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Storytelling for Litigators

Building a Great Narrative for
Judge and Jury – 3rd Edition

OCTOBER 2014

Litigation Graphics
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Introduction to A2L Consulting

A2L Consulting (formerly Animators at Law) offers litigation consulting services to law firms and corporations worldwide. The firm's services include jury consulting, the consultative design of litigation graphics and deployment of pre-trial technology, courtroom electronics and the personnel to support that technology.

A2L headquarters is in Washington, DC and it has personnel or a presence in New York, Miami, Houston, Chicago, Los Angeles and San Francisco. The firm's work routinely takes it to those cities plus Boston, Newark, New Jersey, Wilmington, Delaware, Philadelphia, Virginia, Maryland, Atlanta, Dallas, Phoenix and London, England. Since 1995, A2L Consulting has worked with litigators from 100% of top law firms on more than 10,000 cases with trillions of dollars cumulatively at stake.

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Thank you for downloading our latest e-book

I've explained it countless times to litigation teams, CLE classes, law students, readers of my articles, and anyone that will listen, really: to persuade a jury (or judge) you must connect with them on an emotional level and the only way to do that is to tell them a compelling story.

It's very, very easy for litigators, and especially those second-chairing or in other support roles, to get lost in the facts of a case and ignore building a convincing theme and story during litigation. The best litigators don't make this mistake, and, if you want to take your trial presence to the next level, you won't either. Law school prepares us pretty well to build a case around the law. But, what it sometimes does not prepare us to do is be persuasive. Jurors expect to be related to on a human level. Sitting in a jury and analyzing legal evidence is likely one of the most complicated and complex things a juror will ever do, so you need to make it easier for them and as entertaining as possible. You need to hook them early and keep them engaged.

This eBook will explain the concepts of building a persuasive story for jurors, when to start, how to go about it, and how to use your story in the courtroom. Not everyone is born a Perry Mason or an Atticus Finch, but we can aspire to be that and work toward that goal. The closer you get, the more cases you'll win.

I hope you enjoy this book and will take a moment to share some feedback by contacting me. If you ever have a question about how to prepare the themes and story of your cases, please ask.

Sincerely,

Ryan Flax

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6 Reasons The Opening Statement is The Most Important Part of a Case

Trials are structured in familiar segments – opening statements, direct examination, cross-examination and closing arguments. Of those events, I believe that opening statements deserve more emphasis than any other portion of the case.

As trial lawyer Ira Mickenberg has said, “Opening statements are the lens through which jurors view the evidence. The most important thing to understand about opening statements is that they establish the context in which the jurors will interpret all of the evidence they hear during the trial. [PDF]”



With this context, I offer 6 reasons why I believe opening statements are the most important part of a case:

1. **FRAMEWORK:** It is a psychological truth that people like to place information in a coherent framework rather than deal with disjointed bits of data. As soon as jurors hear any facts, they will begin to connect the dots and fill in the picture of the events in their minds. Therefore, it is crucial that the framework that they use should be yours rather than the other side's.
2. **WHO HOLDS THE TRUTH?:** When the trial starts, jurors figure someone is lying and someone is telling the truth. The opening statement is when they initially reach these conclusions. The opening statement offers the best opportunity to grab and hold the high ground - while at the same time positioning your opposition as slippery.
3. **JURORS DECIDE EARLY:** Jury research has shown that as many as 80 percent of jurors make up their mind immediately after hearing the opening statements. This may seem unfair or strange, but it is true.
4. **ATTENTION:** Unless a celebrity witness like Bill Gates or Scarlett Johansson will be taking the stand, the judge's and jurors' attention levels will be at their highest during the opening statement. This is your opportunity to grab their attention with a compelling story and compelling demonstrative evidence and keep it.
5. **IT'S GOOD TO BE ROOTED FOR:** People like to pick someone to root for early. Did you ever watch a sporting event with teams you don't know well? Don't you normally pick a favorite early in the game? A trial is no different.

6. **ABC - ALWAYS BE CLOSING:** As is true of all sales events – and a trial is a sales event – emotion is what matters. People buy on emotion and justify on facts. In jury trial terms, that means they decide after opening who is the emotional winner and spend the rest of trial and deliberation justifying their emotional leaning with the facts that fit best.

As noted trial lawyer Herald Price Fahringer has said, “Cases are won or lost on the opening statement. Therefore, all your ingenuity, all your intellectual resources, all your stamina, has to be poured into that opening statement, because your failure to fully exploit that critical opportunity can mean either winning or losing a case.”

Fahringer has said, in fact, that the opening line of the opening statement is particularly critical because it grabs the jurors’ attention.

He points to an excellent example from the opening lines of P.D. James’ 1989 novel, *Devices and Desires*: “The Whistler’s fourth victim was his youngest, Valerie Mitchell, aged fifteen years, eight months and four days, and she died because she missed the 9:40 bus from Easthaven to Cobb’s Marsh.”

As Fahringer says, we need to learn from these artists.

[We shared this helpful clip from Herald Price Fahringer in a [recent article](#) and thought it was worth singling out]





Are You Smarter Than a Soap Opera Writer?

By Laurie R. Kuslansky, Ph.D, Expert Jury Consultant, [A2L Consulting](#)



Believe it or not, soap opera writers are better at storytelling than some litigators. Why? Not because of their subject matter or their wisdom, but because they know how to activate more of the brain than some lawyers. They put events into a story context, and they know how to use language to activate the brain better. If they can do it, so can you. Why is that important?

Raymond Mar, a psychologist at York University in Canada, performed an analysis of 86 brain imaging studies, published last year in the *Annual Review of Psychology*, and concluded that there was substantial overlap in the brain networks used to understand stories and the networks used to navigate interactions with other individuals — in particular, interactions in which we're trying to figure out the thoughts and

feelings of others. Scientists call this capacity of the brain to construct a map of other people's intentions "theory of mind." **Narratives offer a unique opportunity to engage this capacity, as we identify with characters' longings and frustrations, guess at their hidden motives and track their encounters with friends and enemies, neighbors and lovers.**¹ [Emphasis added]

But where is the "story" in a complex patent?

Where's the emotion in tedious insurance language?

The answer is that if people are involved, there is *always* a story, including emotion, social interaction, sensory experiences and more – but they are usually left on the cutting-room floor in favor of dry facts and figures. This actually turns off the brain, rather than bringing it into action. Reciting facts using only factual words is like wrapping a gift of cardboard in a brown paper bag. Not very exciting or memorable, is it?

We understand why some litigators resist simplifying and looking for the "story." For one, they know too much and can't unlearn what they know in order to simplify. They are also concerned about oversimplifying to the point of inaccuracy. In a jury trial, they also must present to a diverse audience with conflicting needs: the judge and the record on one side

¹ Your Brain on Fiction by Annie Murphy Paul, Published: March 17, 2012 in the NY Times. http://www.nytimes.com/2012/03/18/opinion/sunday/the-neuroscience-of-your-brain-on-fiction.html?pagewanted=all&_r=0



and the jury on the other. There are also experts to satisfy who earn their keep by the details they can dispute and the hairs they can split – the more, the better. The less understandable their charts, the more diligence they may think they show, bolstering their expertise and justifying their high rate of pay. Finally, some trial lawyers may think that telling just the facts -- rather than telling the story -- is more powerful and credible.

Unfortunately, science disagrees.

Brain scans have revealed that just the facts, absent sensory language, only stimulate the language areas of the brain, and that hackneyed metaphors are processed as mere words by the frontal cortex.

Employing stories that incorporate metaphors and sensory experience activates the whole brain. It actually stimulates the same areas of the brains of the audience as the original action does (e.g., the olfactory cortex when hearing descriptive words involving smell such as lavender and cinnamon or the motor cortex when hearing about movement). Of course the facts matter, but the adjectives, the motives, the cause and effect, and the reasons jurors should feel, remember and care, matter too.

There's always a story, but if you don't tell yours, jurors will use their own.

Humans automatically make stories out of virtually all life events in order to make sense of them. Random events are given meaning through personal interpretation because we crave an explanation for the cause and effect of life. It gives us a sense of control, even if it's false. If you don't provide your version of the story, jurors will create their own narrative anyway, so it's better for you to exercise more control over the story than to leave it to amateurs and detractors.

How can you make the case into a story? It is easier than you may think. For one, make it priority one. We often find that lawyers overlook this task, or worse, resist it. Instead of merely tracking the facts, ask questions in terms of human behavior, not just the law or the chronology, such as:

"What *really* happened here on both sides?"

"Why did they do that?"

"What were they thinking and feeling?"

"What did they know or not?"

"What were their options and choices?"

"What were they each trying to accomplish?"

"Why did they succeed or fail?"

"How did that affect everyone involved?"

"Who tried to correct it? Did it work? Why or why not?"

"How did the story end? Who won or lost?"



“What caused the problem to become a lawsuit?”

“What would make it right?”

“Why is that fair?”

“Why should anyone *care* about what happened?”

But this is just the beginning of the process, not the end. After you’ve figured out “what *really* happened,” you need to breathe life into it. You need to put jurors in the shoes of your client – from the beginning -- so they can experience what your client did, understand the client’s dilemmas, feel the client’s frustrations, and align with the client’s decisions – in human terms, not legal ones. And you need to tell it using the art and the science of effective description and compelling storytelling.

1. The simpler the story, the better.
2. The simpler the language, the better.
3. Use metaphors involving sensory descriptions (e.g., prickly personality, velvet voice, leathery hands, etc.).
4. Reduce the facts to a story connecting to jurors’ real-life experiences, feelings and thoughts. Make it relate to what jurors may have experienced.
5. Assume jurors have no context for the facts unless you provide one.
6. Remember how long it took you to wrap your head around the case, whereas jurors have only a few days, so don’t start in the middle or the end.
7. Use word pictures, including visual and sensory details of important moments, and have witnesses do the same, for example:

Q: Why did that email in particular stand out to you?

COMPARE:

A: “Because the subject was in all caps.”

TO:

A: “Because when that email came in, it was very early in the morning. I was groggy and drinking my second cup of black coffee, while I was pressing the down arrow key on my computer to quickly see my new emails. That email stood out when I was scrolling through my inbox because the subject was the only one all in capital letters, so it caught my attention.”

8. After jury selection, when you know more about jurors’ individual backgrounds, refine your story to connect better with them.

Don’t only use your brain, but jurors’ brains too. Activate their senses, their feelings, their thoughts, and their social experience. Take the extra step, while sipping on warm green tea or frothy cappuccino, to choose more descriptive words. Wear a comfy, plush robe or close your eyes in the breeze to figure out the story, but do it.



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

By **Ryan H. Flax**, Esq., Managing Director, Litigation Consulting, **A2L Consulting**

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.



Storytelling at Trial - Will Your Story Be Used?

By **Ryan H. Flax**, Esq., Managing Director, Litigation Consulting, **A2L Consulting**

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.



Storytelling Proven to be Scientifically More Persuasive

By **Ryan H. Flax**, Esq., Managing Director, Litigation Consulting, **A2L Consulting**



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.

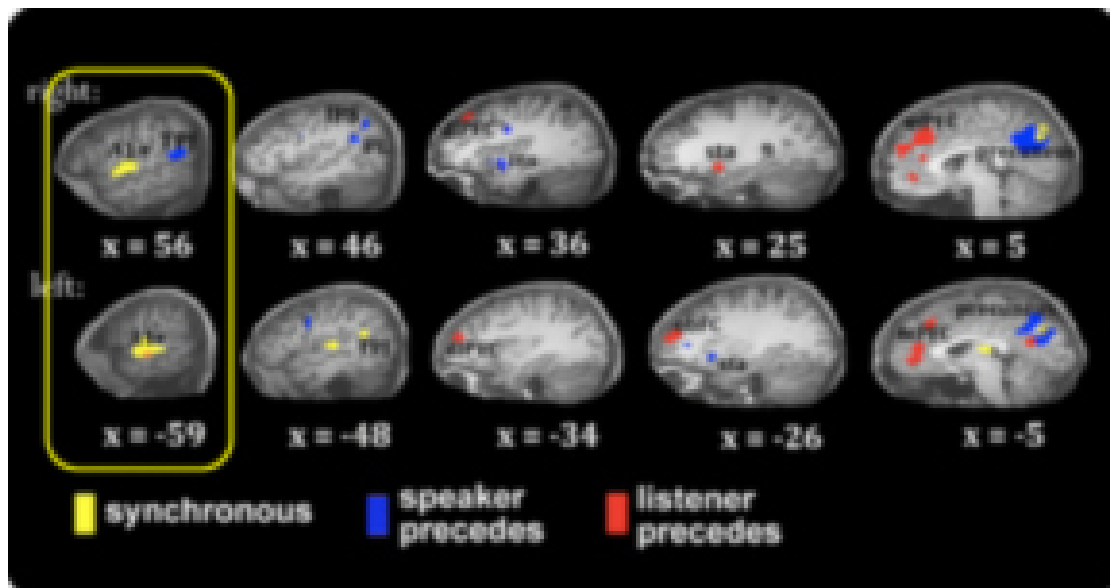
What are the implications? Spreading ideas, norms, values, and culture depend less on IQ-type intelligence and more on the influencer's social-cognitive abilities, use of emotions, and motivation.

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.



A1 = Auditory Cortex

TPJ = Temporoparietal Junction

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 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.**



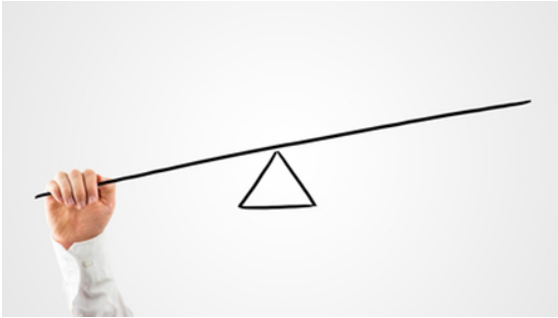
Other research using brain scans reveals other important information relating to effective storytelling and will help us plan our course of action **on the persuasion track**. This research shows that our brains react differently based on the types of words used. Information (e.g., evidence) presented 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.

5 Essential Elements of Storytelling and Persuasion

By **Ryan H. Flax**, Esq., Managing Director, Litigation Consulting, **A2L Consulting**



As I pointed out in **my previous blog post**, when a lawyer uses storytelling effectively at trial, he or she is literally eliciting a reaction from the brain areas and the neurochemicals that are the basis of any human being's foundation for biological survival.

Storytelling, in fact, serves the biological function of encouraging pro-social

behavior. Effective stories reinforce the concepts that if we are honest and play by the right rules, we reap the rewards of the protagonist, and that if we break the rules, we earn the punishment accorded the bad guy. Stories are evolutionary innovations: They help humans remember socially important things and use that information in their lives.

To impact an audience such as a jury, a story must do three things: (1) emotionally transport the audience by moving them and having them get "lost" in it; (2) include characters facing problems and trying to overcome them, but not engaging in mere meaningless problem solving; and (3) communicate some message or moral, meaning some set of values or ideas. Otherwise, the story will seem "empty" and not important enough to pay attention to.

There are several guidelines to help you turn your evidence into a story worth telling. The essential elements you need to provide are:

1. Theme(s) of your case
2. Compelling characters (good/bad)
3. Motive
4. Conflict/Resolution
5. Messages/Consequences

In order to figure out these elements in a lawsuit setting, the first and critical question to ask and answer is: "What really happened here?"

The most common mistake is that litigators don't bother to ask the question, or they answer it with how it (whatever "it" is) happened. Rattling off a series of events – but not the bottom line of what happened - is disastrous to connecting with jurors and telling a compelling story about your client. As a litigator, you must ask yourself "Why must you tell THIS story?" and "What's the belief burning within you that your story feeds off?"

**Other questions that will lead to the real story are:**

- “Why did they do that?”
- “What were they thinking and feeling?”
- “What did they know or not know?”
- “What were their options and choices?”
- “What were they each trying to accomplish?”
- “Why did they succeed or fail?”
- “How did that affect everyone involved?”
- “Who tried to correct it? Did it work? Why or why not?”
- “How did the story end? Who won or lost?”
- “What caused the problem to become a lawsuit?”
- “What would make it right?”
- “Why is that fair?”
- “Why should anyone care about what happened?”

These are the questions that the first-chair litigator and the entire trial team should brainstorm in developing the most persuasive way to present their case. **When I consult for or with trial teams**, these are the types of questions I ask and insist the first chair can answer.

Finally, these rules of thumb should be followed in developing an effective trial story:

- The simpler the story, the better.
- The simpler the language, the better.
- Use metaphors involving sensory descriptions.
- Reduce the facts to a relatable story.
- Use word pictures.

With the basics of storytelling and its importance to courtroom persuasion in mind, we must also consider how to develop a complete package of storytelling presentation. This complete package is not just the oral telling of a story, but must be accompanied by visual support. We will discuss that next.



Why Trial Graphics are an Essential Persuasion Tool for Litigators

By **Ryan H. Flax**, Esq., Managing Director, Litigation Consulting, **A2L Consulting**



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.



Practice is a Crucial Piece of the Storytelling Puzzle

By [Ryan H. Flax](#), Esq., Managing Director, Litigation Consulting, [A2L Consulting](#)

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.



5 Keys to Telling a Compelling Story in the Courtroom

By **Ken Lopez**, Founder & CEO, **A2L Consulting**

Developing a compelling story for your judge or jury may be simple, but it is not easy.

Typically, when I've ask a trial team about the case story a few months before trial, only a small minority can tell me. Most respond with one of the following:

- We just got the case;
- Everybody hates our client, because they are an oil company, tobacco company, bank etc;
- This case has to be won on the law alone;
- It's a bench trial, so story doesn't matter;
- We're too busy;
- We're working on that;
- We don't need help with that;
- I don't know what you mean by a story;



Yet, as I look at all the winning trial teams we've worked with over the last year, one common theme is that they had a well-developed story. It didn't matter whether they were trying a dry patent case or a scandalous white-collar case, they built a strong narrative. It's what great litigators do - yet so many either skip this step or procrastinate and wait too long to fully develop it.

I have written a number of times this year about the importance of storytelling at trial. As I close out the year, I think this may be the most important thing a **litigation consultant** can do to help a trial team. A litigation consultant brings not only the common sense that a fresh pair of eyes offers but will also bring the experience of having seen what works and what does not and the experience of having helped develop stories for hundreds of trials.

Here is an overview of storytelling for litigators with five key points every great litigator should know.

1) Why Care About Story? In his book **The Storytelling Animal**, author Jonathan Gottschall shares so much valuable science and commonsense wisdom about storytelling that I suggest it should be on the must-read list for litigators. The *New Yorker* **summed up the essence of it** this way: "human beings are natural storytellers—that they can't help telling stories, and that they turn things that aren't really stories into stories because they like narratives so much. Everything—faith, science, love—needs a story for people to find it

plausible. No story, no sale." We've drawn parallels between sales and trials before, and I agree that without a story, no one will side with you. Read this book, and your openings will be forever improved.

2) What is a Story? It's not a simple recitation of information and facts in chronological order. It is a tale of character-rich events told to evoke an emotional response in the listener. As **one Harvard paper** put it, "without [stories], the stuff that happens would float around in some glob and none of it would mean anything." Unfortunately, many opening statements don't follow that advice.

3) What is the Structure of a Story? A drama is often split into five parts:

1. The introduction (also called exposition) is where characters are introduced, the scene is set and the plot is introduced.
2. Rising action is where the hero is revealed, the conflict is identified and our hero finds the solution to the conflict.
3. The third act is the climax where our hero's situation is either clearly improved or worsened.
4. Falling action is where we see the conflict diminishing and our hero is now clearly winning or losing.
5. The resolution or denouement provides a transition toward the end of our story. Morals are revealed, tension is released and a sense of relief is given to the listeners.

4) How would I structure a litigation story along these lines?

- *Introduction:* I like to start with belief or fundamental truth and introduction of the characters like, "Banks survive on greed - it's how they make money. When they make good loans, they make money. When they make bad loans, they lose money. These bankers are essentially being accused of making bad loans, which to be true would have to mean, they were not trying to make money. When is the last time you heard of bankers not trying to make money? It makes no sense."
- *Rising Action:* Here the key is to keep a logical flow and keep the tenor rising until the conflict is identified. For example, "After years of lackluster home sales, finally it looked like Miami was positioned to take off and it was these bankers' jobs to make sure their bank made money - and that meant, making loans. And that's just what they did. Month after month, loan applications were up, and month after month, the bank was making more and more money. These bankers were at the top of their game. They received awards for their actions. But a storm was brewing. A real estate collapse had begun, and these bankers had to face it head on, sometimes at great personal sacrifice."
- *Climax:* Here, we see where our heroes overcome or are instead defeated by the conflict. For example, "Our clients did their best to weather the storm, but the reality of the real estate environment was too great to overcome. Loans were not repaid, foreclosures occurred and our clients either lost their jobs or retired and the bank



ultimately failed. It was a brave battle but just not one you can fight at the age of 70 after a 40-year career in banking. Even if they wanted to, the fight was not winnable.”

- *Falling Action*: "So they returned to their families. They lived modestly. They played with their grandkids. On a part-time basis, each helped to wind down bank operations. In the end, they saw much of their life's work blotted out by forces that were completely beyond their control. After all, they are just a couple of retirees who did their job well – they made loans, the bank made money until the unthinkable happened.
- And the *Resolution*: "Ultimately insurance protected all of the bank customers, so no money was lost. The stockholders lost money in their investment, but not all investments work out, right? Not all of the loans these bankers made worked out, and there's no redo for them. So would it make sense to reward stockholders for their investment that didn't work out by giving them an award of money? If Bank greed makes us squirm, the greed of those trying to recoup a lost investment in a bank should make you sick."

5) **Where can I learn more about storytelling for lawyers?** We have written often about this topic this past year, and I think it is one of the most important topics we write about. I encourage you to view these posts:

1. [10 Great Videos to Help Lawyers Become Better at Storytelling.](#)
2. [Demonstrative Evidence Lessons from Apple v. Samsung.](#) Yes, even patent cases have stories.
3. [The output of a great collaboration between a trial team and litigation consulting team is a compelling and simple story.](#)
4. [16 Trial Presentation tips you can learn from Hollywood.](#)

Many of the videos in this popular post of the [Top 10 TED Talks for Lawyers](#) are helpful for storytelling in the courtroom.

I've enjoyed hearing from you and working with more of you than ever in 2012. Here's wishing you great luck in the stories you write for 2013. [It's going to be a great year.](#)



10 Videos to Help Litigators Become Better at Storytelling

In the courtroom, the attorney who has the best chance of winning a case is generally the one who is the best storyteller. The trial lawyer who makes the audience care, who is believable, who most clearly explains the case, who develops compelling narrative and who communicates the facts in the most memorable way builds trust and credibility.

If you follow some basic storytelling and speech making principles as a litigator, you will obtain better courtroom results. Often these storytelling techniques are used in the **opening statement**.

But what's the right way to do this? In law school, some of us were taught to begin our openings in a manner that often started with the phrase, "This is a case about" In speech making courses, we are taught to begin with a clever quip or to state one's belief, as I did in the opening line of this article. Some experts in persuasive communications suggest organizing content in the order of Belief - Action – Benefit, while yet other experts say to use the format of as Why - How - What.

So, which is the best way to go? The simple answer is that the science on the topic is far from settled. In view of that, here are ten 10 videos that will help a litigator tell better stories in opening and become a better storyteller.

1. Simon Sinek is loved by marketers, raconteurs and persuasion experts for this simple and incredibly compelling TED Talk. It has changed the way I present information, whether in opening statement, a corporate speech or a blog article. For litigators, the lesson to follow is to consider his golden circle when preparing an opening.

Organize your speech on the basis of why, how, what, not what, how, why. Don't say, for example, "I represent XYZ pharma company, a great company that is more than 100 years old. XYZ stands here accused of price-fixing. I am asking you today to not reward the plaintiffs because they are simply greedy and serial plaintiffs."

Instead say, "The plaintiff is asking you to believe the unbelievable. To find for the plaintiff, you would have to buy the notion that a dozen highly paid executives from a dozen companies and their accountants and their lawyers and their bankers all engaged knowingly in a conspiracy in which they stood to gain very little. Today, I am here representing XYZ pharma company, and I am asking you to stop plaintiffs from tarnishing our good name and put an end to plaintiff's greed."



2. A Chicago DUI attorney reminds us of the importance of telling a story that is different from your opponent. All too often I see accomplished defense counsel spending the majority of their case explaining why their opponent's case is wrong rather than telling a different story.



3. Harvard Law School's Steven Stark introduces his lecture on storytelling.



4. Ira Glass discusses the building blocks of storytelling. While he is discussing the elements of a journalistic style, his ideas are equally applicable to the courtroom.



5. A UNC Professor lectures on the topic of storytelling and provides three examples of effective storytelling.



6. In this Harvard Business Review interview, Peter Guber discusses the art of purposeful storytelling. He reminds us of the value of not reading from a script. Memorably, he reminds us that we are in the emotional transportation business.



7. In this helpful video, litigator Mitch Jackson reminds us of how to share stories with a jury.



8. Litigator Jeff Parsons discusses how to tell a story and one key to successful storytelling: knowing your audience.



9. Attorney Jeffrey Kroll moderates a panel on the Power of Persuasive Storytelling.



10. In 4 minutes, this TED Talk humorously but effectively shows the power of combining a visual presentation, here from an iPad, with an oral presentation.





Demonstrative Evidence & Storytelling: Lessons from Apple v. Samsung

By Ryan Flax, Managing Director, Litigation Consulting, A2L Consulting

In the *Apple v. Samsung* trial, the outcome will be the result of **good storytelling** and **demonstrative evidence**, not necessarily the best legal case.

Over the last few weeks, **Apple Inc.** and **Samsung Electronics Co. Ltd.** have viciously fought over patent infringement and other claims (see **Apple's complaint** and **Samsung's answer** [pdfs]), both in the courtroom and in the forum of public opinion. The case is steeped in patent law and relates to the alleged infringement and invalidity of utility and design patents. But, it won't likely be the legal details or attorneys' satisfaction of the various prongs of proving direct infringement or obviousness invalidity that will change the future of smartphone and tablet computer technology purchasing options for the foreseeable future.



Yesterday, after closing arguments, the jurors were given their instructions by U.S. District Court Judge Lucy Koh on the legal nuances of patent infringement and validity, trade dress, contracts, and antitrust law – this took over *two hours* and covered **109 (yes, that's one hundred nine) pages of text jury instructions** – and then sent them away to the jury room to decide the fate of Apple, Samsung, and the American technology consumer. I'm sure that the jurors listened attentively to those instructions, but it took me most of a semester of law school to fully understand just some of those legal issues, and I respectfully doubt that those jurors are competently ready to decide the case based on the law.

What they *will* do is base their ultimate decision on their sense of justice and upon their emotions. Those jurors brought their sense of justice with them to the court on the first day of jury selection, and their emotions have been played by plaintiff and defense counsel over the course of the trial. Remember, Lady Justice wields a sword for a reason – if you've done something wrong, you should pay and that's what either Apple or Samsung will be held to do based on which side's story was more moving and convincing during the trial.

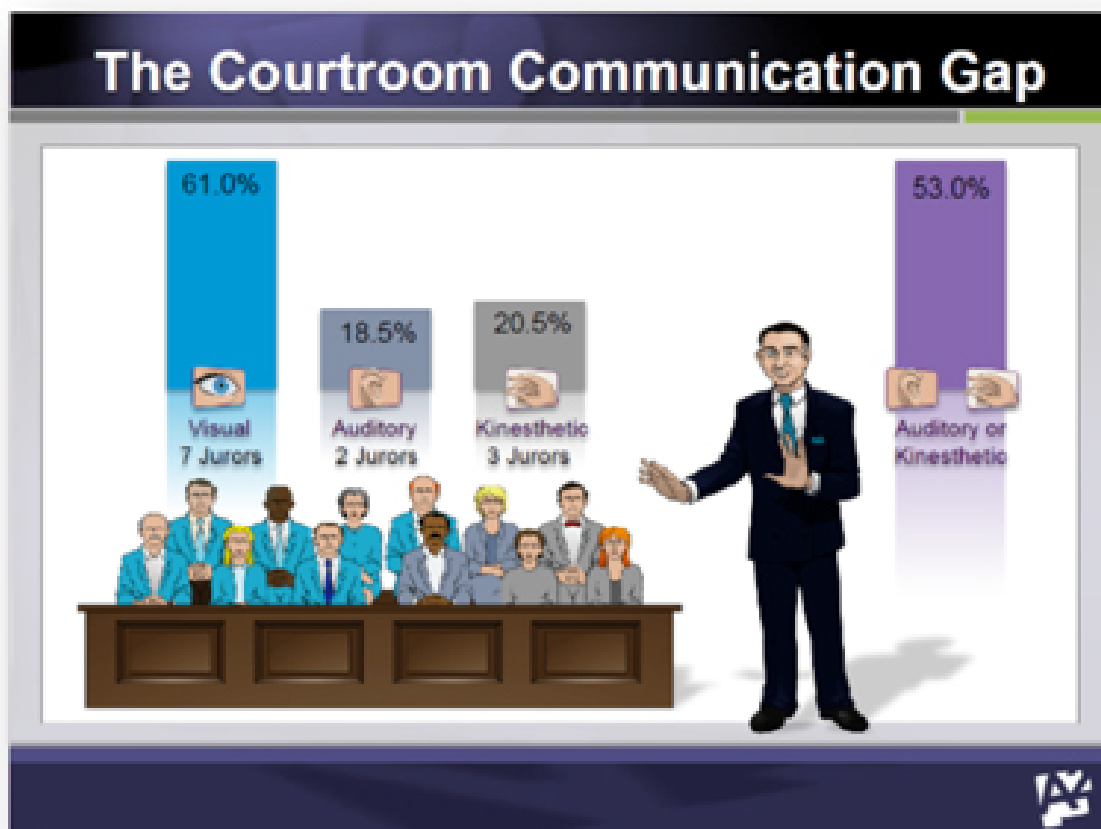
Experts agree. **According to Alexander Poltorak** (CEO of the patent licensing and enforcement firm General Patent Corp.), "Juries tend to simplify the case. That's a natural tendency," and "They want to figure out who is the bad guy here and let's punish them." See *also* our article on **demonstrative evidence and the opening statement**.

Complicated Cases Call for Great Demonstrative Evidence

Bill Panagos (of Butzel Long) **called this case** “extremely difficult” and a “complicated picture of intellectual property.” He went on to explain that, “juries tend to do what they think is fair or right” and “it depends now on the story that they heard from each of the attorneys -- which one of those attorneys was able to tell the story in a way that the jury understands or believes them more than they understand and believe the other side.”

Even Judge Koh expressly and **publicly identified this case as a “coin toss”** and urged the parties to settle the case before a verdict. The Judge went further, “I am worried we might have a seriously confused jury here,” and “I have trouble understanding this, and I have spent a little more time with this than they have,” and finally, “It’s so complex, and there are so many pieces here.”

This underscores the importance of **telling a convincing and persuasive story in court**. Jurors want to reach the right result, so how do you help them do it?



Litigators must be as effective at storytelling as possible at trial and to do so, jurors must be reached on an emotional level. To do this, litigators should **test their story and theme with mock jurors** in preparation for trial and take time to develop effective **trial graphics**. With effective **demonstrative evidence**, also known as litigation graphics, attorneys can teach and argue from their comfort-zone – by lecturing, but the carefully crafted graphics will provide

the jurors what they need to really understand what's being argued and give them a chance to agree. **Most people (remember, jurors are people) are visual learners** and do most of their "learning" by watching television or surfing the internet. In court, litigators must play on this battlefield and with the appropriate weapons.

Using the Right Demonstrative Evidence the Right Way

In a study, attorneys dramatically improved their persuasiveness when "jurors" were **immersed in graphics**, meaning the attorneys always gave them something to see while presenting an argument. Immersed jurors were better prepared on the subject matter, felt it was more important, paid more attention, comprehended better, and retained more information. This is your goal as a litigator – to capture the jurors' attention and coax them onto your side.

Here's a sample graphic used at trial by Apple:



The obvious goal of this graphic was to tell a visual story showing how Apple's iPhone design was the pivot point for Samsung's own mobile phone design in a simple "before and after" format.

I'd say this is a fairly effective graphic. It simplifies a complex issue and makes a dramatic point.

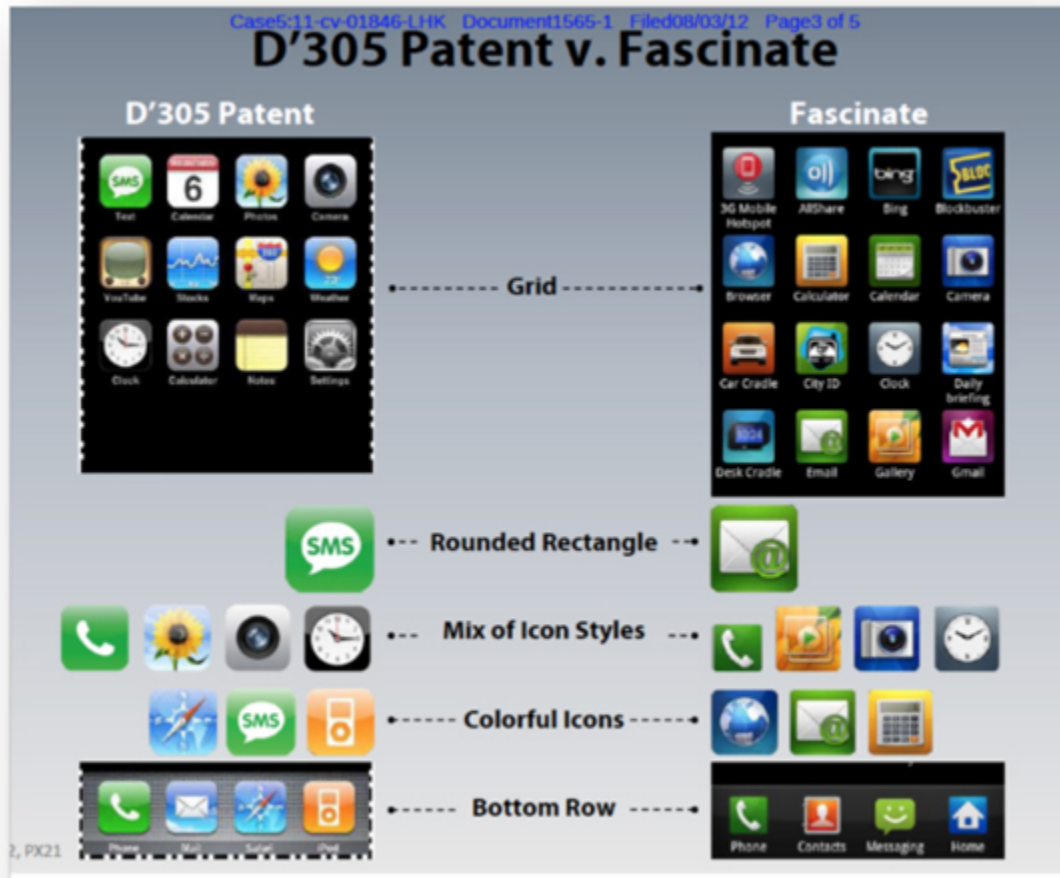
Samsung countered with its own trial graphic, as follows:



The purpose of this graphic was showcase Samsung's own innovative, but still iPhone-like designs over the years, both preceding Apple's product release and following it.

This graphic certainly has a lot of information, but it's not quite as clear and understandable as Apple's demonstrative evidence above. The jurors' understanding of this graphic will have depended more on the attorney's accompanying argument, which is not really the goal of trial graphics.

Here are some more interesting graphics used by Apple's counsel. This first trial graphic accompanied Apple's argument as to how Samsung's user interface infringed Apple's design patent on icons.



It is another effective graphic. It's clear and fairly convincing on its own, without any explanation.

Apple also used this demonstrative evidence trial graphic below to explain that, while Samsung designed an infringing user interface, there are a variety of other ways of making an icon-based mobile device interface. Apple showed examples of “non-infringing” alternatives that Samsung did not use.



I'm not so sure about this one. Sure, there may be differences between these designs and those used in the iPhone or Galaxy devices, but I'm not sure this makes a very convincing argument that Apple's design is so special.

If the parties hold out for a jury verdict, it will be interesting to see which side told a better story here. If the jury believes influence over an industry is illegal infringement, Apple will win. If the jury believes Apple's designs are just the basic building blocks or "grammar and language" (so to speak) of mobile device design, Samsung will win.



Patent Litigation Graphics + Storytelling Proven Effective: The Apple v. Samsung Jury Speaks

By **Ryan H. Flax**, Managing Director, Litigation Consulting, **A2L Consulting**



In **last week's article** on the conclusion of the **Apple v. Samsung** patent infringement trial I emphasized that it would be the storytelling and the patent litigation graphics that accompanied the storytelling that would win the case for either Apple or Samsung. Well, now the jury has returned its **verdict**: 6 of the 7 Apple patents are infringed (*willfully*) by Samsung (3 utility patents and 3 design patents), none of Apple's patents are invalid, and none of Samsung's patents are infringed by Apple. The jurors awarded Apple **\$1.05 billion**, or just less than half of what it asked for.

The amazing, but not unexpected, thing about the jury's verdict is not the overwhelming victory for Apple, but how the available post-verdict jury interviews **completely validate** the points made in **last week's article**. As expected, the verdict was *only superficially* based on the law and evidence, but more so on the fact that Apple's counsel had the better story and better **intellectual property graphics** (and the juiciest **tidbit of evidence** around which the story could be woven and graphics designed).

Jurors Want a Story, Not a Legal Case

When asked to point to the evidence that compelled their verdict, **one juror – Manuel Ilagan – explained**, “on the last day, [Apple] **showed the pictures [below] of the phones** that Samsung made *before* the iPhone came out and ones that they made *after* the iPhone came out,” and **this visual evidence at the closing was enough!**

Juror Ilagen went on, “we were debating about the prior art. Hogan was jury foreman. He had experience. He owned patents himself . . . so he took us through his experience. After that it was easier. After we debated that first patent – what was prior art – because we had a hard time believing there was no prior art. In fact **we skipped that one, so we could go on faster**. It was bogging us down.”



So, the jury *skipped* talking about the difficult evidence, instead relying on how they *felt* about the case and on the *story* weaved by plaintiff’s counsel. And, as discussed below, relying heavily on the background and experience of the jurors.

Speaking of the jury foreman – Velvin Hogan – he also reported in a post-verdict *interview* that he had a revelation after first night of deliberations while watching television (he called it his “*a ha* moment”), explaining, “I was thinking about the patents, and thought, ‘If this were *my* patent, could I defend it?’ Once I answered that question as ‘yes,’ it changed how I looked at things.” So, once more, a juror (the foreman no less) reported basically disregarding the complex specifics of the law and evidence, here going with his *instincts* in deciding the validity of Apple’s patents and then deciding whether they were infringed.

Another juror – Aarti Mathur – *expressed to reporters* that, “it was a very *exciting* experience and a unique and novel case.” As a litigator, can you imagine one of your jurors saying this about your next trial – **what would you do to provide this kind of exciting experience for them?** This was a



patent case and yet it instilled this feeling of excitement in the jurors. Research establishes that the best way to do this is by **immersing the jurors** in argument and litigation graphics throughout the trial. You want to get them interested and keep them interested.

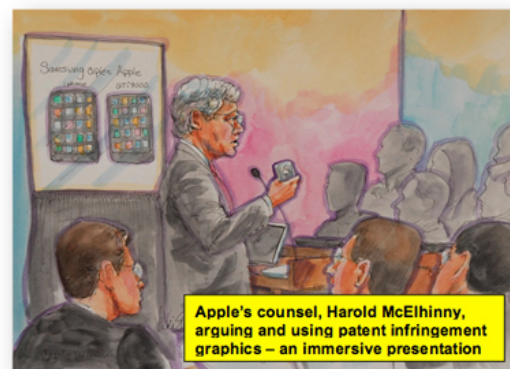
Seasoned patent litigator, **Sal Tamburo**, a partner with **Dickstein Shaprio LLP** noted, “patent litigators, and really litigators of any complex subject matter, face a difficult task when heading to trial. The law is complicated as is the technology and it is our job to convince jurors, who are usually unfamiliar with the nuances of either the law or the technology, that we’re right and should win. In essence, we **need to prepare two cases**, one for the jurors that is interesting, compelling, and persuasive, and one for the district and appellate courts that is solidly based in the necessary legal proof.” Sal’s right.

It was apparent that the complex law of patent infringement and the overwhelming jury instructions made it all but **impossible for the Apple v. Samsung jury to really decide the case on its merits**. Not only were the jurors *confused* by the verdict form, but they actually came back with **inconsistent verdicts and damages awards**, e.g., awarding damages of \$2 million on a patent they found *not-infringed*, and had to be sent back by the judge to resolve the inconsistencies. This little “speed bump,” however, did not slow them down much.

As I reported in the **article last week**, this was a case so complicated that the judge *begged* the parties to settle before it went to a verdict (calling it a “**coin toss**”) and was also a case in which the jury instructions took *two hours* to explain and included a **109 page document**. With all this complexity and nuance of law, these jurors were nonetheless able to return a verdict in just under 22 hours. This turn-around time would be extraordinary for even a simple case and is beyond imaginable for this patent case.

Jurors Want Great & Useful Graphics

In addition to juror Ilagan’s expressed reliance on Apple’s patent infringement graphics, according to its foreman **the jury cut through unnecessary work by hand-drawing a matrix** on a notepad to illustrate which patents Apple said were infringed by each of 26 Samsung smartphones and tablet computers. This **jury-created graphic** is exactly the type of trial graphic counsel should have shown the jury during its closing arguments and then requested be entered into the record as a summary of evidence so the jury could take it with them to the jury room.



Juror Ilagan **said**, “my impression was that [Apple’s attorneys] Bill Lee and McElhinny were pretty good in their presentation and questioning of the witnesses.” Mr. Ilagan was also complementary of Samsung’s counsel’s presentation (recall, this was a “**coin toss**”).

As I mentioned in **last week’s article**, with effective patent **litigation graphics** attorneys can teach and argue from their comfort-zone – by lecturing, but the carefully crafted graphics will provide the jurors what they need to **really feel they understand what’s being argued** and

give them a chance to **agree**. Most people, including judges and jurors, are visual learners and in court litigators must play on this battlefield and with the appropriate weapons.

Jurors Will “Hang Their Hat” on Bits of Evidence

Jury foreman Hogan **explained** that the jury’s decision was based on documents illustrating Samsung’s intent to closely mimic the look of the iPhone and that “certain actors at the highest level at Samsung Electronics Co. gave orders to the sub-entities to actually copy, so the whole thing hinges on whether you think Samsung was actually copying. The thing that did it for us was when we saw the memo from Google telling Samsung to back away from the Apple design. The entity that had to do that actually didn’t back away.” The **litigation graphic** to the left illustrates this important evidence.

And, so, on the back of one email chain, the hammer fell on Samsung to the tune of a billion dollars.

This point is very instructive. It shows us that **testing litigation facts, themes, and stories before trial with mock jurors** is an important tool in crafting a persuasive and winning case. Before you get to the courtroom, you want to know what facts resonate with mock jurors of the same demographics as your jury pool so you’ll use the right ammunition when it counts.

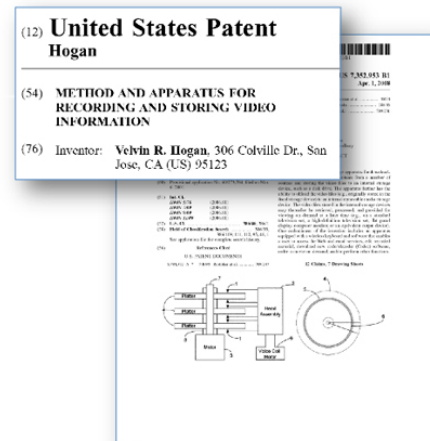


You Must Use Jury Consultants

Another interesting take-away from this jury’s verdict is that it relied heavily on the backgrounds and experiences of the jurors, even to the disregard of the law and evidence presented at the trial and instructed by the Court. This is instructive and shows how important **jury consulting** can be for litigators.

For example, the jury’s foreman (Mr. Hogan) was an engineer and holds a patent (relating to video compression software, at right). The **jury relied heavily** on him to deal with the patent law issues in the jury room and he even told the Court that the jurors had reached a decision **without needing the instructions**!

Experts agree this isn’t uncommon at all. According to Stanford Law School Professor **Mark Lemley**, “if there is one juror who seems more clearly knowledgeable than the others, the jury will often look to that person to help them work through the issues, and perhaps elect him foreman.”





Hogan, told the court he had served on three juries in civil cases, spent seven years working with lawyers to obtain his own patent covering “video compression software,” and worked in the computer hard-drive industry for 35 years. **Based on this** he was elected jury foreman and, I suppose this background also **relieved the other jurors** of having to worry too much about the gritty nuances of the law of patent infringement and validity because Mr. Hogan could sort out those details for them.

It’s been **reported** that Mr. Hogan said that the jurors were able to complete their deliberations in **just three days** and much faster than almost anyone predicted because a few jurors had engineering and legal experience, which helped with the complex issues at play. According to Mr. Hogan, once they determined Apple’s patents were valid, jurors evaluated every single device separately.

These leaps in deliberations are remarkable, but, **as discussed in last week’s article**, predictable.

One More Thing

Foreman Hogan **explained in a televised interview** his thought process regarding the law of patent validity and how he helped the rest of the jury come to terms with the law – it’s clear that (although he’s obviously very intelligent) he does not really understand it and he and the rest of the jury went on their *gut instincts in most instances*. To a patent litigator, like myself, his interview is frightening on one level because it shows how hard it is to get through to lay jurors and even technically experienced jurors on the nuances of patent law and how it should apply to the facts.

But, it’s also **very instructive**. All litigators should watch and note his explanation of the jury’s process. I think Mr. Hogan is fairly representative of what the *top* of the juror food chain is like and he’s a good place to start when developing your trial strategy. Cater to their needs in proving your case – use graphics extensively, use jury consultants, and test your case.

Oh, *there is one more thing*. Just for the sake of stirring the pot, here’s an ironic and amusing video of Steve Jobs discussing what great artists (and presumably great innovators and great companies, including Apple Inc.) do to succeed (can you guess what it is?):



Steve Jobs: Good artists copy great artists steal

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I wish good luck to both the parties and their counsel in the appeal process, which I and other patent experts will be attentively watching. (write this down: *it's my bet that this case ultimately settles before any opinion from the Federal Circuit*). Stay tuned.



\$300 Million of Litigation Consulting and Storytelling Validation

By **Ken Lopez**, Founder/CEO, **A2L Consulting**



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, A2L Consulting 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 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.

16 Trial Presentation Tips You Can Learn from Hollywood



Why do so many TV shows and movies include courtroom dramas? Because people love drama, they love to try to figure out who committed the crime, and because they love the clash of right and wrong.

With all that focus on the creation of drama for fiction, we only need to turn on the television or start a DVD to see a lot of good acting by actors who are behaving like lawyers. Surely, there is something we can learn from their work.

After all, top-notch screenwriters have written their words, costume and set designers have made them look the part, and the actors have studied the best trial lawyers in the world and have had dozens of “takes” to get it right. So we are seeing the world's best story tellers tell a story that they think everyday people want to hear, in an intensely dramatic way.

In the first place, TV and movie viewers are ordinary people, the same ones who will become jurors some day. They are used to hearing and seeing the best in their entertainment and they will want it in the actual courtroom.

Second, we can learn from the way in which movie and TV directors distill the best and most exciting aspects of a trial to make it compelling. We can make our **trial presentations** just as compelling.

Here are sixteen lessons from the movies or television (**note that each movie/TV title has a link to purchase a copy from Amazon.com**):

1. **Practice.** Matthew McConaughey may not have what it takes to actually be a lawyer, but with great practice he delivers an amazing **closing argument**. If he can do it, you can too. Listen to this closing from *A Time to Kill*.



2. **Use jury consultants.** This clip from *Runaway Jury* doesn't illustrate the work of jury consultants any more than CSI illustrates police work accurately. However, a good jury consultant can tip a close case by either helping to pick the right jury, testing the case and the lawyers, or both.



3. **Use plain, simple language.** The best screenwriters know how to make a few words go far, and you can do that as well. Here, Keanu Reeves, playing Kevin Lomax in *The Devil's Advocate*, uses simple language and lays out a straight-forward and emotional theme in his opening statement.



4. **Be Believable.** Screen and TV actors know how to project credibility, and lawyers can do the same. Glenn Close masters believability in this scene from the show *Damages*. Do you have any question about whether she is going to take the settlement offer made in this deposition?



5. **Manage your hands.** Like many distracting mannerisms, how a litigator uses his or her hands can be a good thing or a bad thing. Look at Tom Cruise in *A Few Good Men*. In this classic scene (and we all know it NEVER ends with the witness famously breaking down on the stand) Tom Cruise never distracts. When he is at the podium, he stands strong. When he is before the jury, he gestures well. When he is before the witness, he stands with hands behind his back.



6. Make Sure Your Audio Video Setup is Flawless. Courtrooms rarely have *high quality trial technology equipment* that make your presentation look and sound great. It is up to you and *your trial technician* to make sure your setup works well. In this scene with Matt Damon from *The Rainmaker*, can you imagine how much less effective this deposition clip would be if it had scrolling text on screen to make up for a poor audio recording or poor courtroom audio setup.



7. Relate to your jury. We've successfully used Giant's Stadium, the Statue of Liberty and many other local landmarks to *convey scale to juries*. In the "magic grits" scene from *My Cousin Vinny*, Joe Pesci connects with a local Alabama jury over the cooking time of grits. Like in this scene, it is important to create a memorable dramatic moment, ideally touching on the most important part of the case. It is important to speak the local language, and it is critical to relate your knowledge of a local custom or landmark to something meaningful in the case. (Exact clip unavailable).



8. **Don't go after the sympathetic witness.** One witness can flip a case for or against you. Always ask yourself if the potential benefit is greater than the potential risk and act accordingly. This scene in *Philadelphia* is one of many examples from the movie industry.



9. **Let silence do the heavy lifting.** This has long been the advice of my mentor for having difficult conversations, and I think it applies just as well for the courtroom. In this movie classic, *To Kill a Mockingbird*, Gregory Peck delivers a now famous closing. Note how he uses pauses and silence as effectively as he uses words.



10. **Tell a Story.** You don't need Hollywood to remind you of the importance of storytelling, you need only refer back to our article on the topic: <http://www.a2lc.com/blog/bid/53536/10-Videos-to-Help-Litigators-Become-Better-at-Storytelling>

11. **Ask open ended and provocative deposition questions.** You never know what the witness might say. In this scene from *Malice*, Alec Baldwin's character famously lets his ego fly in this med-mal deposition.



12. **Control your emotions.** In this R-rated clip from *Primal Fear*, Laura Linney delivers her questions and her message with forceful emotion, yet you never get the sense she's lost control. It is good to show emotion, it just must always make sense to the jury why you would feel this way. If the gap between the story the judge or jurors are building in their heads, and the emotion you are showing is too great you can lose credibility.



13. **Think about the courtroom like a director.** To some degree, you have to deliver on the jury's expectations of drama. Fail to build a compelling story and you'll likely lose the case. Such was the case in the recent [Apple v. Samsung dispute we wrote about here](#). Noted director of courtroom dramas, [Sidney Lumet](#), comments on what makes the courtroom drama dramatic.



14. **Memorize.** Can you imagine if the lawyers were reading their closing statements here in this [Law & Order](#) clip? They would not work nearly as well. Still, we regularly see attorneys reading their openings or closings. Notes work great and are important to make sure nothing is missed. One Hollywood director friend of mine poignantly said, "you can memorize, but I prefer mastery. Master your subject matter. That way, memorization is not an issue." Good advice for actors and lawyers alike.



15. **Project your voice.** Follow the tips of this voice coach to learn how to project your voice better. Some of the best litigators I know use acting coaches, voice coaches, style coaches and more. As we inevitably move toward an era of more televised trials, these considerations will become more and more important.



How To Project Your Voice by [VideojugCreativeCulture](#)

16. **Connect with the jury authentically.** Paul Newman's closing argument in *The Verdict* is moving, memorized and authentic.



So, the question I often wonder about related to our courtrooms is whether Gene Hackman, Robert Duvall or Meryl Streep would deliver a better opening/closing than we professionals would? I think our job is to make sure the answer is no, and to make sure the answer is no, we're going to have to adopt some of their best techniques.



14 Differences Between a Theme and a Story in Litigation

By **Ken Lopez**, Founder/CEO, **A2L Consulting**



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 about 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 tag line, 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*.



Don't Be Just Another Timeline Trial Lawyer

By **Ken Lopez**, Founder/CEO, A2L Consulting

In my 18 years in the litigation consulting business, I've noticed that there are two types of trial lawyers. The first one is what I call a timeline lawyer. Usually, his or her opening statement always starts at the beginning, in terms of time, and ends at the end.



The second type, and by far the more successful type of trial lawyer, is the storyteller. Storytellers don't start at the beginning unless it serves them, and normally it does not.

Instead, the storyteller will begin where the story ought to begin. Usually it takes a form similar to this: Things used to be this way, then something happened, and now they have changed. Sometimes the storytelling trial lawyer will also follow Joseph Campbell's paradigm of the hero's journey. We have prepared an infographic that places **the hero's journey in context for trial**.

We have **written often about storytelling**. We've shared how storytelling is being used increasingly as a persuasion device in the courtroom. We have offered **five tips for effective storytelling in court**. We have even produced an entire book, which is a free download, called **Storytelling for Litigators**.

That's not to say that timelines are a bad thing. Timelines are, in fact, key exhibits in most trials. They help orient the fact finder and serve as a memory stimulator for the trial lawyer and expert witness alike. They can also serve as a persuasion device if they are set up as a permanent exhibit at trial. Given the importance of timelines, you will not find it surprising that we've written **an entire book about trial timelines too!** And yes it's a free download.

I still advise you to rethink your strategy if your plan is to start at the beginning and end at the end. It's not a very effective strategy at all. You want your fact finders to care. You have to provide meaning and context for a judge or jury. As our senior jury consultant said in **a related article**, "[jurors] 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."

We see this play out all the time. In a recent mock trial exercise, we watched as mock plaintiffs' counsel developed a story with meaning and emotional connection. Then we



watched as our client, who was using the mock trial properly to figure out the best strategy for trial, stood up and told a chronological story that was so logical and syllogistic that a computer would certainly have found for the defendant.

However computers don't decide cases. In fact, here, all the mock jury panels came back vigorously against our client. When asked if they could articulate the story of each side during deliberations, the mock jury was able to spit out an elevator speech of the plaintiffs' case in seconds complete with emotional meaning and impact. However not a single juror was able to articulate the defense story with any clarity.

Unless we tell stories and ask judges and juries what we want from them and give them an easy roadmap for giving us what we ask for, we're doing our clients a horrible disservice. Use your timelines in every case, but don't use them to organize your openings and closings, and you'll be a more successful trial lawyer for it.



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

By Thomas F. Carlucci, Partner, Foley & Lardner LLP

John E. Turlais, Senior Counsel, Foley & Lardner LLP

Ryan H. Flax, Managing Director, Litigation Consulting, A2L Consulting

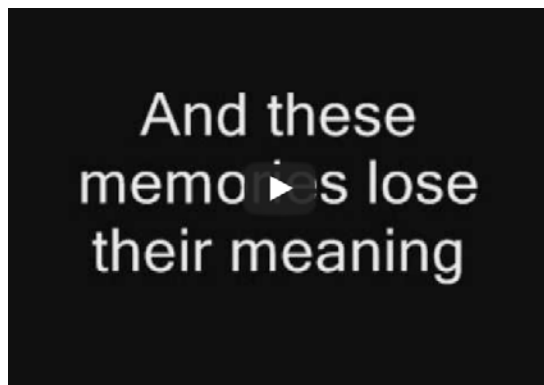
There is a certain irony in providing high-level litigation and litigation consulting services. Namely, if we, as litigators and litigation consultants, do our jobs correctly, the end product – whether it be a presentation to a jury or to the government – should be simple.

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 A2L Consulting 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**.

Simplicity is Power

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).



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

By **Ken Lopez**, Founder/CEO, **A2L Consulting**



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 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. **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 everyday, 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 any one 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).



8 Videos and 7 Articles About the Science of Courtroom Persuasion

by **Ken Lopez**, Founder & CEO, **A2L Consulting**

Long the subject of lore and myth, the art of persuasion is rapidly becoming a science-based discipline. Using the insights of psychologists, neuroscientists, linguists, jury consultants, and other specialists, we are beginning to understand how persuasion works. This article provides an overview of articles and videos related to the science of persuasion for litigators and litigation support professionals.

Google Scholar **lists** hundreds of thousands of studies and articles related to persuasion. More than 40,000 of these are related to juries and the courtroom.

One of these articles defines persuasion as “an act of influencing the minds of others by arguments or reasons, by appeals to both feeling and intellect; it is the art of leading another man's will to a particular choice, or course of conduct.” **Another good definition is** “the act of influencing the mind by arguments or reasons offered, or by anything that moves the mind or passions, or inclines the will to a determination.”

I would say simply that **persuasion is the act of encouraging a decision.**

Below are eight videos and seven articles that I find especially helpful for those who spend time in and around courtrooms:

1. Use persuasive language intentionally:



2. Here are a few great articles from the **Persuasive Litigator blog**. If you like our blog, I encourage you to [subscribe to it](#) and to the helpful [Persuasive Litigator blog](#).

- [Persuade using both Alpha and Omega strategies](#)
- [Persuade using visual tools and the immersive method](#)
- [Give jurors the tools they need to persuade one another when evaluating scientific testimony](#)

3. Geared more toward sales than the courtroom, this video from a persuasion scientist offers **six lessons for persuading**.



4. Use the **Learn, Retain, Transfer** method. Offered by other industry jury consultants, this video offers a good overview of this technique.



5. **How to use a “hook” to win over a jury.** An authority on jury persuasion says the first three or four sentences, the first 30 seconds, are what will “hook” the jury and grab its attention. You need to press your theme, your theory of the case, and your most important facts. That’s what belongs in the hook and is critical to persuasion.



6. An author of a book about science and persuasion shares about **consensus and social proofing**. The lessons shared here work better for a bench trial than a jury trial, but there is applicability.



7. Dateline NBC runs a **social test on persuasion** with interesting results.



8. Harvard's Gary Orren shares about **persuasion science**.





9. Here are **3 additional articles that cover the topic of persuasion science** on A2L Consulting's site:

- [How font choice can overcome juror bias](#)
- [Why body language is important for litigators to understand](#)
- [6 presentation errors litigators can easily avoid](#)
- [Here's why opening is the most important part of the case](#)



Font Matters - A Trial Graphics Consultant's Trick to Overcome Bias

By **Ken Lopez**, Founder & CEO, A2L Consulting

A fascinating new study in the field of social psychology indicates that the type font in which an argument is presented has an effect on how convincing it is. For **trial graphics consultants** and litigators alike, this is potentially very big news.

The study, published in the *Journal of Experimental Social Psychology* [pdf], tested the effectiveness of political arguments in convincing people to change their minds – and **also tested people's attitude to a hypothetical defendant in a mock trial**.

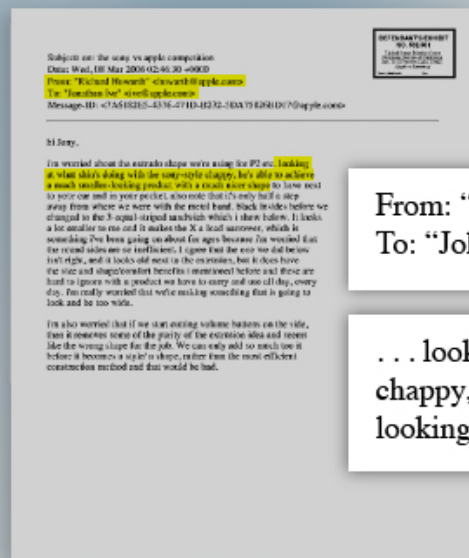


It is well known that people tend to disregard arguments that vary from their own longstanding views and to take note of arguments that support their views. This phenomenon is known as confirmation bias. For litigators and trial graphics consultants, we know this means judges and jurors will only closely pay attention long enough to confirm what they already believe - so, we need tactics to overcome this bias.

The idea behind such research was to present the arguments in hard-to-read type faces (e.g. light gray bold and italicized **Haettenschwiler**, and, the scorn of all design professionals, **Comic Sans** italicized) and to see whether confirmation bias was just as strong as when the arguments were presented in normal, easy-to-read type (Times New Roman).

Below are two sample trial graphics that compare two of these fonts. The first image uses easy-to-read Times New Roman for the callout.

Apple Closely Monitors Sony Design Changes

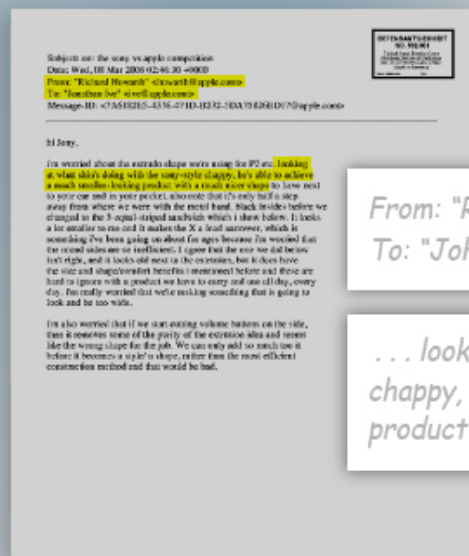


From: "Richard Howarth" <howarth@apple.com>
 To: "Johnathan Ive" <ive@apple.com>

. . . looking at what shin's doing with the sony-style chappy, he's able to achieve a much smaller-looking product with a much nicer shape . . .

And the second uses hard-to-read light gray Comic Sans italicized.

Apple Closely Monitors Sony Design Changes



From: "Richard Howarth" <howarth@apple.com>
 To: "Johnathan Ive" <ive@apple.com>

. . . looking at what shin's doing with the sony-style chappy, he's able to achieve a much smaller-looking product with a much nicer shape . . .

The result of the study was that confirmation bias was moderated by the use of the hard-to-read type. Normally, those who believed the defendant was guilty would stay with that view after reading the arguments pro and con, and the same would be true of those who thought the defendant was innocent. They wouldn't change their views.

But with the hard-to-read type, more people began to seriously consider the arguments against their initial position.



"We showed that if we can slow people down, if we can make them stop relying on their gut reaction -- that feeling that they already know what something says -- it can make them more moderate; it can have them start doubting their initial beliefs and start seeing the other side of the argument a little bit more," said graduate student Ivan Hernandez, one of the leaders of the study.

What might this research mean for trial graphics consultants and litigators?

First, there's no question that confirmation bias exists among jurors. A juror who, because of the **opening statement** or for some other reason, approaches the trial evidence with a certain perception, is unlikely to change that perception. That is one of the trial lawyer's toughest challenges -- to reach a juror (or judge) who starts out against his or her client and to get that juror to reconsider.

This study seems to say that hard-to-read typography will "disrupt" that bias and lessen its persistence, perhaps by making people "slow down." This may affect the preparation of litigation graphics by trial graphics consultants by forcing them to consider whether a bias against their clients exists, and if so, making exhibits more, not less, difficult to read. This might mean that text call-outs from scanned documents should not be retyped and that persuasive titling should be in harder to read fonts.

We will begin testing these findings with our **mock juries**, and if they prove successful, testing them at trial as well. Anything to make jurors (metaphorically) stand up and listen (that is within ethical and legal boundaries) is fair game for trial graphics consultants. We will keep you posted.



The Top 10 TED Talks for Lawyers, Litigators and Litigation Support

By Ken Lopez, Founder and CEO, A2L Consulting

In the 1980s, a small conference was started in California focused on topics related to technology, entertainment and design. Now known by the acronym **TED**, what was once a small conference is now an international movement devoted to the dissemination of "Ideas Worth Spreading."

The format is simple. Compelling speakers with compelling messages are invited to speak for between five and 20 minutes to a live audience. The talks are video recorded and generally posted online. These **online TED Talks** have been viewed over one billion times worldwide.

Some TED Talks are among the most popular educational materials on the Internet, and there is a lot that lawyers, litigators and litigation support professionals can learn from them. Whereas a **PSY video** may be the most watched video of all time on YouTube, TED Talks are the viral videos of the intellectually curious.

While the TED Talks are a **pricey conference** to attend live, there are now TEDx events as well. These are locally organized TED Talks that are only loosely affiliated with the parent. On average five occur every day somewhere in the world in over 1,200 cities, and they are inexpensive or free to attend.

I regularly attend TEDx talks that are close to me. They are **inspiring**, they are **motivating**, they are **moving**, and sometimes you even **find a major law firm litigation partner speaking at one**. I recommend you **find one near you to attend**.

Here are 10 TED videos that I believe are especially helpful to lawyers, litigators and litigation support professionals.

1) Changing How You Are Perceived by Changing Your Body Language: Whether you are trying a case in front of a jury, negotiating a deal, or managing a litigation support team, how you are perceived will change how people react to your message. Oddly, it turns out that by purposefully changing your body language, you will not only change how you are perceived, you will measurably change your own body chemistry.



2) **Inspire and Persuade Others by Speaking in this Order:** If you see me speaking somewhere or if I am **advising on the development of an opening statement**, you'll notice that I follow the teachings of Simon Sinek. I have recommended his golden circle talk before, and I still think it is among the best TED Talks, because it is just so easy to implement.



3) **How Lawyers Can Tell a Great Story (R-Rated):** The writer of Toy Story, WALL-E and others reminds us of something critical to any trial presentation, "Make me care!" **Learning to tell better stories** may be one of the best skills a litigator can learn. Making an emotional connection with your audience is how you get them on your side - not by overloading them with facts, details and backup.



4) **How to Structure a Great Talk:** Nancy Duarte does a great job of explaining how to structure a good story and offers a format that can be applied easily to any **brief**, **opening** or **closing statement**.



5) **Persuading the Rational Decision-maker:** The speaker reminds us that decisions are made on emotion and justified on fact. This is true in sales, and it is true in the jury deliberation room. To persuade, we must trigger people's encoded memories and their emotions. Even if your role is that of litigation support on a trial team, it is critical to remind trial counsel of the importance of these lessons. Remember, you can always forward this article.



6) **How Statistics Fool Juries:** We've written before on topics related to statistics including [the use of trial graphics to teach statistics for trial](#) and [statistical significance](#) as it relates to litigation. For anyone making a *Daubert* challenge, this is an especially useful talk.



7) **Negotiating Effectively** from the author of *Getting to Yes*: He shares his journey of walking in the steps of Abraham and how it may serve as a model for Middle East peace. In the process, he reminds us of how to negotiate effectively as lawyers, litigators and litigation support professionals by looking at the third side.



8) **Let's Simplify Legal Jargon:** As a designer with a law degree and a passion for simplicity, my eyes open wide any time someone says they want to simplify legal things. Here, in less than five minutes, another designer who has spent some time in law school, Alan Siegal, shows how he simplified IRS notices and credit card statements.



9) **Battling Bad Science and How Evidence Can Be Distorted:** An epidemiologist reminds us of how science can easily be interpreted incorrectly. Since we often consult on litigation where human health effects are alleged, sometimes on a mass scale, I find this talk helpful. It reminds me how often evidence is distorted to try to create liability.



10) **Harnessing the Power of Introverts:** I saw former corporate lawyer Susan Cain speak at a conference recently, and I found her talk eye-opening. Not only did I re-discover some of my buried but natural introvert roots, but I learned better techniques for leading introverted members of my team. Whether you lead a trial team, a litigation support group or a law firm, this is an important talk to hear for leaders.



I hope you've enjoyed the videos. If you've watched a number of them, you'll notice a similar presentation style. It's one that you might compare to a [Steve Jobs keynote](#), or like that of [Garr Reynolds](#), or [Cliff Atkinson](#) would follow. This style is one that I want to see more litigators embrace during opening and closing arguments.

Notice the lack of bullet points throughout the presentations. We wrote about [avoiding the use of bullet points](#) in July, and it has been one of our most popular articles ever. And I don't think a TED Talk is all that dissimilar from an opening or closing statement.



The Top 14 TED Talks for Lawyers and Litigators 2014

By **Ken Lopez**, Founder/CEO, **A2L Consulting**



In 2012, I wrote an article called **The Top 10 TED Talks for Lawyers**. Back then, most readers didn't know what **TED** was. Now, just a couple of years later, a majority of people have heard of TED and most have usually seen at least one TED talk. Over the last several years, a number of TED offshoot events were launched that dramatically increased the footprint and influence of TED and its "ideas worth sharing." TEDx events are TED-like speaker conferences but are

independently organized and usually quite local. TEDed videos are informative videos produced and posted online to teach about a particular topic of interest.

The list of TED talks I put together for lawyers and litigators in 2012 still holds up nicely, and I encourage you to **browse it**. In it, I included talks that focused on storytelling, neuroscience, juries and the legal system generally. For 2014, I want to share new videos on those same topics and also highlight a subject that the legal industry is passionate about: persuasion.

Even though lawyers engage in persuasion all the time, and it is at the core of the work we do, persuasion is something most are street-smart about, not book-smart. In other words, most people's knowledge of how to persuade tends to come naturally or is attained by observing how other talented persuaders behave.

I spend a great deal of time reading about the science of persuasion, studying those who do it well and practicing the craft myself. I tend to separate visual persuasion and oral persuasion, but they are, of course, fundamentally interrelated as many of these TED talks touch on. Across our service areas at A2L, persuasion is central to our jury consulting and our litigation graphics consulting practices. Thus, it is something we are consciously doing as litigation consultants and as visual persuasion consultants every day.

I hope that you enjoy my top 14 TED talks for lawyers of 2014 and can use these videos to improve your skills as a lawyer and litigator:

14. Influence at Work: Proven Science for Business Success: "Rarely, in isolation, does information influence or persuade us." At A2L, this sentence rings true with our core belief system and offers the primary reason our firm is hired by so many litigators. This speaker does a good job of discussing how information can overwhelm and introduces proven scientific techniques for persuasion. There are good lessons here for how to communicate with jurors.



13. Storytelling, Psychology and Neuroscience: A graduate student explains the connection between these three concepts in a way that would be useful for most lawyers to understand.



12. The Science of Stage Fright (and how to overcome it): I have seen many litigators with dozens of years of experience get nervous, sometimes distractingly so, in court. This TEDed presentation discusses the physiological effects of stage fright and how to overcome fear of public speaking.



11. Why We Should Trust Scientists: Frequently, litigation involves science. This talk provides a good framework for explaining why we should believe in science. It can be a useful guide for helping to explain to a jury why your expert is correct.



10. The Impact of Persuasion: As many TED speakers discuss, Don Norman discusses how social proof influences our behavior and other scientific concepts of persuasion. These concepts are useful to keep in mind when communicating with judges and juries.



9. The Aesthetics of Decision Making: The hero's journey is discussed and the real truths about how decisions are made are revealed.



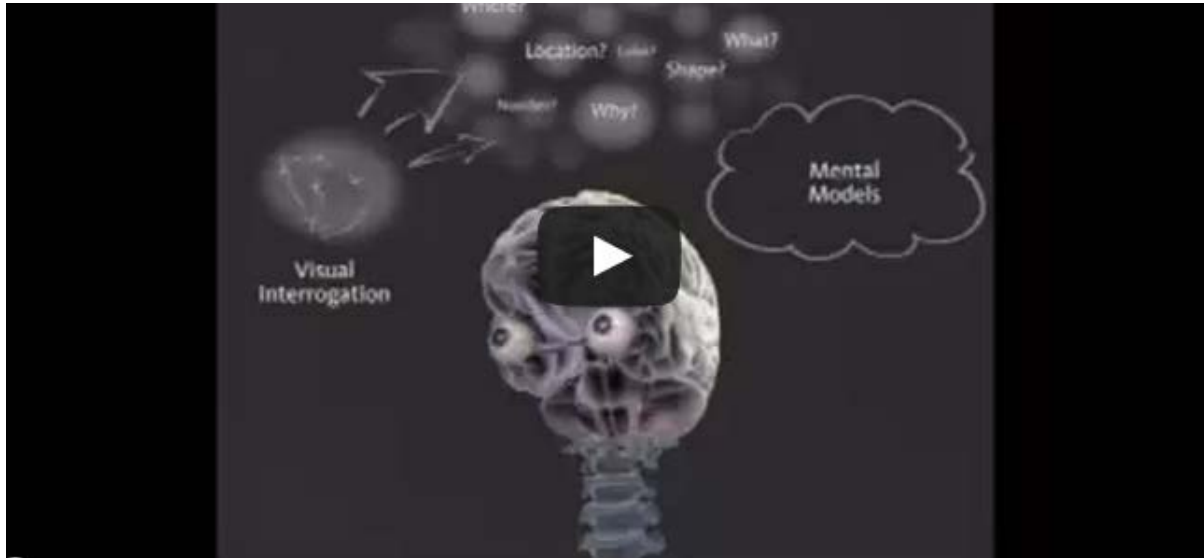
8. Persuasion: Influencing the Rational Decision Maker: A shopper strategy consultant discusses how people make decisions. Many lessons for persuasive visual communications are discussed.



7. Hear "Yes" More Often with the Science of Influence: This speaker discusses how to use influence and persuasion based on the latest science. Concepts such as information social influence, authority and reciprocity, are discussed.



6. 3 Ways the Brain Creates Meaning. Information designer Tom Wujec discusses something near and dear to me: how the brain processes visual imagery and makes meaning out of it. The applicability here for litigators is wide ranging. In particular, the techniques discussed here are excellent for case preparation in complex cases. Furthermore, he lays out some of the fundamental reasons that litigation graphics are essential in every single trial.



5. The Mystery of Storytelling: This TED Talk helps explain why most storytelling fails and offers a methodology for telling good stories. We have talked a lot about storytelling, [written a book on the topic](#) and even offer [a recorded version of our popular storytelling for litigators webinar for free](#). This talk complements our work well by offering a structure for a good story.



4. How Your Working Memory Makes Sense of the World: This talk focuses on the something we discuss frequently on our blog, namely, working memory. If you understand how working memory operates, you can better understand how to persuade an audience. In a nutshell, people have a very limited working memory. Thus, what we present at trial must be incredibly simplified and properly structured.



3. Leadership Storytelling: "Most stories do not work." Stories must be true, must be positive, must be simple and must contrast the before and after to be effective. Consider this when putting together your next opening or closing.



2. The Power of Story: PR agent Greg Power discusses why storytelling works.



1. How to Avoid Death by PowerPoint: At A2L, we frequently write about [how best to use PowerPoint](#), and how we work with litigators, CEOs and advocates to find the best ways to persuade using this tool. This speaker does a good job of summarizing many of our beliefs about what works best when persuading with PowerPoint. I don't agree on every point (e.g. the use of dark backgrounds), but we agree on *almost every* point. If you'd like to learn more about our recommendations for how to use PowerPoint, [read our articles on the topic](#), download [a free book we have written about it](#) or [watch our popular webinar about persuading with PowerPoint](#).





Litigators Can Learn a Lot About Trial Presentation from Nancy Duarte

By [Ken Lopez](#), Founder/CEO, [A2L Consulting](#)



Nancy Duarte is a well-known graphic designer, author and speaker who is probably best known for helping Al Gore put together his slide presentation for *An Inconvenient Truth*. The design philosophy and communication lessons she espouses are equally valuable to corporate presenters and litigators preparing trial presentations.

Last month, I was excited to learn that Nancy Duarte and I were [speaking at the same conference](#), and I made it a priority to attend her session. For me, listening to Nancy is like being a cat and having catnip tossed in my direction.

My firm, [A2L Consulting](#), and Nancy's firm, [Duarte Design](#), are quite similar. Both are storytelling consultancies that emphasize good presentation design. However, we do focus on different markets. Duarte's market is a general corporate market whereas A2L Consulting's market is focused on litigation and influencing decision-makers involved in a variety of disputes.

If you have read A2L's blog over the last few years, you have surely noticed that storytelling is a frequent subject of our articles and ebooks. Some noteworthy titles include [our ebook on Storytelling for Litigators](#) and articles such as [5 Keys to Telling a Great Courtroom](#)

Story, Storytelling in Apple v. Samsung and 10 Videos to Help Litigators Become Better at Storytelling.

I think Nancy's approach to storytelling is quite compatible with the advice we give to litigators. Her recommendations for effective storytelling are included in this video below:



When I saw Nancy present last month, she offered a new and imaginative way of looking at storytelling and effective communications that I think can be helpful to litigators and those who prepare trial presentations.

A typical three-part story takes us through the journey of meeting a reluctant hero who overcomes obstacles and then triumphs as the hero is transformed in some way. Nancy looked at some famous speeches and found that they did necessarily follow a **typical hero's journey structure**. Instead, the speakers make the audience the hero and follow a juxtaposed pattern of "what is" and "what could be" (both repeated), followed by a colorful description of a new hopeful reality. The photo at the top of this article shows the general pattern. Valleys describe what is, and plateaus describe what could be.

Her analysis does not stop there, as she goes into considerable detail about elements of a great speech. Below is a chart she prepared analyzing Martin Luther King, Jr.'s *I Have a Dream* speech. Phrases with common traits are highlighted along the lines showing what is v. what could be.



Any communications junkie will enjoy this analysis and anyone involved in the trial presentation creation process will benefit from learning it. A video going into considerable detail about the speech and the charts shown above can be found [here](#).

I think the takeaway from all of this analysis is that there is more than one way to present well, and there is more than one way to design a great trial presentation. You need not always [portray the client as a hero](#), and [you need not always follow classic storytelling patterns](#). In fact, very often, a presentation that follows a "what is" vs. "what could be" format may serve as a great opening or closing argument.

At the very least, one can thoughtfully include the elements found in great speeches into one's trial presentation when one understand them. Nancy's analysis is a helpful reminder that rarely does a great speech, a great opening statement or a great trial presentation simply include a chronological recitation of the facts.



6 Trial Presentation Errors Lawyers Can Easily Avoid

By Ken Lopez, Founder and CEO, A2L Consulting

In our view, many common techniques that lawyers use in making courtroom **trial presentations** actually represent very common errors.

"Error" is a strong word, since trial presentation skills and techniques are not an exact science. However, every litigator and courtroom professional should know that there is a strong body of evidence that supports the idea that these approaches are less desirable and likely to be less effective.



1. **Don't Split the Audience's Attention.** The **redundancy effect** and related **split attention effect** are the negative results of presenting information visually and orally **at the same time**. The classic example of the redundancy effect is a presenter who presents bullet points and then reads them. The human mind will struggle to process both -- and your audience will end up with less comprehension of your points than if you had presented either 100 percent visually or 100 percent verbally. Similarly, if you show something on screen, learn to pause to let your audience take it in.
2. **Don't Use All Pictures.** On the other hand, **one recent study** suggests that jurors will perform better if there is *some* redundancy between what is said and what is shown in text. So for example, if you were explaining how **LCDs work using a PowerPoint** in a patent trial, it would be ideal to show **litigation graphics** with a few key words or phrases in the presentation that are repeated orally.
3. **Don't Just Speak.** In the legal field, we see litigation graphics used in all sorts of contexts including **arbitrations**, **patent technology tutorials for judges**, **Markman hearings**, hearings on summary judgment motions or motions to dismiss, **trials**, **mock trials**, **motions and briefs**, administrative patent office disputes, **ITC hearings**, pre-indictment meetings with prosecutors, and many more contexts. No matter what the situation, there is **well established science that combining visual and verbal materials results in optimal learning**. The question that remains is what combination works best. Although it is not written in a very accessible manner, **I think this 2011 article about the modality effect** and factors that contribute to it is one of the best that I've read for an overview of the science in this area, although you may want to read our **primers on statistics for litigators** before diving in.
4. **Don't Use Bullet Points.** They're not just bad due to the redundancy effect and the likelihood that people will just read your bullets and not listen to you. They generally come across as outdated, boring, and even condescending to the listener. **See our article about bullet points from earlier this year.**



5. **Don't Just Make Spotty Use of Litigation Graphics.** One study we wrote about earlier this year demonstrates that the **most effective trial presentation technique for showing litigation graphics is a so-called "immersive style."** That is, constantly showing litigation graphics throughout the entire trial presentation.
6. **Don't Use Only Static PowerPoint Slides.** One recent study about **modality effects** (also mentioned above) suggests a strong advantage is gained using dynamic presentations (**i.e. animated PowerPoint slides, courtroom animation, etc.**) over a series of static slides.



12 Reasons Bullet Points Are Bad (in Trial Graphics or Anywhere)



Bullet points, especially when they're found in PowerPoint slides, have become the cliché of the **trial graphics** and presentation worlds. **There's no good reason to use them, and plenty of reasons not to.** For many, bullet points signal a boring presentation is about to begin or one is about to hear a presenter who, like someone on a vintage cell phone, is detached from modern presentation style.

Bullets are not just aesthetically bothersome. The **A2L Consulting trial graphics team**, trained in cutting-edge theories of conveying information, believes that text-heavy presentations riddled with bullet points also do harm to the persuasion process.

Garr Reynolds, a leading writer on the art and science of presentation, says in *Presentation Zen*, "Bullet-point filled slides with reams of text become a barrier to good communication."

Chris Atherton, a cognitive psychologist who has scientifically studied bullet points, writes, "Bullets don't kill, bullet points do."

Attorney Mark Lanier, **commenting on his \$253 million Vioxx verdict after following the no-bullets advice offered by Cliff Atkinson**, another top presentation theorist and author of *Beyond Bullet Points*, said, **"The idea that you could speak for 2 1/2 hours and keep the jury's attention seemed like an impossible goal, but it worked. The jury was very tuned in."**

Below is a list of reasons and resources that support the reality that bullet points do not belong in your presentation – whether a trial graphics presentation or something else.

1. People read faster than they hear -- 150 words per minute spoken vs. 275 words per minute reading. People will read your bullets before you can say them and stop listening. If jurors are spending time (and brain-power) reading your **trial graphics presentation**, they are not listening.

2. Chris Atherton's work confirms that bullet points do real harm to your presentation. Her [scientific study validates the notion of eliminating bullet points](#) and she lectures on the topic in this video.



3. The [redundancy effect](#) describes the human mind's inability to process information effectively when it is receive orally and visually at the same time. If you speak what others are reading in your bullets, because of the redundancy effect, you end up with less comprehension and retention in your audience than if you had simply presented either 100% orally or 100% visually. <http://www.a2lc.com/blog/bid/26777/The-Redundancy-Effect-PowerPoint-and-Legal-Graphics>
4. Authorities on the subject agree bullets are problematic. Read *Presentation Zen* or pick up Garr Reynolds' tips in the video below. Also see here <http://beyondbulletpoints.com/> and here: http://sethgodin.typepad.com/seths_blog/2007/01/really_bad_powe.html



5. Watch great presentations and see what they are doing right (and note that they do not use bullets). Here are three stand-out and bullet-point-free presentations:

Hans Rosling's TED Talk presenting data in an appealing way.



Steve Jobs introduces the first iPhone in 2007.



Al Gore revisits his *Inconvenient Truth* theories.



6. The more you use bullets the more people will judge you as outdated. If you are making a trial graphics presentation and your case relates to technology, this is unforgivable, but for any case this will not be helpful. Remember [Chris Atherton's work from point 2 above](#).
7. If you are using bullets to talk about numbers, there is usually a very easy workaround. For example, here is an easy way to handle changing metrics:

before		after																
The economic outlook is optimistic.		The economic outlook is optimistic.																
<ul style="list-style-type: none"> ❖ According to DGBAS the GDP will grow by 4.39% in 2010 fueled by a slow but steady increase in exports, domestic consumption, and private investment. ❖ The Central Bank said the interest rate will remain at 1.25% for now and any revisions will depend on the financial situation. If consumer prices increase, upward revisions are likely to take place in March or June. ❖ Exports are expected to increase by 15.3%. ❖ Domestic consumption is expected to increase by 1.77% as people become more confident. ❖ The forecast for private investment is for an increase of 6.85%. 		<table> <tr> <td>GDP</td><td>4.39%</td><td>↑</td></tr> <tr> <td>Exports</td><td>15.3%</td><td>↑</td></tr> <tr> <td>Domestic Consumption</td><td>1.77%</td><td>↑</td></tr> <tr> <td>Private Investment</td><td>6.85%</td><td>↑</td></tr> <tr> <td>Interest Rate</td><td>1.25%</td><td>=</td></tr> </table>		GDP	4.39%	↑	Exports	15.3%	↑	Domestic Consumption	1.77%	↑	Private Investment	6.85%	↑	Interest Rate	1.25%	=
GDP	4.39%	↑																
Exports	15.3%	↑																
Domestic Consumption	1.77%	↑																
Private Investment	6.85%	↑																
Interest Rate	1.25%	=																

and an easy way to handle dates:

Implementation will take 2 months

- Installation: April 5~16
- Testing: April 19~May 5
- Training: May 10~25
- Reporting: June 4 (first report)

Implementation will take 2 months

April							May							June						
M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
Installation 1 2 3 4							1 2							1 2 3 4 5 6						
5	6	7	8	9	10	11	3	4	5	training			6	7	8	9	10	reporting		
12	13	14	15	16	17	18	10	11	12	13	14	15	16	14	15	16	17	18	19	20
19	20	21	22	23	testing		17	18	19	20	21	22	23	21	22	23	24	25	26	27
25	27	28	29	30			24	25	26	27	28	29	30	28	29	30				

8. Understand how the brain works. Developmental Molecular Biologist Dr. John Medina explains briefly one of his 12 "brain rules" from his book of the same title. Here, he explains that vision trumps all other senses and pokes fun at bullet points in the process.



Vision from Pear Press on Vimeo.

9. Whether most of your presentations are for judges and juries or whether they are for management, learn how to tell better stories; take a look at one of our most popular articles: articles <http://www.a2lc.com/blog/bid/53536/10-Videos-to-Help-Litigators-Become-Better-at-Storytelling>
10. Remember, if you are using bullet points, people are likely to tune you out as boring when you most want them to be paying attention.
11. Consider using Prezi instead of PowerPoint as we explained in this popular post, and illustrated in A2L's well-circulated Prezi sample that explains Collateralized Debt Obligations (CDOs): <http://www.a2lc.com/blog/bid/40453/Beyond-PowerPoint-Trial-Presentations-with-Prezi-and-Keynote>



Collateralized Debt Obligations (CDOs) Explained with Prezi on Prezi

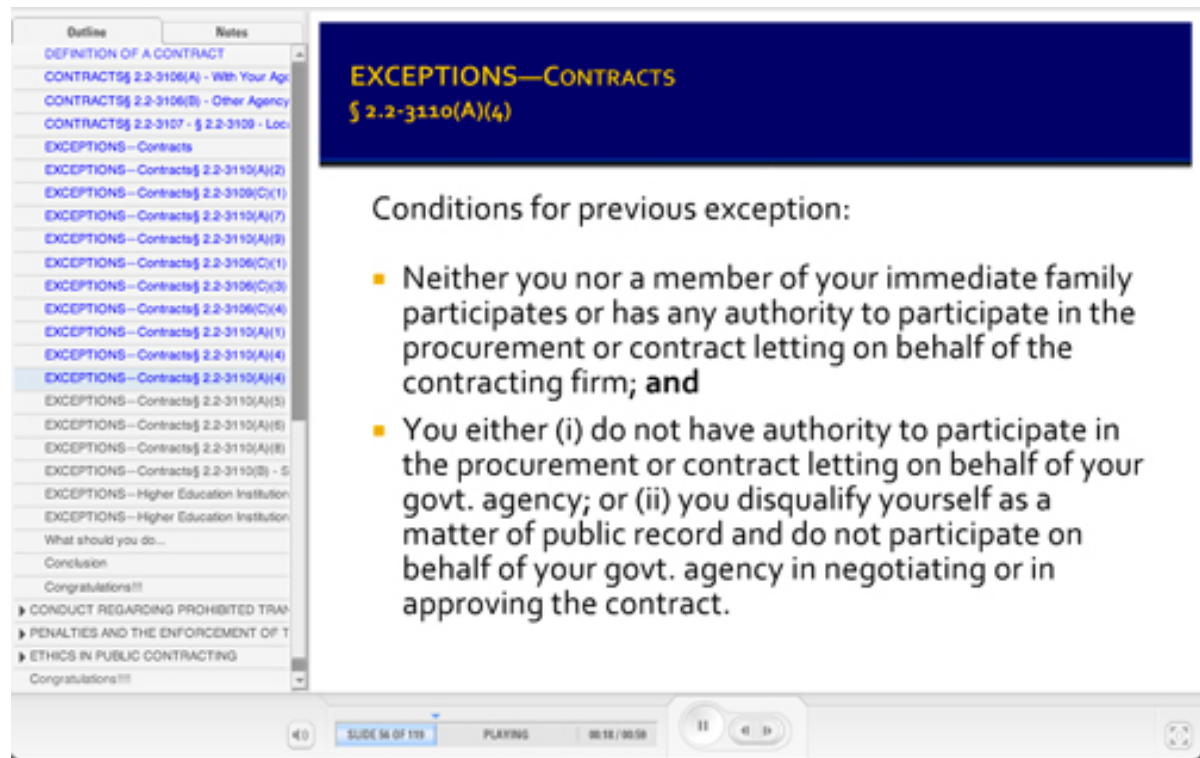
12. Finally, while A2L Consulting would be thrilled to help, here are 74 ways to remove bullet points on your own.
- a. 6 inspiring non-bullet point options
 - b. 41 great alternatives to bullet points
 - c. 4 before bullet point and after bullet point examples
 - d. 4 great before and after bullet points from Garr Reynolds (see slides 5 through 8 - although his entire presentation is helpful)
 - e. 7 ways to replace bullet points altogether
 - f. 12 more ways to avoid bullet points

We believe that a well-crafted presentation -- whether in trial graphics or in the corporate world -- will change the way people make decisions. Regardless of your audience, there is something you want from them. Make your presentation the best it can be using the latest techniques.



Why Reading Your Litigation PowerPoint Slides Hurts Jurors

By **Ken Lopez**, Founder/CEO, **A2L Consulting**



I was just painfully reminded of how bad a juror's experience can be when we fail to put them first. Yesterday morning, like many of you recently, I had to complete a continuing education course. It was your typical recorded one-hour one-credit online course. That's one of the slides pictured here.

While listening to the instructor, it struck me that the experience I was having was eerily similar to most opening statements. It lasted about an hour, 119 PowerPoint slides were presented, there were **lots of bullet points**, almost no actual graphics were used, and the content of the slides was dutifully read to me by a well-spoken middle-aged gentleman.

And it nearly killed me.

You see, even though I have a law degree, I am much more like a typical juror than a typical lawyer. When someone presents to me with the intent of persuading and/or teaching me something, I expect a lot, and boy did this presentation fail to deliver.

I expect compelling visuals, I expect videos, I expect to be entertained, and I expect to hear scenarios and examples that I can imagine experiencing. I am a lot like most jurors, impatient and spoiled by twenty years of information being delivered efficiently online or on television. In learning style terms, I am a somewhat **rare dominant-kinesthetic learner** with a



secondary preference for visual learning. In other words, I prefer to experience something when I am learning it, but if I have to, I am almost equally comfortable seeing it.

Most jurors are visual learners. Most lawyers are not. Most lawyers prefer to speak when they teach or persuade. Most jurors are wondering why we are not showing them more. The same is true for online training attendees like me, and that experience provides a valuable reminder for litigators, one that most of us can relate to.

Why does reading your litigation PowerPoint slides really cause a problem for people?

When you read a slide, you are actually worse off than if you had *either* only shown a slide and said nothing *or* if you had only spoken and shown no slide. This is true for at least two reasons, one is commonsense and the other rooting in neuropsychology.

The commonsense reason is that people read faster than you can speak. On average, people speak at 150 words per minute while people can read 275 words per minute. Unless you want to race against your listeners or properly combine oral and visual methods, it is best to choose one approach or the other.

The other reason one should not read litigation PowerPoint slides is not as obvious. It involves something called **the split-attention effect** and cognitive load. In plain language, our brains get overloaded when someone tries to show us something and tell us the same thing at the same time. The result is that our brains bounce back and forth between communication mediums and end up retaining and understanding less than they otherwise would have had we used only one method.

To be clear, the opposite is true too. If we supplement good visual aids, like **well-prepared demonstrative evidence**, with spoken words, a jury will remember more and understand more than if you had just done either. A **recent study [pdf]** confirmed this fact.

So, for someone like me, I learned what I needed about conflicts of interest in this online module and earned the requisite certificate in the course, but I was miserable along the way. I was bored, I felt my time was not respected, and I felt that little effort was made to make my experience a good one. If I could have punished my lecturer, I would have, and that is precisely the opposite way you want your jurors to feel, right?



How to Structure Your Next Speech, Opening Statement or Presentation

by Ken Lopez, Founder/CEO, A2L Consulting



I frequently help lawyers craft presentations – whether it's the opening statement of a litigator, a pitch presentation for a law firm, or a seminar presentation for a corporate lawyer. And I too am often called upon to speak at events or even off the cuff to a group.

After a good bit of trial and error, I have found two nearly foolproof ways of organizing any of these talks that I use almost invariably, whatever the context may be.

The great thing about these models is that you can use them in an off-the-cuff speech just as well as you can in a highly scripted presentation. Whether it's the courtroom or your kid's school, these models work wonders. You will come off as inspiring, not just informative. You will appear confident. You will also be seen as following modern presentation styles – the spoken equivalent of using an electronic presentation versus using transparent overhead slides.

To understand these new approaches, which have become common in **TED Talks**, on the professional speaking circuit, and among A2L's clients, you need to understand the old format and why it is a recipe for audience disconnection and boredom. It goes something like this:

"Hi, I'm Ken Lopez. Thanks for having me here this morning. It's a real pleasure to speak to a group like you.

I founded A2L Consulting in 1995, and today I am going to talk to you about litigation consulting. If you heed my message about conducting mock trials, using litigation graphics and relying on trial technicians in court, you are going to be at the top of your game in the modern courtroom."

Okay, it's accurate, but it's flat. And it gets worse. The agenda slide comes up. Ugh. The **parade of bullet points** starts marching across the screen. Ugh again.

Compare this with the following approach. These will be the first words you hear from me:

"Litigation consulting is a process that helps people like you, the world's best communicators, persuade even more effectively. For your must-win cases, it is a must-do and includes a three-stage system of structured practice including mock trials,



the consultative creation of litigation graphics to bring your trial story alive, and flawless courtroom document and electronics handling by trial technicians who make you look like a star. Your judge and jury will reward your fine preparation.

I'm Ken Lopez, and I'm the Founder/CEO of A2L Consulting, the world's best litigation consulting firm."

Delivered the right way, with the right pauses and the right tone, version two should have left you feeling something entirely different than version one. It should have left you *feeling*. And that's no accident.

I'm using a format that I call **BELIEF - ACTION - BENEFIT**. I learned it from a professional speech coach many years ago. Essentially, it goes like this:

I believe ____, I think you should do ____, and if you do, the benefit will be _____. Then introduce yourself. Then go into detail about what you believe, what actions you want your audience to take and how they will benefit by doing so. Finally, repeat your initial belief - action - benefit statement.

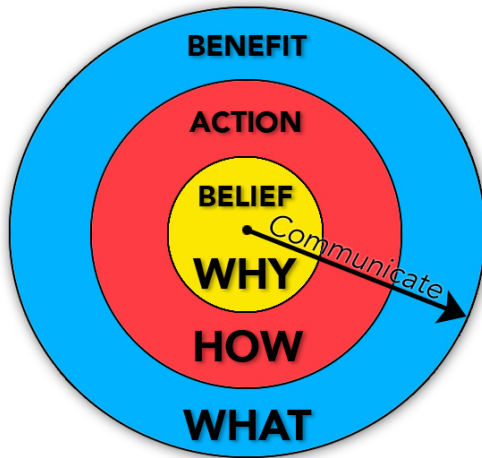
This process needs to be modified to suit your situation. What a lawyer believes is not really relevant to an opening statement, so the belief - action - benefit approach needs to be couched a bit differently -- more like "Plaintiffs, self-described patent trolls, are attempting to wrongfully extort money from my client. You have a chance to make this right. If you do, you'll be standing up for small business and all that is just and right."

One well-known speaker who offers a similar format is **Simon Sinek**. He points to the golden circle of communication that follows a pattern of **WHY - HOW - WHAT**, whereas most people communicate the opposite way **WHAT - HOW - WHY**, which is exactly what I used in my first uninspiring example. Look at Simon's now legendary TEDx Talk:



I think Simon's format is extraordinary and pretty similar to **BELIEF - ACTION - BENEFIT**. I tend to weave both formats together when developing a story for trial, but when I am speaking off the cuff, I just find **BELIEF - ACTION - BENEFIT** to be a bit easier to remember. However you look at it, I bet this is not the presentation you would have given a year ago, or even a week ago.

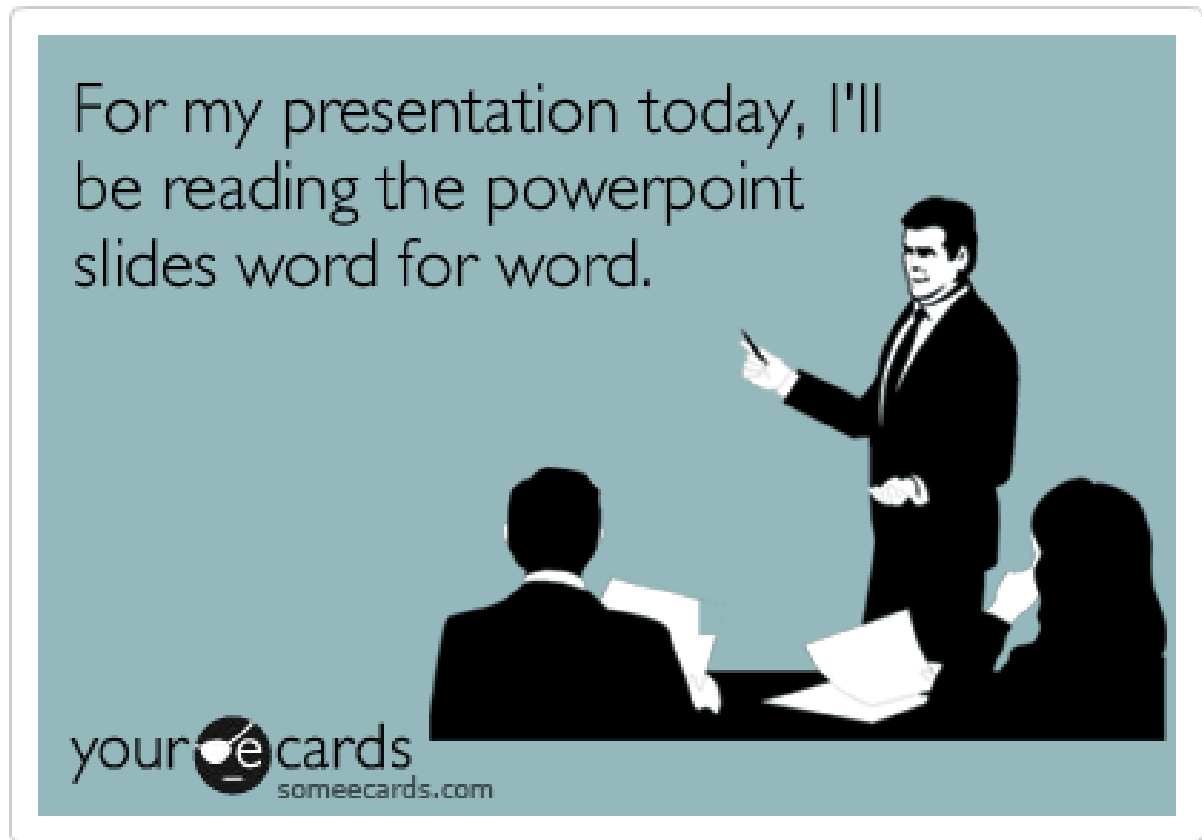
Here's a chart that will help you visualize both approaches. Remember, most people, businesses and organizations communicate from the outside in. But to inspire rather than simply inform, communicate from the inside out.





Don't Use PowerPoint as a Crutch in Trial or Anywhere

By **Ryan H. Flax**, Managing Director, Litigation Consulting, **A2L Consulting**



The goal of a presentation is always the same -- to engage the audience, to move them. This rule of thumb holds true regardless of the stage. It's so in the courtroom, on the floor of the U.S. Congress, in the boardroom, and in the classroom. Litigators engage a jury to win their case for their client; professors engage their students so that they can best teach the subject matter. Engagement leads to better understanding, which then leads to better retention and enhanced persuasiveness. Retention and understanding are the keys to success.

As a student of presentation technique, I was especially lucky over the last summer to have two terrific sources of experiential information on the subject and a good deal of insight in to what works and what does not. My sources were Ms. Shawn Estrada and Ms. Jessica Dunaye, two of our summer interns at A2L, who have some pretty specific thoughts about presentation style after having sat through over 2,000 lectures from many, many professors and students throughout their college careers. After having spent a summer with A2L, learning first-hand how great litigators operate and now they are counseled themselves by litigation and jury consultants, they strongly believe that the litigation presentation techniques espoused by the A2L team are relevant in many aspects of life.



Here are some of the interesting tidbits from these two. They had so much to offer, I've divided their points into a series of articles.

Don't use PowerPoint as a crutch.

PowerPoint is a great presentation tool and the standard foundation for most courtroom, business, and classroom presentations. It enhances a presenter's points when used correctly. However, it can also ruin a presentation and make its user a tremendous bore.

It is easy to feel prepared after pasting a few words on a slide and/or committing your entire presentation outline to a series of slides, but we all know the result: **the unprepared presenter**; and its consequence; overwhelming the audience with a wall of text. It's painful to watch such a presenter grappling with the technology, fumbling with their notes, and stuttering through their content.

It doesn't go unnoticed when a presenter seems to be hiding a lack of knowledge, a lack of mastery of the subject matter, or a failure to practice a presentation behind a PowerPoint slide filled with text, reading it word for word. During a presentation, it is important to convey your position as an authority on your subject matter, which is why it is crucial to prepare yourself thoroughly. The best ways to ensure that you are not using your PowerPoint as a crutch are to make sure that you know your presentation perfectly and to make sure that you are using graphics to supplement, not to direct your presentation. You should NOT be relying on the content of your slides to drive your presentation.

This is true for professors teaching a classroom of students and for students presenting as part of their coursework. Student presentations are a college classroom staple. Every semester it's déjà vu: a nervous, obviously unprepared, student slowly walks to the podium at the front of the class to take his or her turn presenting something to the class. Usually their goal is to teach the class that day, and professors expect nothing but the best. It's a reasonable expectation, too, as the subjects are straightforward and presenting is simply an exercise in corralling the facts into a neat package.

The biggest give-away that a presenter does not know what they are talking about and is uncomfortable making the presentation is reading directly from the PowerPoint slide. Not only does this almost instantly *disengage* the audience; it also shows a lack of command of the subject (this also goes for burying your head in note cards).

Also, a presenter needs to know his subject and presentation well enough to that he can dodge some curveballs. Some students will go to great lengths to "participate" in your discussion because they know it's an easy grade booster. This sometimes means asking random questions just to show the professor they are trying to engage in the topic of the day. For an unprepared presenter, these students are their worst nightmare. **Being prepared** means researching your topic fully and practicing until you know your presentation by heart.

We can all plan to keep from using PowerPoint as a crutch. In fact, at A2L we have many tips on **how to make PowerPoint your very best friend**. The combination of a well-prepared presenter and a carefully-designed graphic is sure to be a recipe for success for any student or litigator alike.



Introducing a New Litigation Consulting Service: the Micro-Mock™

By Ryan H. Flax, Managing Director, Litigation Consulting, A2L Consulting

How important is it to you to give your clients and their cases the *very best service*?

How important is it to you to be and become the *best litigator possible*?

How important it is to you to *save litigation costs* while bringing *maximum value* to your cases?

As an experienced litigator and litigation consultant, I already know your answers to these questions. For the best litigators, answering these questions is easy. We all want to win, make our clients happy with and proud of us, and minimize unnecessary costs while doing it. The challenge for most of us is that we have to make competing choices as we prepare for trial.

As much as we would like to schedule a mock trial for each case, because we learn so much from them and the case is always better for it, money and time budgets often prevent it. Yet, one of the things we often hear from trial teams after mock trials, or even after working with our litigation consulting team on themes or graphics preparation, is how valuable the process was and how much they appreciated getting an earlier start on developing trial strategy than they otherwise would have. Working out the complexities of a case and simplifying issues sooner, rather than later, are essential to litigation best practices.



I believe that our team has the perfect antidote to the time / money / value balancing act in the launch of a unique approach to resolving these competing priorities. In utilizing our proprietary methodology, I know that overall litigation costs will be reduced, while at the same time exponentially improving litigation results.

In-house counsel should pay particular attention to this because your outside counsel is constantly balancing the potential for settlement, litigation budget, and the desire to “win.” It’s necessary, but sometimes this balancing act can come at the expense of being as prepared for trial as trial counsel would like to be (or you would like them to be).

Today, A2L Consulting introduces a special new service designed to help you better prepare your case, while *not* breaking the bank.

It’s called the **Micro-Mock™** and *only* A2L offers it. The service starts at a fixed-rate of \$9,500.

The **Micro-Mock™** is A2L’s proprietary service that fits almost every litigation team’s budget and almost no litigation team can afford *not* to use. You may have used mock juries and jury



consultants in the past to hone a case and prepare for trial, and there are few better ways to fully prepare for a trial than with a well-crafted mock exercise.

But the process is not inexpensive and can be time consuming – two issues often creating a barrier to the process. The **Micro-Mock™** is a different service that can complement jury consulting when used or can be an alternative if your time and expense budget won't allow for full mock jury services. For a small fraction of the cost and time of a full mock jury process, you can utilize A2L's **Micro-Mock™** to sharpen your case and your presentation skills.



I wish I could write in more detail about the **Micro-Mock™** service, but because it is a revolutionary new product for the litigation consulting field, it's something we want to share with litigation teams directly. If you are interested in learning more about the service, please let us know by [following this link](#), clicking the **Micro-Mock™** button above, or by contacting me directly.

This is a service I helped develop, because it is one I wish had been available to me when I was trying cases and is one that I know will benefit almost every litigation team. I promise it will benefit whatever cases you're working on and will improve your advocacy abilities. I would welcome the chance to explain the service and how it will help you win.

[Click here to learn more.](#)

Here are some related mock trial, trial consulting & jury consulting resources from our litigation consultants:

- [Overview of our traditional mock trial services](#)
- [6 good reasons to conduct a mock trial](#)
- [A2L Voted Best Jury Consulting Firm \[pdf\]](#)



10 Things Litigation Consultants Do That WOW Litigators

by Ken Lopez, Founder/CEO, A2L Consulting



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 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 A2L Consulting and other firms like ours often hear the word, "wow."

1. **Wow, you came in at or under budget:** One of 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.



How To Emotionally Move Your Audience

by Laurie R. Kuslansky, Ph.D., Managing Director, Jury Consulting, A2L Consulting

“One ought to hold on to one's heart; for if one lets it go, one soon loses control of the head too.” — Friedrich Nietzsche



In other words, once emotion comes into play, fact and reason go out the door. For at least one side of the courtroom, that is the precise goal. For the other, the goal is to combat it, but if you cannot beat them, then you must learn how to join them. What does that mean?

There are several emotions that can often play a role in jury trials: anger and sympathy being chief among them.

Sympathy

“Can I see another's woe, and not be in sorrow too? Can I see another's grief, and not seek for kind relief?”

— William Blake

Many attorneys are concerned about the role of sympathy in jury trials for fear that it will dictate how the jury rules. This is a well-placed concern in cases involving a truly helpless victim (such as a newborn in a “bad baby case”).



However, decades of jury research through mock trials and post-trial interviews of actual juries show something different in many other instances: that jurors measure a party's actions by what they knew or should have known and what they did or failed to do about it based on what they knew (i.e., knowledge and control). If the party knew too much (or should have known) and did too little, for example, it trumps sympathy.

For example, a journeyman electrician and popular, well-liked football star, was engaged to his high-school sweetheart. He was tasked with cleaning the electrical workings on a ship on a fast turnaround. The floor of the ship had salty sea water. He was to clean high-voltage equipment. He didn't check if the electricity was on or off ("tagged out") and did the unthinkable – cleaned the equipment with a metal brush, while standing in salt water. Sadly, the power was not turned off and he was almost killed by the electrical shock that resulted. Miraculously, he survived, but was in very bad shape, and no longer the baby-faced young man, but a disfigured, disabled one. Although he was highly sympathetic, the yardsticks of knowledge and control yielded a failing grade. Any housewife knows not to mix electricity and water, let alone salt water. Anyone knows this from common sense, so while they were greatly sympathetic, jurors faulted him for engaging in such risky behavior. As a result, their damages award was significantly discounted for his contributory negligence. Although they also blamed a failure in supervision, his own actions undermined sympathy for him and the result.

A retired school-bus driver dreamed of driving around the country with his wife in an RV in their golden years. Before departing for such a trip, he realized he needed to change one of the tires. Unlike tires on a typical car, tires on this vehicle clearly required – as would those on a school bus – special procedures to avoid injury, such as placing chains on the tire and other precautions. Sadly, despite his years of professional experience with a bus that required a similar procedure, he cut corners and simply approached changing the tire as if it was on a VW bug. It exploded and nearly killed him. He was no longer going to tour the country. He could hardly walk and had significant and permanent brain damage. His wife, a nurse, was on permanent duty to care for him. Again, while some felt sympathy, jurors used the yardstick of knowledge and control, concluding he should have known better and exercised more appropriate caution. Goodbye windfall.

So, if you represent the Plaintiff, before you seek sympathy (or damages), first hold a mirror up to the actions of your client to consider what they knew or should have known, and what they did or failed to do. To the extent you can minimize these for your client and increase them for the defense, the better you will do.

Similarly, defendants may be assumed to be more knowledgeable and powerful and to have an obligation to be so, but being able to show a lack of access or ability for control can diminish liability, and in turn, damages. For example, what was the state of the art? What was the basis for your client's beliefs and actions? Why was that reasonable and keeping with industry standards? What lack of control did your clients have over changes? Why wasn't the "ideal" possible"? Often times, jurors will believe that profits motivated defendants' actions or inactions, putting profits over safety, for example. This in turn often leads to the most powerful emotional driver in litigation: anger.



Anger

“Anger cannot be dishonest.”

— Marcus Aurelius

One of the most potent drivers of jury decisions is anger, whether in deciding liability, awarding compensatory damages, or most relevantly, punitive damages. Even in cases in which punitive damages are not a real option, jurors often express their punitive emotions by awarding higher compensatory damages. One of the best ways to move a jury is to move them to anger and vice versa.

Angry jurors are more committed to their position, loath to abandon it, and prone to accelerate the amounts to award, thereby raise the ceiling, while less likely to want to listen to reason or facts. While facts, if they do seep in somehow, are a powerful way to combat anger, failing to address the causes of anger is a risky approach.

Anger shows you care. One cannot get angry about something one doesn't care about, so the trick is to discover what matters to the jury. In order to access their anger – or overcome it – you must know the trigger. What do people care about most? Themselves. They ask, “What if that was me? Or my child?” “Can that happen to me?” “What if they don't fix that problem?” Next, people care about greed and unfairness, particularly when those in power take advantage of those who are not.

For example, a young construction worker working on the roof of a building in which a sky light was under construction did not notice the open hole and fell through, suffering permanent brain injury. Plaintiff's counsel could display safety rules and OSHA guidelines and the like, as well as medical records, but none of that promised to anger the jury outright. It would only make them think. The goal was to infuriate the jury. How? By having an expert testify about the proper way to secure the hole – including some plywood and some 2x4s blocking access to it – and then, marching those items into court during summation and showing the Home Depot receipt for about only \$80.00. Once angered by the callous cost-cutting of the owner, jurors were angry that it would have taken so little to prevent so much harm, and showed their anger honestly in the currency of jury anger by awarding significant damages.

As a defendant, there are ways in which one can *inadvertently* anger jurors and thus, move them in the wrong direction. This often occurs when counsel considers facts without considering the emotions that can naturally attach to them. While the facts in a vacuum may seem very convincing, they can backfire in the context of jurors' feelings. For example, while it may be true that an M.I.T. study shows that women make less in the workplace largely due to their own work/life choices, how do real people react to that? By saying that since women are the ones who have babies, employers should make adjustments to level the playing field by taking that into account. Or, say that an industry study shows that most people in an industry do precisely what the defendant did in the case, but jurors find that behavior objectionable. In that case, jurors will use the verdict as a means to correct the industry, starting with your client. In another instance, in order to refute claims of “pain and suffering” of passengers on an ill-fated flight, expert testimony may show, that depressurization in the cabin results in hypoxia, which causes a mild sense of euphoria and feeling “high” before passing out and eventually dying due to lack of oxygen as a way to say that people on a



crashing flight didn't suffer. Try selling a bridge. Even if true, jurors are likely to storm the defense counsel's table rather than accept this factual position as helpful. Instead, they ended up mocking it and displaced it with their own disaster fantasies of what the last 18 seconds of life was like for the poor people on the doomed flight on their way down. The expert testimony backfired and made them angry.

Skilled plaintiff attorneys tend to know how to dial up emotions. They know how to include details that bear the ring of truth, words that touch the soul, and images that relate to jurors' own lives. It is usually the defense that needs greater awareness in this realm. When one considers presenting only the facts, they are giving their opponent a great advantage. Instead, consider also how the facts will play on jurors' feelings. For the defense to succeed, it must consider how the events impacted everyone involved as well as how the verdict may impact everyone involved, and then, how all of that may impact the jury. It may be tedious, but failing to do so is perilous and failing is not a good feeling.



10 Things Litigators Can Learn From Newscasters

By **Ken Lopez**, Founder/CEO, **A2L Consulting**



High-caliber newscasters are an interesting group. They inform, they teach and they persuade us. They use visuals in a way that complements what they are saying quite seamlessly. Their attire is impeccable, they look the part, and their delivery feels more like a conversation than a lecture. Somehow, they confidentially speak to an audience who can't talk back to them, and yet they manage to build a relationship with that audience.

If you think about this description, it sounds a lot like a litigator.

Of course, there are big differences between litigators and newscasters. Litigators don't simply read what is in front of them (at least not the good ones). Preparation for a newscast takes hours or days, not the months or years a trial might take. And of course, the skill set of a litigator is quite broad outside of the courtroom performance aspect of the job, typically requiring the ability to negotiate, write well, organize well, think on your feet, lead a team, sell and much more.

Still, I believe there are some very useful lessons to be learned from watching how the news is put together. *The Nightly News with Brian Williams* is a good example of a high-quality newscast, and about 10 million people watch it every day. Whether the evening's anchor is Brian Williams, Lester Holt or Savannah Guthrie (she happens to be an attorney), the presentation is well-refined, the delivery is exceptional and overall, it serves as a good model for how to communicate in the courtroom.

Let's look at 10 things that litigators, especially those who participate in jury trials, can learn from a high-quality news broadcast.

- 1) **Newscasters never speak in jargon:** The language used is comfortable and accessible to all audiences. Litigators must work hard on themselves and with experts to strip away as much jargon and tech-speak as possible in their presentations.
- 2) **Newscasters look the part.** Brian Williams has been **named to Vanity Fair's fashion hall of fame** for his consistent well-tailored looks that convey professionalism without distracting from the information presented. I know great litigators who use style consultants to help plan their courtroom attire. If you can't or don't want to do that, read up on what works well as far as attire goes.
- 3) **The graphic presentation style is simple and clear.** A newscast is short. To get a lot of information across quickly and clearly, useful visual aides are critical. This chart below shown Wednesday night certainly gets the attention of those of us on the East Coast and quickly conveys information. It follows the simple rule of 'one concept, one slide' that we promote.



- 4) **The graphic presentation style is immersive.** We learned about the value of an **immersive style of visual presentation from Dr. Ken Broda-Bahm**. Watch this segment and notice how the visuals never stop coming. Indeed, they never stop during an entire newscast. Studies suggest this approach is best for courtroom persuasion. [38 seconds]



5) **The graphics complement what is being said.** Litigation graphics should not compete with what you are saying. They should only complement what you are saying. Watch here as visuals are constantly in motion, informative and persuasive. The golden moment is at the end when he describes the size of the search area. The visual combined with the phrase "size of Colorado" is unforgettable whereas neither would really be all that memorable alone. [23 seconds]





6. The presentation is not just informative. The presentation is entertaining as well. Brian Williams does a good job of appropriately injecting humor into his presentation. It makes him more credible and trustworthy. With that said, please remember that you never want to **force courtroom humor and get a result like the one we discussed last June.**

7. Convey massive amounts of information. In 20 minutes of the news, we learn quite a bit about some key subjects. The visuals are essential to this process as mentioned above. Also, clear language goes a long way to making it digestible. Many trials are much longer than they need to be because the trial team has not made proper use of demonstrative evidence. Free Downloads: [A2L's Complex Civil Litigation Trial Guide](#) or [A2L's Litigator's Guide to Using Litigation Graphics](#)

8. Attention is switched (intentionally) between spoken word and visuals. You must keep your audience on their toes. You must surprise them. Watch any **Nightly News broadcast**, and you'll see a combination of photos, graphics, video and talking heads used every time. The frequent switching of presentation methods keeps the viewer engaged. Try to match this style at an appropriate pace in the courtroom.

9. The nightly news is on every night. Until we can watch federal trials regularly, we have to learn from other sources like **mock trials, state trials, televised appeals, CLE's, YouTube clips** and the way they do things on the news. One of the great things about watching how they do things on the Nightly News is that it is on every day of the week, and they keep improving their approach. It is an easy and free place we courtroom experts can learn from.

10. Don't take yourself too seriously. Brian Williams is brilliantly funny, and it's his dry delivery that really sells his humor. He does not show too much of that on the Nightly News, but he shows just enough to forge a relationship with the audience. In this story, there is a two-and-a-half-minute video with some **funny Brian Williams moments.**



21 Reasons a Litigator Is Your Best Litigation Graphics Consultant

By [Ken Lopez](#), Founder/CEO, [A2L Consulting](#)

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.



3 Ways to Force Yourself to Practice Your Trial Presentation

By **Ken Lopez**, Founder & CEO, **A2L Consulting**

and **Ryan Flax**, Managing Director, Litigation Consulting, **A2L Consulting**

The old adages roll off the tongue when someone says the word “practice,” don’t they?

“Practice makes perfect”

“Practice makes the master”

“Practice is everything”

“Perfect practice makes perfect”

- or one of my favorites -

“In theory there is no difference between theory and practice. In practice there is.”



Whether you hear these in the voice of a parent, the *Karate Kid* mentor, Mr. Miyagi’s voice, Yoda’s, or Morgan Freeman’s, these words resonate. Yet many highly regarded litigators resist practicing their **trial presentations**.

Take a look at what a proven winner, Coach Pete Carroll, has to say about practice theory:



Jeff Stott, an expert consultant to business and sales professionals, confirms the importance Carroll puts on carefully planned practice and confirms how reluctant most non-athlete professionals are to engage in the activity:



We don't know why they resist it exactly, but it may have something to do with not wanting to be seen as less than perfect. While this is a valid emotion, succumbing to it does an injustice to your case, your client, and yourself.

For the real best of the best professionals, including trial lawyers, practice is not only common, it is usually public. These people create a culture in which presentations are not expected to be perfect at the outset, and everyone is better for the experience. Accustoming yourself to this mindset, much less creating such a culture, is not easy. But you can make it happen.

Take some tips from Victoria Labalme, a communications consultant to Fortune 100 executives:



Victoria makes some terrific points in her six-minute video:

1. First, you must practice to be any good
2. Practice on the clock
3. Practice with an audience
4. Watch yourself practice
5. Video (and audio) record your practice

Practice as you'll play – wear the clothes you'll wear, rehearse as you'll do the presentation, imagine yourself in the “arena” you'll be playing in

Finally, Marsha Hunter advises attorneys in NITA on the best ways to practice presentations, speeches, and opening statements. Here's an excerpt of a 2012 NITA talk she gave to a group of litigators:



We strongly believe in continuous self-improvement. It's best for us and the people around us, and it is certainly best for our clients. With that in mind, here are three ways in which you can build practice into your trial preparation routine:

- 1) Use a **mock jury (trial)**. We offer a variety of mock jury formats that range from the full multiday event involving 50 to hundreds of mock jurors to single-panel focus groups or mock jurors. Either way, you get access to a Ph.D. jury consultant, a formal report, and a review session. If you can afford it and have the time, this is the way to both practice your case and get the maximum feedback.
- 2) If a full mock jury session is not in your budget, you don't have the time, or it's too early in your case to do it, use a **Micro-Mock™** session. The Micro-Mock™ is A2L's proprietary service. There are a variety of options, but at a minimum you get access to our expert litigation consulting team and tremendous feedback on your case. This is the ultimate in



balancing budget and results. No other service is as effective at forcing you to practice your case and get the formal feedback you need to improve.

3) On your own, **practice, practice, practice** your **opening statement** or oral argument. Do it yourself at home, in the car, in your firm's conference room, in your partner's office, and do it over and over again. Enlist your peers as well as non-attorneys as your audience. Get their feedback. Listen to yourself talk out loud and try different ways of getting your points across.

It's best to use all three of these suggestions. Progress from very informal practice to very formal practice and back again. Put these things on your calendar now and be a better litigator for it when it counts.

Here are some other articles related to practicing your trial presentation:

- [Practice like an actor playing a lawyer, and you'll be Gregory Peck in no time](#)
- [Learn more about mock trials](#)
- [Learn more about A2L's unique Micro-Mock service](#)
- [Free Download: The Complex Civil Litigation Trial Guide](#)
- [7 ways to help experts give better testimony](#)



20 Great Courtroom Storytelling Articles from Trial Experts

By **Ken Lopez**, Founder & CEO, **A2L Consulting**

The power of storytelling has been recognized for millennia. From Aesop to Hans Christian Andersen to Steven Spielberg, great storytellers are celebrated by our society, almost as much as the people that they glorify in their tales. We tell our kids stories, businesses are encouraged to share stories to build culture, and we all admire that person who can captivate a group of friends with a fascinating tale, true or invented.



The reason we appreciate these great storytellers is hard-wired in the human brain. Storytelling predates written language, of course. It is how our ancient ancestors communicated what to fear, what to value and whom to love. Studies reveal that whether we are told a story or not, our brains will naturally try to build a story around a set of facts. In other words, if a trial lawyer fails to build a story, judges and jurors will build one anyway. It's how we make sense of a set of complicated facts. It's how we impose order upon chaos. It's how we resolve tension and conflict.

As more and more experts study what works best in the courtroom, the value of storytelling is being increasingly recognized. We have written frequently about the subject and plan to release an e-book on the topic next week. Other top trial consultants write about storytelling too, and I would like to highlight some of the best articles that I have found on the topic.

Here are 20 articles from trial consultants and lawyers around the industry that discuss the power of storytelling in the courtroom. Watch for a new complimentary e-book next week that we are publishing on storytelling for lawyers. If you'd like to be notified of its publication, be sure to [claim your free subscription to The Litigation Consulting Report here](#).

1. [Storytelling for Lawyers](#)
2. [Litigation: The Art of Storytelling](#)
3. [Storytelling for Oppositionists and Others: A Plea for Narrative](#)
4. [The Power of Storytelling in Your Legal Practice](#)
5. [Trial Lawyers as Storytellers, The Narratives Versus The Numbers](#)
6. [Why Trial Lawyers Say it Better](#)
7. [Psychodrama and the Training of Trial Lawyers: Finding the Story](#)
8. [Tips for Lawyers on Persuading Through Storytelling](#)



9. [The Power of the Story in the Courtroom](#)
10. [Final Argument: Storytelling](#)
11. [The Storytelling Lawyer](#)
12. [The Importance of Storytelling at All Stages of a Capital Case](#)
13. [Yarn Spinners: Storytellers' no-tech craft proves refreshing, educational](#)
14. [The Stories We Lawyers Tell](#)
15. [iPad and Storytelling for Lawyers](#)
16. [What Trial Lawyers Can Learn from a Songwriter to Strengthen Their Case](#)
17. [Fiction 101: A Primer for Lawyers on How to Use Fiction Writing](#)
18. [When You Think "Story" Think "Structure"](#)
19. [A Trial Presented as Story](#)
20. [Twelve Heroes, One Voice reviewed in the Advocate magazine](#)

There are many great articles out there on this topic, and unfortunately many are hidden behind a paywall or require a subscription. I've endeavored to list only those that you can readily access.



Portray Your Client As a Hero in 17 Easy Storytelling Steps

By **Ken Lopez**, Founder/CEO, **A2L Consulting**



Much has been written about the hero's journey as Joseph Campbell described it in his seminal work, *The Hero with a Thousand Faces*. In this 1949 book, Campbell asserts that storytellers worldwide, in their best stories, have for centuries used a story structure that he calls the monomyth. From Beowulf to Ulysses to Luke Skywalker, the pattern is seen over the ages.

Leadership speakers, filmmakers, theologians and literary authorities use the 17 steps described by Campbell to tell stories that have multi-generational staying power. I had the pleasure of attending a **TEDx event last month whose theme was the hero's journey**.

As we have written about before and described in A2L's free **Storytelling for Litigators book**, humans are moved by stories at a primal level. Tapping into this human need for drama by using storytelling in the courtroom is an easy (but not simple) method of persuading your judge or

jury. As is largely true in sales, I believe that juries (and probably most judges) **decide on emotion and justify their decisions with facts**.

Since we know that using story is a valuable courtroom strategy and since we know that painting our clients as heroes is also inherently valuable, I thought I might try to use some of the existing hero's journey charts and guides to build a narrative for a typical case. The problem that I found is that most writing (or charting) on this topic is weighed down by so much jargon (e.g. Apostasis, Belly of the Whale, Rescue from Without) that it is hard to quickly make sense of. To that end, below is a **litigation-ready infographic free of literary jargon that lays out the key 17 steps of the hero's journey**.



[Click on image to pop-out a larger version and to share]





As the chart above shows, the hero's journey follows a pattern of 17 steps. Campbell's cryptically described 17 steps are well discussed [here](#). To make this useful pattern more accessible, I've attempted to use plain language to describe the steps. My plain language stage is followed in parentheses by the name that Campbell gave to it. Also, to help bring the process alive, I have matched each step with an example from a hypothetical legal and technical fact pattern, typical of the cases we most often see at [A2L](#).

Here, our heroine is a lower level employee at a stagnant remote control manufacturing company, and she has an idea for a breakthrough product - a remote control operated not with a handheld device but by wireless physical hand gestures.

1. **Something Interrupts the Ordinary** (Campbell's Call to Adventure): Describe the status quo as it was at the time. Then describe that moment when someone sees an opportunity for change or a new threat emerges.

In the hypothetical example, remote controls are functional uninspiring devices that get lost, wear out and have undergone little change for 25 years, in the same era that saw the mass deployment of handheld phones and personal computers. Inspired by watching her nieces play a TV-displayed game that uses hand gestures instead of controllers, our heroine imagines a world where hand gestures alone can manipulate her television and replace standard remote controls. At work the next day, she hears a speech by the firm's CEO who is looking for new ideas.

2. **Obstacles Arise** (Campbell's Refusal of the Call): Share how obstacles arose from the very beginning that prevented your client from taking the leap of faith required to pursue the opportunity.

Example: After hearing the speech, our heroine brings the idea to the attention of management at the remote control factory and was laughed out of the executive suite. She figured they were in management for a reason and went back to manufacturing remote controls as before.

3. **A Mentor or Helper Appears** (Campbell's Supernatural Aid): Explain how your client gets some unexpected assistance that is a sensible next step in bringing the opportunity to reality.

Example: Our heroine attends a consumer electronics conference that shows off some new gaming technology that reminds her of her idea. She talks with the reps at the tradeshow booth about applications they've considered for their wireless controllers. They suggest she show them what she has in mind.

4. **A Big Step Forward** (Campbell's Crossing of the First Threshold): Recount how your client made the decision to move forward toward the opportunity with a large clear step.

Example: Our heroine makes the brave decision to leave her employer and set off on her own.



5. **Out with the Old, In with the New** (Campbell's Belly of the Whale): Tell how your client demonstrated a willingness to embrace the opportunity in spite of the great odds.

Example: Our heroine's savings has run out and she stays up night after night trying to perfect a prototype with the dream of returning to that gaming company to show off her work.

6. **Many Attempts with Mixed Results** (Campbell's Road of Trials): Chronicle how your client tried to reach the opportunity time and time again. Usually, there are some successes and some failures.

Example: She created prototype after prototype and each had some success and some failure.

7. **Finding a Partner** (Campbell's Meeting With the Goddess): Describe how your client came to find that right person or right organization that helped them achieve success.

Example: Our heroine goes to the gaming company, shows off her prototype, agrees to sell the technology and joins the new firm to help them commercialize it.

8. **Temptation to Stray** (Campbell's Woman as Temptress): Detail how your client was met with an opportunity to stray from the chosen path but chose the higher road.

Example: Our heroine is contacted by her former employer, who offers to bring her back to the old firm for more money and an executive position at the company if she will share the new technology they are hearing rumors about. She declines the offer.

9. **Meeting with a Mentor** (Campbell's Atonement with the Father): Discuss how your client one day had a meeting with the person or organization at the center of the opportunity.

Example: The Chairman of the Board stops by our heroine's prototype lab to check out the new product in development and take stock of her. He says that they are going to bet big on her idea for the holiday season.

10. **A Period of Reflection** (Campbell's Apotheosis): Explain how your client took some time to reflect on how far things progressed to date.

Example: While on vacation, our heroine watches as her young nieces again use a wireless gaming device to entertain themselves on a rainy beach day and she increasingly sees her product as the future.

11. **Success** (Campbell's Ultimate Boon): Share how your client achieved the goal set out in the opportunity.



Example: The product is launching into stores, and the early reviews are positive from the technology press. Our heroine begins to realize that her idea was not only a good one but one with vast commercial potential.

- 12. Don't Forget Where You Came From** (Campbell's Refusal of the Return): Report how your client began to enjoy her success.

Example: All of the press swoon over our heroine, and she becomes a fixture on panels at technology conferences worldwide, often traveling for weeks at a time. Her nieces miss seeing her.

- 13. Remember Where You Came From** (Campbell's Magic Flight): Discuss your client's return to their roots and journey home.

Example: Our heroine, now fed up with long periods of time away from loved ones, puts an end to the fame treadmill and makes a surprise journey home to be with her family.

- 14. Back to Reality** (Campbell's Rescue from Without): Relate how your client had to return back to everyday life having achieved so much, only the world is now quite different for them.

Example: Our heroine is picked up from the airport by her sister who describes what was like to return from a military deployment and reminds her of the challenge of coming home from her own time away.

- 15. What Did You Learn** (Campbell's Crossing of the Return Threshold): Describe what your client learned from this entire experience.

Example: Our heroine comes back to her family and shares her experiences with them. Now she watches as her nieces easily use her invention to operate the television without a physical remote control. She is also reminded that the example of the children playing is how she arrived at her idea in the first place.

- 16. Mastery Is Revealed** (Campbell's Master of Two Worlds): Position your client as someone who now understands what it takes to be successful and is likely capable of replicating that success.

Example: Our hero notices that the children playing with her new remote control interface ask sensible questions about why other things like cars, bikes and computers can't work this way. We know that she is just beginning to see the possibilities.

- 17. Loss of Fear** (Campbell's Freedom to Live): With success under their belt, your client now has the confidence to look for new success and trust their instincts. At this point, one might begin the story again to show how your opponent enters the story and the hero's journey begins anew with new challenges to their heroism.

Example: While watching the kids at home and at complete peace, our heroine hears a knock at the door. It's a process server. Her former company is suing, claiming that the IP was developed on their dime. And so, the hero's journey begins again, back to step one, only this time, it will be the jury who defines the ending.

Finally, I enjoy this short YouTube video on the hero's journey as it relates to Star Wars, The Matrix and Harry Potter. It will give you another perspective on the hero's journey related to films you're likely familiar with.





The Very Best Use of Coaches in Trial Preparation

by Ken Lopez, Founder/CEO, A2L Consulting



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.

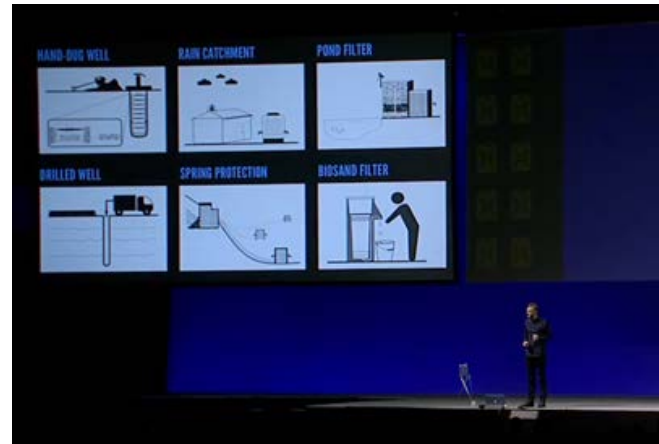


Every Litigator Should Watch Scott Harrison Deliver This Presentation

by Ken Lopez, Founder/CEO, A2L Consulting

I had the pleasure of speaking at a conference where another speaker blew me away recently. His name is Scott Harrison, and he is the founder of **charity: water**. What's special about Scott is what an exceptional storyteller, marketer and presenter he is.

He wants to solve the world's water crisis in our lifetimes -- to make clean water accessible to every single person in the world.



Normally when I write a blog post it's designed to be consumed in a few minutes. This one has a one-hour video at the bottom of it. Chances are if you read our blog, you are a pretty busy person. I recently sent this video to about 100 close friends. I'm really enjoying how many of them are telling me that they watched it and how it changed their view of the world.

Briefly, Scott tells a compelling story that is understandable, simple and believable. It's something you can get your arms around. This is similar to what litigators are called upon to do every day. I just happen to think this guy has an unusual natural talent for it.

Scott has upended and disrupted charity in a way that frankly I had no idea needed to happen. I give to quite a few charities in the course of the year. I can't even remember what most of them are except for a few key ones. All I remember is that they were worthy causes, a friend asked and it was something I could easily do.

What Scott Harrison is doing is entirely different. He recognizes something that I didn't fully recognize before: I don't really trust charities. For the most part I think they're not going to make good use of their money. They're going to probably be a bit better than government in efficiency but they're not going to be anything like the way we operate in the private sector.

charity: water, Scott's organization, is different. Instead of reporting what percentage of their donations go to administrative costs, they give 100% of donated money to their projects. How is this possible? Simple: They fund raise separately for administrative costs to run the business, and they fund raise



separately for donations. Scott figured out how valuable it is to be able to say that 100% of your donation goes to the people that need it.

The second key feature of this charity is the fact that they prove every donation. This concept is quite wonderful when you understand what it means. Simply stated, it means that you're able to trace every single dollar to a specific project. Depending on the project, you will get tweets, Google maps, photographs, your name on a sign -- whatever it takes to prove that you contributed something specific.

Another technique that **charity: water** uses is amazingly simple: it's called giving away your birthday. The idea is that for your birthday instead of asking for presents or Facebook posts, you ask people to donate dollars equivalent to the number of years you have lived.

This is an amazing thing. My birthday is in a few weeks. I set a goal of raising about \$2000 which will help about 50 people in India get clean water. **I've raised about \$1000 as of this writing.** I think that's amazing. All in all, I see this organization as a reinvention in the entire way we think about charity.

To say I presented at the same conference as this founder of **charity: water** is a little bit embarrassing. It sounds as if I'm trying to associate myself with someone really great, and I think I am. What this guy is doing is on a whole other planet. I have no right to ask for an hour of your time, but I promise it will be worth it.

Like others who have seen Scott speak, when I left I felt compelled to act. His presentation was so moving and compelling that there's no other way I would have done anything else. Now, I've seen lots of charity presidents and executive directors stand up and ask for money. I've seen incredible stories that no one would say no to. But Scott's pitch was entirely different. What he's asking for doesn't just feel selfless. It feels like a movement. And people like movements. People like meaning.

I hope you can see where I'm going in this post. All of this is so similar to an opening statement and a closing statement in the cases we present that I hope you can see the similarity at once.



When Scott presented his case, he gave it meaning. He told compelling stories. He used photography, graphics and simple slides to explain complex subjects. He used language and imagery that would appeal to visual, auditory and kinesthetic learning styles. Perhaps most important of all, at the end he asked me to do something. When you watch this presentation I want you to watch Scott Harrison's use of stories. How he memorizes what he presents. And how he uses graphics to make his case.

I make a living watching presentations, designing presentations and helping people improve how they present. Even though I know Scott's presentation has been given hundreds of times, it felt real and new that day. And that is how we should make our judges and juries feel every time.

This doesn't mean playing on emotions because you can. It doesn't mean tugging



heartstrings because you can. It doesn't mean slyly taking advantage because you can. No, it means being authentic, creating meaning, and asking for what's right.

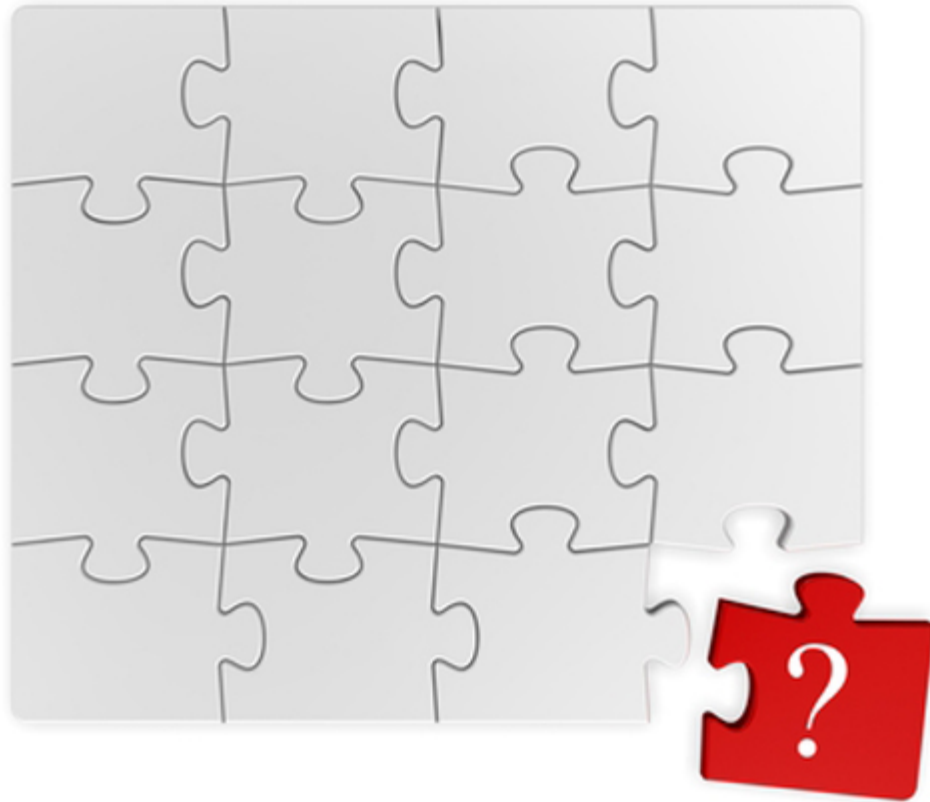
Watch this video and tell me you can skip over doing something. Lots of people call us horrible things in the legal industry. Here's a chance to show something different. Watch this, learn from it, and then take action that feels right to you. You can [donate to my campaign](#), you can [start your own](#), but I'm telling you there's a movement underway here, and it's going to change the world.





No Story, No Glory: Closing Arguments that Don't Close Loops

By Laurie R. Kuslansky, Ph.D. Jury Consultant



A trial lawyer can have all the facts, but unless he or she can weave them into a story that makes sense and doesn't leave unanswered questions in the closing argument, the facts aren't likely to add up to the result the lawyer seeks at trial.

For example, in the recent [Jodi Arias murder trial](#), in which Arias was convicted in an Arizona court of murdering her ex-boyfriend Travis Alexander, prosecutor Juan Martinez left several critical holes and questions:

- 1) Why would the defendant have sex all afternoon with the victim and then kill him?
- 2) How could her killing him not be in the heat of passion or the result of an argument after they had sex that day?
- 3) Why would she have sex with the victim if she headed to his home with the premeditated plan to kill him?
- 4) Why not kill him when his back was turned?



- 5) Why use a knife if she had a gun?
- 6) Why take photographs and create evidence if you're planning a murder?

The evidence pointed to the notion that the defendant's Plan A was winning the victim back:

- Arias brought CDs and the couple watched photos of good times they'd had together on trips
- They had sex twice that afternoon
- Arias "relented" and agreed to have Alexander take nude photos of her to "please him"

[Click here to Download
the Free Complex Civil
Litigation Trial Guide](#)

The defense claimed she snapped and that "something happened in this moment in time between 5:29:20 and 5:32:16." "Something happened" just before the victim was killed, i.e., something different than the sexcapades that preceded it, *but what was it?*

The answer could have been that Plan A, which was reconciliation, did not work, so Arias resorted to Plan B, to kill him and spin it as self-defense. The evidence points to this common-sense story, but the prosecutor didn't tell it to the jury.

The story of what really may have happened with Plans A and B leads to confusion of another sort: reconciling them with the legal instructions, also unanswered by the prosecutor in summation.

For example:

- 1) Could it be premeditated and heat of passion at the same time? If the murder was solely premeditated, she wouldn't have had sex with him before killing him. If it was in the heat of passion (when Plan A failed), how could it be premeditated?
- 2) The crime clearly shows high emotion and overkill (28 stab wounds, a gunshot, a slashed throat), not a well-planned method. Why? If it was planned, wouldn't it have happened earlier upon her arrival and been "neater"?
- 3) Doesn't Plan A (winning him back) undermine premeditation? Doesn't Plan B require an argument (related to his refusing to take her back/to Cancun)?
- 4) If there was an argument, doesn't that cancel out premeditation?

It is a serious oversight for a litigator not to explain a defendant's actions in closing argument and close the gaps in light of the legal instructions. Although the prosecutor reviewed Arias' actions for the jury, he did not tie them directly to the full story. He did not educate the jury on how it was possible that both plans were premeditated, and that not winning Travis Alexander back with Plan A could have caused an argument and passion, yet could have been in Arias' plan all along. This could have been an example of premeditated murder for just that reason. His solution was potentially risky – to offer that the premeditation occurred at two different times and circumstances: 1) at the end of May, after



the break up, in advance of planning her trip to see Travis Alexander AND/OR 2) at the time of the crime.

The prosecutor did yeoman's work trying the case solo, rarely using notes, and doing his summation after a marathon in court the prior day. This article is not intended as criticism, but as a lesson to learn to reduce the risk of failure.

Ultimately, the 12 jurors determined that the defendant was guilty of premeditated first-degree murder: 7 of them finding premeditated *felony* murder.

However, so much hard work can be left on the cutting-room floor if the story is not told in a manner that satisfies tough questions. Jury research has shown that when questions are unanswered and gaps are not filled, jurors do so themselves, which is very risky and often inaccurate. While in the Arias case in Arizona, one of the few states that permits ongoing juror questions, jurors revealed their questions and counsel was able to answer them before it was too late. In most other states, it is up to counsel to anticipate and address jurors' questions.

It is better to try to have more control over how such questions and gaps are handled by addressing them at the very latest, in your closing argument, if not earlier.



Practice, Say Jury Consultants, is Why Movie Lawyers Perform So Well

By Ken Lopez, Founder and CEO, A2L Consulting

Most of the lawyers that our **jury consultants** work with go to trial about once a year - if that often. Some might find that surprising, but it's quite true that even the best big-firm litigators in the world don't go to trial that often. How could they become so good when they get jury face time so infrequently?

All of these litigators have a gift for connecting with jurors. Most will regularly conduct **mock trials** and solicit advice from our **jury consultants**. They heavily use **litigation graphics** and work with **our courtroom trial technicians**, who ensure that the lawyer has his or her mind on his connection with the jury, not on his or her connection with the Internet.

But, even among the very best, there are some who are the simply the best of the best, and their habits are quite different from most. They comfortably rely on image consultants. They use acting coaches. They videotape themselves doing run-throughs, review the tapes, refine and repeat. And, more important than anything else, they practice openly in front of a group of trusted advisers. In a nutshell, they spend most of their careers asking, *How can I be better?*

When I watch these great litigators at work, I notice that they are a great deal like the fictional depictions of lawyers in the movies. And I don't think it is an accident. They've worked with jury consultants and other consultants to slowly mold themselves into who they are now.

I've written before about **how lawyers can learn a lot about trial presentation from the movies**, **how the litigation business is not all that unlike the movie business** and **how litigators can benefit from learning to tell better stories** - just like the movies. So, this got me thinking.

Since juries expect litigators to be a lot like those in the movies, and since the best in the business are not all that dissimilar from lawyers in the movies, might the gap in performance between good litigators and great litigators be the degree to which they practice?

There is a noticeable gap between the way some litigators perform in the courtroom when compared to a Glenn Close, Paul Newman, Laura Linney, Matthew McConaughey or Gregory Peck. It's not just about their hair and makeup. It's about how they present their cases, how they connect better with jurors and how they tell better stories that are more emotionally compelling. So, rather than guess, I've turned to a few friends from the movie industry and asked them, ***How much practice goes into a performance like those we see in film?***



Gregory Peck accepts the Oscar from presenter Sophia Loren for his role as courtroom lawyer, Atticus Finch, in *To Kill a Mockingbird*



Storytelling for Litigators: Building a Great Narrative for Judge and Jury
Hollywood director **John Carter** has had a chance to work with and coach some of the best in the business. He observes, "Putting ego aside and working the material is critical to performance. A screenwriter spends months contemplating a character and a line of dialog before a final draft. Often the screenwriter listens to actors read the material long before production of a film. Then there is the

rehearsal process involving props and wardrobe as the actor becomes the character, even masters the character. Imagine someone else playing Forest Gump. At one point there was just Tom Hanks and a script. That character came from a special collaboration and hard work. At some point, the great ones aren't even thinking about the material anymore, they have become the character. I wonder how much Roger Federer thinks about the mechanics of his serve before he hits it. Not much. After 17 Grand Slam titles, he still has a coach."

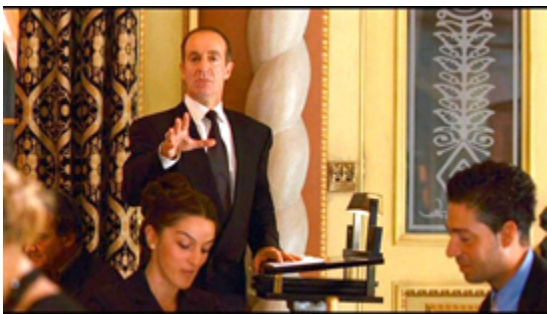


Paul Dano, famous for his roles in films like *Little Miss Sunshine* and *There Will Be Blood* remarked, "It's hard to speak for anyone else, but I think a lot of actors enjoy their preparation. It is a time when you can learn, discover, and push yourself. I find the more deep my preparation, the more fun I have on the actual day of shooting. Each actor is very different, but I think hard work is the most common characteristic between the great ones I have worked with."

Kaili Vernoff, who's appeared in multiple Woody Allen films, has also played a lawyer on TV in the series *Law & Order*. For her role, she noted, "by the time I'm on set, I've already run the scene with other actors - or my very supportive husband - until I know it back and forth. If I'm still stumbling over the words, I'm not able to breathe any life into the character. For professionals, it's that kind of practice and preparation that makes all the difference."



Kaili Vernoff



Michael Allosso, has appeared alongside Steve Martin and others in a long career as actor and director for both film and stage. He said, echoing the teachings of our jury consultants, "Structure allows you to be more spontaneous. If you prepare, rehearse, practice - no matter how many flaws there are in those rehearsals - you will be ready to be more improvisational in the moment. Be impeccably prepared. Then,

you are upping the chances of delivering a believable, natural performance."

Jules Haimovitz, former president of MGM Networks and former Vice Chairman and Managing Partner of Dick Clark Entertainment, sees a vast difference between prepared entertainers and those who extemporize. He reminds, "in the movie and television business, like in life, there is no substitute for careful preparation. Those who fly by the seat of their pants do not position themselves well for repeatable success."





So, just as our jury consultants suggested to me, it seems to me that litigators can learn a lot from actors, directors and movie moguls about preparation. As someone who also gives speeches and presentations regularly, I know that I am far better when I've prepared. No matter how many times I've done a run-through in my car or practiced in front of a mirror, there is simply no substitute for practicing in front of others. Yet, sometimes I, like many litigators, resist the humiliating feeling of not performing well, even in practice. But, I know, to get long-term gain, you often have to suffer some short-term pain.

That's where a great jury consultant or trial coach can come in. As my mentor reminds me from time to time, it requires two people to really grow yourself. This is true because the feedback you receive in real time is where much of your growth comes from. A jury consultant can provide feedback on everything from your style of dress, to how you use your hands, to how you structure your argument.

One key difference between a fictional lawyer and a real litigator is that some things just cannot be practiced. While you can practice your opening and closing until you're as convincing as Gregory Peck, learning how to conduct a good cross, managing objections, handling everything that leads up to trial as well as maintaining a good client relationship are all special challenges that no amount of memorization can prepare you for.

Ultimately, as some of Hollywood's brightest have shared and as our jury consultants remind, it is how you practice that defines how you present - and there are no short cuts.



Are Jurors on Your “Team”? Using Group Membership to Influence

by Laurie R. Kuslansky, Ph.D., Managing Director, Jury & Trial Consulting, A2L Consulting



People who identify as being in the same group as others are more likely to give others in their group preferential treatment over people not in the same group (also known as in-group favoritism or in-group bias).¹ In litigation, if you lead jurors to identify with *your* client as a member of the same group as the jurors in terms of their social identity, the jury may be more likely to “help” your client in their decision-making.

Team fan or Soccer fan

Two fascinating studies in the U.K. illustrate how far a little group membership can go, showing that **people are more likely to help “in-group” members than others.**

In one study,² fans of a popular English soccer *team*, Manchester United, filled out a questionnaire about that team and wrote an essay on the **joys of being a Manchester United fan.**

They were then directed to walk to another building across a parking lot. En route, the group witnessed a (staged) accident in which someone was running, tripped, fell and clutched his ankle in pain, wearing one of three T-shirts: a plain one, a Manchester United one, or their arch rivals’ team, Liverpool FC. Observers who noticed the accident were significantly more likely to help the injured man when he wore **their group’s Manchester United T-shirt** than either of the other two shirts.

A second study³ showed how flexible group boundaries are and how important inclusion in a category can be.

In that instance, instead of aligning subjects with Manchester United as the group’s identity, they were aligned with soccer in general. The questionnaire asked about soccer and the essay was about **the joys of being a soccer fan.** This time, observers were equally likely to help the injured man when he wore **either soccer team’s T-shirt**, but not when he wore one unrelated to soccer.

Group Affiliation Influences Who Helps An Accident Victim

Victim's T-Shirt



Witness is a
**Manchester
United Fan**

92%
of witnesses
helped victim

30%
of witnesses
helped victim

33%
of witnesses
helped victim

Witness is a
Soccer Fan

80%
of witnesses
helped victim

70%
of witnesses
helped victim

22%
of witnesses
helped victim

Imagine that, instead of a soccer team, the group identity was Plaintiff or Defendant. What about your client represents a group to which a jury can identify? How can you “prime” the jury to focus on that factor? As seen in research, rather little effort was required in order to underscore the focus of the observers’ social identity (a questionnaire and an essay) prior to observing the in-group preference.

**In court, how can you recreate such focus?**

Conventional wisdom suggests only seeking out adverse jurors who reject your case and that still holds true. However, if you are permitted to provide *voir dire* questions or a written questionnaire to prospective jurors, it is worth considering including “priming” questions, e.g., say that your client is the Plaintiff and has a rags-to-riches history. Your questions can ask about valuing such a history. If your client is the defendant unfairly accused of wrongdoing, perhaps you can ask about such experiences of prospective jurors. In opening statement, you can reinforce that group story to further prime the jury to identify with your client. To the extent you can align jurors with specific traits or experiences of your client that they may share, you may raise the odds of jurors’ bias being in your favor and becoming fans. In addition to other considerations of people who may be an unfavorable juror, those who do not exhibit any relationship with the social identity of your client may merit being moved up on your strike list.



Storytelling as a Persuasion Tool - A New & Complimentary Webinar

by Ken Lopez, Founder/CEO, A2L Consulting



One thing that all successful trial teams seem to have is the ability to tell a well-developed story. It doesn't matter whether it's a patent case, a white-collar crime case, or a commercial case – they always know how to build a narrative that appeals to a judge or jury. It's what great litigators do. They know that human beings are natural story-tellers and that story-telling is therefore the best means of persuasion.

Remember: A story is not a simple recitation of information and facts in chronological order. It is a tale of character-rich events told to evoke an emotional response in the listener.

Simplicity is power. A successful litigator can refine mountains of information into a neat and compact outline of evidence that tells a compelling narrative that provides simple and persuasive themes. That task, however, can be easier said than done.

How, then, should a litigator actually go about telling stories? We have found that telling stories effectively is part art and part science. At A2L, we know what works in practice, and we know what works based on real science, and, most importantly, we will tell you both in our next webinar.

We are running a webinar on “*Storytelling as a Persuasion Tool*,” on Tuesday, January 14, 2014, at 1:30 pm Eastern time. This will be a free 60-minute program taught by our top litigation persuasion experts, Dr. Laurie Kuslansky and Ryan Flax, Esq.

Dr. Kuslansky will reveal the science behind why storytelling works, using lessons learned from more than 400 mock trials and 1,000 litigation engagements. Litigator turned litigation



consultant Ryan Flax will share what he has learned about storytelling, especially visual storytelling, while trying complex cases for a dozen years and helping to amass more than \$1 billion in jury verdicts for his clients. He is now helping hundreds of top litigators as a litigation consultant at A2L.

The webinar will begin on January 14, 2014, 1:30pm Eastern Time, and will last for one hour, with an additional 15-minute question-and-answer period.

In the webinar we will cover:

- The science behind the storytelling
- When it's appropriate to use stories
- A useful plan that will help you tell your stories more effectively
- How to use litigation graphics to enhance your storytelling

This webinar is suitable for anyone with an interest in litigation, but it is primarily designed for the courtroom lawyer.

To register for this free program, [please click here](#).



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