangements are just one form of AFA’s that we use. Why do this? Actually, we prefer AFAs. I think they are better for our clients and better for us.

Our clients in large law firms consistently tell us that they prefer alternative fee arrangements, because they only have to have one budget conversation with their corporate client, as opposed to the old way of an easy one up front and a hard one after trial, and because it is a “set it and forget it” system that allows the lawyers to focus on getting the work done. We like them as well, because they allow us to get paid on a timely and predictable basis.

I think a fixed price alternative fee arrangement is a pretty good form of AFA, but it's just not perfect for every case. Sometimes, things are just too unpredictable weeks before trial. So we have created a number of other pricing strategies and discounting methods that have





also worked well for our clients. Since our litigation consulting services are similar to the "consulting" that a law firm provides to a client, each of these alternative fee arrangement methods is applicable for law firms as well.

1. Fixed Price: The key to a successful fixed price engagement is agreement on a scope of work. In agreeing to fix price, we normally make arrangements to have payments arrive at predictable intervals. It's a win-win for all involved unless the work departs significantly (upward or downward) from the scope.

2. Capped Fees: Keeping in mind the necessity of an agreed-to scope, capped fees allow a bit of flexibility by providing a not-to-exceed level of billing. This approach can be beneficial when both sides know there's a good degree of unpredictability in how the trial will go.

3. Billable Hour + Floor and Ceiling: This approach keeps the traditional billable hour as the base but protects both us and the client in case the volume of the work proves to be greater or smaller than anticipated.

4. Blended Rate: We have a blended rate for each of our three service areas ([jury/trial consulting](#), [litigation graphics](#) and [courtroom technology support](#)) and even a blended rate for any combination of these services. This approach allows for easier review of invoices since it is just naturally easier to evaluate a bill based on a number of hours rather than sort out the increased complexity of how various rates were balanced together.

5. Days Rates/Week Rates: These are especially appropriate for our on-site trial services like [on-site preparation of trial graphics](#) or [trial technology support](#).

6. Success Fees: Increasingly the litigation support world is seeing the use of success fees or incentive bonuses being used by clients looking to align interests with their key vendors. Agreements of this type should be crafted with the corporate client and not the law firm, since fee splitting is not allowed between law firms and legal support vendors that work with them.

7. Holdbacks: Similar to success fees, holdbacks are usually constructed to allow costs to be covered during the litigation and then a final amount to be paid after the engagement is complete. This amount may be voluntary, at the client's discretion.

8. Firmwide Volume Discounting: For some large law firms, we offer across the board discounts up to 25 percent that are based on ongoing sales volume. After a threshold is reached in the first year or after it becomes obvious it will be reached, subsequent engagements are discounted so long as the volume levels are maintained. If you are a large law firm or corporation engaged in frequent litigation, this is a no-brainer.

9. Firmwide Marketing Discounting: For law firms that cannot achieve volume levels or those that want to avail themselves of discounts out of the gate, we offer a discount of up to 20 percent in exchange for helping us to market to their litigation counsel internally.

10. Litigation Financing: Relationships with litigation financing firms allow us to work at a reduced rate since they can be a frequent source of trial consulting work for A2L and because we refer them clients regularly.



11. Hard-line Estimates: If you have an estimate you can believe in, it can be nearly as good as the arrangements listed above – except when it’s not. Sometimes, through a combination of lowball estimates and trial teams who underestimate the scope of work, a hard estimate proves quite inaccurate, to the detriment of the relationship between the law firm, the client and the trial consulting firm. However, we have an 18-year history of providing firm estimates and know how to manage to them.

12. Settlement Insurance is a term we use to describe a discounting methodology that applies in cases like fixed price alternative fee arrangements. We agree to discount proportionally if a case settles rather than enforce a fixed fee.

In the environment of the “new normal,” law firms are proposing AFAs to their corporate clients, either because they want to or because they need to. Either way, they understand the importance of AFAs and their economic value. When it comes to paying the costs of a litigation consulting firm, they would like to benefit from AFAs as a client, and we think we can benefit as a vendor. Why shouldn’t people be able to agree on price and value -- whether it is for jury consulting, litigation graphics, trial technicians, or legal services? It’s just good business.

Related articles about law firm economics, getting value from vendors and more:

- [Trends in litigation for 2013](#)
- [When a simple product is the final one, how do we see value?](#)
- [FREE DOWNLOAD: Leadership Lessons and the Business of Litigation](#)
- [9 Trial Graphics and Trial Technology Budget-Friendly Tips](#)
- [21 Secrets for Using Litigation Consultants on a Tight Budget](#)
- [7 Ways to Prepare Trial Graphics Early and Save Big \\$\\$\\$](#)



5 Tips for Working Well As a Joint Defense Team

The 5 Biggest Issues in Patent Law Right Now

12 Insider Tips for Choosing a Jury Consultant

7 Things Expert Witnesses Should Never Say

10 Things Litigators Can Learn From Newscasters

11 Traits of Great Courtroom Trial Technicians

Top 5 Trial Timeline Tips

Trial Graphics, Color Choice and Culture

Like These Articles?

Subscribe to our blog for free.

The Very Best Use of Coaches in Trial Preparation

4 Tips for Stealing Thunder in the Courtroom

7 Tips to Take “Dire” out of Voir Dire

How to Emotionally Move Your Audience

Jury Questionnaire by the Numbers

360° of PTSD: Facts vs. Fiction in Litigation

Are You Smarter Than a Soap Opera Writer?

Don't Be Just Another Timeline Trial Lawyer

7 Things You Never Want to Say in Court



Alex Brown

Director, Business Development and Operations

brown@a2lc.com

O: 1.800.337.7697

M: 1.301.356.2909

Litigation Graphics

Jury Consulting

Trial Technology

Visual Persuasion