A2L CONSULTING

50 Articles to Help Guide Litigation Leaders

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Litigation Graphics
Jury Consulting
Trial Technology
Visual Persuasion

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Introduction to A2L Consulting

At A2L Consulting, our primary mission is to help you communicate your message in its most persuasive form. Often, this involves helping to explain difficult concepts to judges and jurors through the use of visual design and technology -- collectively called litigation graphics. Our litigation graphics are designed to speak to a specific narrative. Our industry-leading litigation and jury consultants are experts in the development and enhancement of narratives for trial – what we call, Winning, by Design.

A2L's headquarters is in Washington, DC and it has personnel or a presence in New York, Miami, Houston, Chicago, Los Angeles, San Francisco and many other cities around the world. Since 1995, 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.

A2L Consulting was recently voted Best Demonstrative Evidence Provider and Best Jury Consultants by the readers of LegalTimes and a Best Demonstrative Evidence Provider bythe readers of the National Law Journal.

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The leadership team of our firm shares something in common with the leadership of most law firms and trial teams: we both have to frequently switch between leading our teams and doing the work required by our clients. Very few of us are full-time dedicated managers–most often, we are player-coaches.

Such is the case with most professional services firms. We're distinctly different from the typical corporate entity. However, business schools study the business models of the Fortune 500®, not those of large professional services firms. Rarely are books and articles written about companies like ours or the challenges of leading a team under enormous pressures like those of a trial.

This eBook is designed to help those who lead law firms, those who run litigation departments and those who lead trial teams. You are a unique breed with the interesting challenge of leading and motivating some of the smartest and most educated people in the world. You often have to establish and communicate a vision under rapidly changing and stressful circumstances. You have to manage under dramatically changing market conditions. These and countless others are not trivial challenges.

In this book you'll find valuable information about a wide variety of topics including trial tactics, group psychology, litigation graphics, jury communications, mock trial tactics, management and much more.

I hope that you enjoy this book. I would enjoy hearing from you. Obviously, if you or your firm has a need for trial consulting, litigation graphics support or onsite courtroom support, I do not know of a better firm than A2L Consulting, and I encourage you to contact me.

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1. The CEO in Litigation: Problems, Solutions and Witness Preparation

by Laurie Kuslansky, Managing Director, Trial & Jury Consulting, A2L Consulting

Beware: When a CEO takes the stand, he or she could prove to be an unexpected liability. Dr. Laurie R. Kuslansky, Trial Consultant, explains how to avoid this unfortunate — yet foreseeable situation.

The very qualities that make the CEO successful in business—the ability to take charge, to think in terms of the "big picture," to avoid minutiae, and perhaps the possession of ample self-importance and confidence—may collectively manifest as a poor witness in the courtroom, which is not filled with "yes-men." These behaviors can handicap counsel and may prevent judges and juries from perceiving the executive favorably. Trial team members may overlook a CEO's faults due to familiarity, resignation, because they wish to maintain a comfortable relationship, or because other facets of the case distract them. However, it is risky to ignore the negative impact the CEO's behavior may have on an uninitiated audience (i.e., a judge and jurors) that has no incentive to tolerate it.

Pitfalls of the CEO as Client

The CEO is naturally hesitant to relinquish control. When faced with a threat, this leader seeks control. An excessively controlling executive is certainly not the person who should run the legal show, but often tries to do so. The trial team may not feel trusted and may be forced to "work around" the CEO to get its job done. It is essential that one member of the trial team—ideally, the best qualified—be designated to direct the effort.

When a CEO defers authority, it may be to someone who lacks the skills necessary to succeed in trial (e.g., a non-litigator who performs legal research, writes briefs, or who focuses on motions or post-trial appeals or to inside counsel who is paid to agree with "the boss"). In this situation, friction will undoubtedly arise between the non-litigator's provision of detailed information and the litigator's streamlined plan or between the politically driven in-house counsel and strategically thinking trial counsel. The CEO's choice of one plan over the other may be a show of control, but may work against the strength of the team—and ultimately against the CEO.

Pitfalls of the CEO as Witness

The CEO is among the most visible of corporate witnesses. Jurors view the chief executive as uniquely qualified to answer for his or her company, both as the endorser/enforcer of corporate policy and as the parental role model for the corporate culture. Consequently, this

leader is expected to be knowledgeable, powerful, and accountable. However, jurors often view the CEO cynically (i.e., as out of touch with the average person, as poised to advance the company's agenda, and as being motivated by greed and a desire to protect him or herself and assets). We've heard CEOs make comments that set them apart from the jury, such as "It wasn't a lot of money . . . only maybe two or three million dollars."

In contrast, the juror typically has high regard for the judge and expects trial participants to be polite and deferential. The executive who seeks control—or who seems too casual—offends the jurors' sense of who should be in charge and how one must conduct oneself in court. If the CEO resists direction from the Court, he or she is seen as difficult, evasive, or unlikable (and thus not credible). Worse, it sends the message that they are above the rules and are willing to break them.

Ironically, then, attempts by a CEO to advance an agenda or to show strength accomplish quite the opposite. Behaviors that succeed in the corporate environment only serve to antagonize jurors. Jurors do not live in the CEO's world; jurors tend to be average wage earners with limited or no power in the workplace. Though they may admire the corporate leader who has an unusually positive story (e.g., a CEO who pulled himself or herself up by their bootstraps), jurors are inclined to feel distant from—even resentful of—a powerful individual, particularly one who displays an air of superiority and collects hefty salaries and bonuses which are seen as in the stratosphere and unwarranted. The jury trial provides a rare opportunity for jurors to turn the tables. Hence, the CEO who testifies as if he or she is holding court (rather than deferring to the Court) may provoke a backlash by confirming juror suspicions of corporate arrogance.

On direct examination, the self-assurance displayed by a CEO can make a cordial exchange with the questioner reminiscent of a well-rehearsed infomercial. This effect will likely be more pronounced than with other witnesses, since the executive (who is, after all, the client) will elicit only polite and respectful questioning. On cross-examination, however, the same executive often appears unprepared, uncooperative, impolite, manipulative, arrogant, and/or evasive. A CEO's power struggle with a cross-examining attorney reveals the leader who was so pleasant and self-assured on direct examination as someone who can also be highly unlikable and inappropriately controlling.

Why does this happen? Negative Tendencies of the CEO

- Believes that others see things from his or her perspective when most are simply paid to do so
- Patronizes others or blames their limitations when others are not persuaded to see things as the CEO does
- Finds it difficult to speak at the level of the jury, yet expects to be understood
- Refuses to yield on the stand, opting for one-upmanship in a misguided show of strength rather than picking his or her battles
- Bullies opponents: It is more important to the CEO to be right than to be likable or cooperative
- Insists on always having an answer
- Is prepared to give orders, but not to take them; and is willing to ask questions, but not to be the one "on the spot"
- Refuses to spare his or her opinions
- Fails to speak diplomatically
- Appears to be a "suit" (i.e., appearance, body language, behavior, lifestyle, etc. serve to identify the executive as a privileged power broker).
- Doesn't suffer fools well, so shows contempt for ill-prepared or disorganized questioners
- Note: If you show this list to a CEO, he or she will deny it describes them!

Pitfalls of the CEO on Videotape: Seeing Is Believing

Video depositions are an additional CEO hazard. Opposing counsel may edit video testimony to create damaging sequences for replay to a jury; these sequences commonly exaggerate unattractive qualities of the executive that go unnoticed when only the written record is used. Such qualities include appearance, demeanor, facial expression, body language, mannerism, delays in responses, tone of voice, diction, accent, eye contact, gaze, posture, personality, and attitude . . . as well as attire, haircut, tan, jewelry and accessories.

Video is especially damaging when the judge and jury do not see what they expect. For example, the CEO's attire may send the wrong message; an inappropriate background in the video can do the same.

Inconsistent behavior or appearance that would likely go unnoticed in written transcripts can be quite apparent on video and seeing is believing . . . or not.

The executive's energy level or appearance may improve from one taping to the next, or (more likely) may decline due to fatigue over time.

Poor positioning of the witness may also create a negative impression. If the CEO is sandwiched between deposing and defending attorneys, the resulting "pingpong" effect of his or her turning head is both a distraction and a red flag. Any fidgeting that creates a visible pattern (remember Oliver North at the Congressional hearings?) has a similar effect.

Likewise, the CEO who looks to the attorney after hearing a question reveals uncertainty and the need to defer to counsel.

In traditional depositions, attorneys tend to focus on substance more than form; CEOs tend to answer questions by saying as little as possible. This protects against later attacks on the executive's credibility (given the developments of discovery and the opportunity to review additional materials, answers in court may vary from those given in deposition). On video, however, such reticence presents as unresponsive, detached, uncooperative, and even evasive.

The CEO who is tongue-tied in a video deposition but charismatic and forthcoming in court will witness the erosion of his or her credibility.

Conversely, the CEO who plays the "charmer" in a video deposition by volunteering information, war stories, etc. likewise forfeits credibility if he or she "gets religion" and clams up on the stand at trial.

Keep in mind that it is easier to lie with words than with behavior. Nonverbal messages may betray the CEO's true mindset. Jurors know instinctively that body language can be revelatory. From their perspective, the CEO's physical behavior is more significant than his or her words.

How to Avoid Video Pitfalls

Some solutions to these concerns are obvious: Pay close attention to appearance. In deposition, position the witness to allow a clear line of sight to both parties and the camera. Strive for consistent demeanor over time.

However, success requires time, practice and expertise. To improve the video performance of your executive witness, the following are essential:

- Blunt reality checks: Offer honest feedback regarding the added risks of video deposition.
- Pay attention to details: Form is as important as substance and more so for credibility.
- Clear the table of distractions.
- Warn the CEO to use his or her best manners: No interrupting, no bad attitude, and avoid controlling behavior.
- Remind the CEO to respond only after the question has been fully asked and understood.
- Avoid ploys to stall for time (such as asking a questioner to rephrase or repeat a question when unnecessary).
- Vary the length and the language of responses; use this variety to attract attention to helpful testimony and to avoid sounding trapped or as if “taking the Fifth.”
- Model and practice matter-of-fact answers to difficult questions.
- Teach the witness to respond in contrasting style to the examining attorney. If the adversary becomes loud, fast, or aggressive, the CEO should accordingly strive to be quiet, deliberate, or polite.
- When members of the trial team pass documents or approach the witness or exhibits, they must take care to remain off camera.
- Educate the witness: Ask the CEO to observe as someone else plays the role of the CEO under questioning, and then evaluate the CEO to ascertain his or her level of self- awareness.
- Employ behavior modification: Arrange for the executive to evaluate his or her level of self-awareness by reviewing details in videotaped practice sessions.
- To identify negative body language, review the video without sound first.
- Because the trial team’s relationship with the CEO makes it difficult to view the CEO as others will, arrange for an unknown attorney to conduct practice sessions and then to provide honest feedback.
- Identify behavior that needs work, and then change one behavior at a time. Practice, videotape, then review and evaluate the tape. Encourage positive change, and then move on to change another area.
- Prepare visual exhibits (of adequate size to review on camera) to make strong points, organize the CEO’s testimony, and strategically distract viewers from the witness.

Why Does a CEO Act This Way?

Though it seems illogical for a CEO to behave counterproductively, there are reasons for such behavior. The chief executive is driven to succeed. He or she has every reason to believe that tactics rewarded by success in the past will continue to yield success. When in unfamiliar territory (e.g., the legal process), the CEO will misapply familiar behavior (borrowed from the business world) until he or she understands that doing so risks failure.

The CEO will resist the surrender of winning familiar formulas.

Unless he or she has learned through experience or atypically defers to counselors, a chief executive does not respond well when told to change or to back off.

Once your CEO becomes aware of the dilemma and is receptive to new ways, keep in mind that old habits die hard. The CEO will be a poor witness if he or she views a lawsuit as an interruption of higher priorities. Jurors have a keen perception of such elitism. If the CEO perceives the necessary investment of time, energy, and money as unjustified or feels above the need to explain him or herself, the result will be a dismissive or contemptuous attitude, both on the stand and in the steps leading there, but he or she won't have the last say for a change — the judge or jury will.

Corporate politics may undermine a chief executive's testimony. For example, imagine that the CEO was at odds with other executives regarding a policy change. Cross-examiners would be thrilled to reveal this rift. They would take the opportunity to exploit tension between the CEO and dissenting witnesses. A CEO would resent the need to simultaneously defend and reconcile such differences of opinion. The trial team must not overlook the fact that stress hampers the CEO's decision-making ability and performance. Expectations of the CEO run very high. As the corporate leader, this witness has far more to deal with than litigation. The implications of a given case extend beyond the courtroom, and the chief executive is highly exposed. He or she is accountable to employees, business plans, banks, investors, trustees, board members, shareholders (if the company is publicly traded), and the public. Each of these factors contributes to the CEO's unique perspective of – and stress from – a lawsuit.

When a CEO is the client in a criminal case, the problem of stress is magnified. The CEO is likely to receive little outside support as former allies (including friends and family) distance themselves, adding to the CEO's anxiety. Anxiety is the saboteur of CEO witness performance. As anxiety increases, a CEO typically becomes less able to accept advice. His or her desire to take control increases in direct proportion to the perceived threat (e.g., if the CEO's liberty is at stake). Tension may also develop between a CEO's advisors and the trial team. The leader of a corporation is commonly surrounded by "yes men" who tell the CEO what he or she wants to hear. In a criminal trial, the CEO may present as unlikable and not credible and yet receive positive feedback from insiders who misleadingly assure him or her that all is well. Many rule by fear, so stressful times are the least likely to illicit criticism, even if accurate.

In contrast, the trial team will wish to provide more balanced or even worst-case scenarios. However, when trial team members give realistic critical feedback, they may find the CEO unwilling to listen. Thus, attorneys hesitate to give frank advice because they fear being shot as the bearer of bad news, or because they naively wish to protect their client by shielding him or her from negative feedback (to no one's long-term advantage). As a last resort, the trial team will sometimes forego calling the CEO as a witness. This can be a death knell – especially in criminal cases – because juries want to hear from the CEO. The trial team then faces a no-win choice: Either put a CEO on the stand who is a bad witness, or avoid calling the CEO altogether.

Too Much of a Good Thing Is Not Always Wonderful

The CEO witness can fail by over-compliance or under-compliance. Training any witness to act against their nature can backfire; an overly prepared executive may not present as genuine. For example, a stern CEO who smiles at the jury when speaking can look like a grinning fool or a windup doll, thus losing instead of gaining essential credibility.

A chief executive must behave naturally, must uphold the jury's positive expectations, and must not reinforce negative stereotypes. The CEO's lead attorney is charged with maintaining a balance between forthrightness, control, and remaining sensitive to the CEO's concerns and anxieties.

How to Raise the CEO's Awareness:

- Be certain you understand each other. Review mutual goals and your plan to reach them. Take nothing for granted.
- Control damage. Show the CEO (e.g., by videotaping cross-examination practice sessions) how and why misguided strategies, aggression, and over involvement will boomerang.

- Consider the reaction of the audience. Orient the CEO to the perspective of the judge and jurors. Use blunt terms to describe how the CEO is likely to be perceived.
- Get a reality check from the horse's mouth. When possible, mock-try the CEO. Test recorded direct and cross-examinations before surrogate jurors to allow the CEO to measure his or her expectations against real feedback.

The attorney's task includes showing that the CEO is a "people person," not just someone who gives orders from on high. Demonstrate the CEO's knowledge and understanding of the roles and contributions of others in the company. Even if the witness is reluctant to learn the details, it is important to encourage him or her to become familiar with the experience and input of lower level employees. This is essential for the CEO who must testify as both a fact witness and a corporate witness; keep in mind that his or her recall and performance will benefit to the degree that anxiety can be reduced. The CEO should also be encouraged to consider how outsiders view him or her as a person and as a decision maker, and to offer background and context to explain his or her actions.

What the Attorney Must Teach the CEO Witness:

- Capitalize on your strongest asset: Charisma. Opportunities to employ charisma may be lost if ego gets in the way (appeal to the CEO's ego with winning strategies).
- Choose your battles carefully while under questioning.
- Take control on the stand through both your behavior and your speech.
- Practice the questions you dread most through role-play (the CEO plays the cross-examiner and the attorney plays the witness). By asking the most difficult questions, you can learn model responses that overcome anxiety.
- Work with others on the case to avoid the "Hero or Zero" witness syndrome. No one makes or breaks a case without help from others.
- Use analogies the judge and jurors appreciate but that opponents cannot turn against you.
- Use a mock jury to pretest these analogies.
- Pare down all excess in dress, accessories, and mannerisms.
- Drive to court in your mother's car, or use public transportation.

Spend time with the CEO to review what he or she can and cannot concede. Supply areas of concession and appropriate, matter-of-fact ways to make concessions. Thus armed, the CEO will have something to give without losing ground and a guide to assist his or her choice of battles.

It's a Lousy Job, but Someone's Gotta Do It

As difficult as it may be, it is imperative to tell the emperor that he has no clothes: Someone must inform the CEO witness when he or she has presentation problems. If you are ultimately to be successful in your litigation, this witness must understand the significance of the situation and must be enlisted to help you improve it. Though it may be tempting to avoid conflict with the CEO client, doing so would be a disservice. Embarrassing results would certainly hurt the relationship, and unwanted results can end it. The earlier these problems are addressed, the better.

This article originally appeared as the Cover Story of International Commercial Litigation Magazine.

Other articles about witness preparation, jury consulting and courtroom testimony from A2L Consulting:

- Witness Preparation: The Most Important Part
- Witness Preparation: Hit or Myth?
- 7 Things You Never Want to Say in Court
- How NOT to Go to Court: Handling High Profile Clients
- No Advice is Better Than Bad Advice in Litigation
- Practice, Say Jury Consultants, is Why Movie Lawyers Perform So Well
- 10 Web Videos Our Jury Consultants Say All Litigators Must See
- 7 Things Expert Witnesses Should Never Say
- Webinar - Integrating Argument and Expert Evidence in Complex Cases
- Walking the Line: Don't Coach Your Experts (Re: Apple v. Samsung)
- 3 Articles Discussing What Jurors Really Think About You
- Hurry Up and Wait - Using Silence in Depositions, Voir Dire and More
- The Top 14 Testimony Tips for Litigators and Expert Witnesses
- 7 Videos About Body Language Our Litigation Consultants Recommend
- 6 Tips for Effectively Using Video Depositions at Trial
- 2 Metric Showing Litigation Shifting to Midsized Law Firms

2. How We Judge People Is Shaped Mostly By Who We THINK They Are

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

It's always interesting to me how humans view and judge each other. We all do it almost all of the time, in every interaction with other people. We even do it when we don't even interact with others, for example, while driving or watching TV. We develop little dramas and characters in our minds to make sense of the world around us and its characters.

This is particularly important in my profession, where my goal is to help litigators frame their case or showcase their client in a compelling and engaging way for judge or jury. I've just watched the video below and it highlights how important it is to frame our clients' character correctly when we want a decision maker to see things our way. That "correct" way of introducing our client is whatever way will result in a decision in our favor – Ask: what would make the judge or jury feel our client should prevail?

What we see in this little experiment is the audience, here photographers, were introduced to their subject in a very specific way, that is, as a successful man, an alcoholic, a hero, a criminal, a working man, etc., and this framing of the character dictated how they saw that subject going forward. It also dictated how the photographers then presented the character to the world – in the photos they took. We see that the group of photographers themselves, upon reviewing each other's photographs, noted that the subject/character looked like a

completely different person in each of their pictures. To each of them, he was a completely different person and they judged him based on that framing.

So, this (non-scientific) experiment sheds light on the importance of how we frame and introduce our clients (and ourselves, too) to judges and juries. What we can honestly and convincingly convey to jurors about our client to make them a sympathetic, honorable, trustworthy, or dedicated (or whatever superlative you like) character, and, on the flip-side, portray our opposition as just the opposite, can go a long way toward providing the right lens through which your audience views your case and evidence.

Other A2L Consulting articles and resources related to storytelling and portraying your client's image intentionally:

- Portray Your Client As a Hero in 17 Easy Storytelling Steps
- 7 Things You Never Want to Say in Court
- 8 New Ways to Connect with Clients - How Our Litigation Consulting Firm Does It
- How NOT to Go to Court: Handling High Profile Clients
- Top 7 Things I've Observed as a Litigation Consultant
- 12 Alternative Fee Arrangements We Use and You Could Too
- Explaining the Value of Litigation Consulting to In-House Counsel
- The 14 Most Preventable Trial Preparation Mistakes
- Winning BEFORE Trial - Part 3 - Storytelling at Trial for Lawyers
- $300 Million of Litigation Consulting and Storytelling Validation

3. 7 Bad Habits of Law Firm Litigators

by Ken Lopez, Founder & CEO, A2L Consulting

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

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

1. Lawyers designing PowerPoint slides.

Anyone who went to law school can of course use PowerPoint. Generating PowerPoint slides is not difficult, and lawyers are smart. Many lawyers can even make PowerPoint slides that look nice. But:

a. It's not about pretty slides, it's about effective slides, and the rules for how to create those take years to learn. See Litigation Graphics: It's Not a Beauty Contest

b. A lawyer doing slides costs the same or more per hour than a litigation graphics expert doing slides. Classically, you could cut your own hair, but why would you? See How Valuable is Your Time vs. Litigation Support's Time?

c. A lawyer creating slides does not know the tricks of the trade. See Trial Graphics Dilemma: Why Can't I Make My Own Slides? (Says Lawyer)

d. A lawyer creating slides will likely tell a chronological story instead of an effective story. See Don't Be Just Another Timeline Trial Lawyer

e. A law firm might claim to have in-house litigation graphics expertise (See 13 Reasons Law Firm Litigation Graphics Departments Have Bad Luck). But ask yourself: How many trials does that law firm do per year? For even the largest firms, that answer may be a couple dozen. How many cases does that lone artist work on? A small percentage of what is already a small number? Contrast that with litigation consulting firm with graphics expertise that might do 50 or 100 trials per year concentrated among a handful of key staff. See With So Few Trials, Where Do You Find Trial Experience Now?

2. Paralegals running trial technology. This is pretty common, and I'm not as adamant about this as I am about content creation. Still, when something goes wrong, you want to have one or more people on the team who have been to hundreds of trials, not a few. You might save some money by keeping the service in-house, but the savings are small if any, and the trade-off is a lot of risk. Free Download: How To Find and Use Trial Technicians and Trial Technology

3. Conducting in-house mock trials. I call this getting high on your own supply. You should pick mock jurors from a broad base of people that mirrors your likely jury. See 11 Problems with Mock Trials and How to Avoid Them

4. Lawyers running PowerPoint at trial. It often works, but it often does not work. Why would you allow your litigators to create risk with almost no benefit? See Making Good Use of Trial Director & Demonstratives in an Arbitration and 12 Ways to Avoid a Trial Technology Superbowl-style Courtroom Blackout

5. Outside litigators who are afraid to ask for help. Litigation is one of the few competitive areas in which people are afraid to rely on coaches, best practices, and experts, and that makes no sense. Even Michael Jordan had a coach. See Accepting Litigation Consulting is the New Hurdle for Litigators

6. Outside trial counsel who is afraid to ask for a needed budget item. They often see a pie of a set size, and asking for budget for a mock trial or other litigation consulting support, might take pie away. You should instead see a pie whose size can be changed when it makes sense. See In-House Counsel Should Make Outside Litigation Counsel Feel Safe

7. Outside litigators who conduct frighteningly last-minute preparation for trial. I really think the day of the cowboy litigator who rides in at the 11th hour and charismatically bends a jury to his will are largely over. The opposition is much more sophisticated now, and so are juries. See The 13 Biggest Reasons to Avoid Last-Minute Trial Preparation

Have you ever seen any of these habits play out?

Other articles and resources by A2L Consulting focusing on trial preparation, the relationship between in-house counsel and outside litigators and on winning cases generally include:

- Download Free: Storytelling for Litigators Guidebook
- Free Webinar: 12 Things Every Mock Jury Ever Has Said
- 25 Things In-House Counsel Should Insist Outside Litigation Counsel Do
- 16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint
- The 14 Most Preventable Trial Preparation Mistakes
- 9 Things In-House Counsel Say About Outside Litigation Counsel
- The Top 14 TED Talks for Lawyers and Litigators 2014
- 12 Alternative Fee Arrangements We Use and You Could Too
- The 12 Worst PowerPoint Mistakes Litigators Make
- 21 Ingenious Ways to Research Your Judge
- 10 Videos to Help Litigators Become Better at Storytelling
- 5 Things Every Jury Needs From You
- 7 Things Expert Witnesses Should Never Say
- 7 Things You Never Want to Say in Court
- 16 Trial Presentation Tips You Can Learn from Hollywood

4. Group Psychology, Voir Dire, Jury Selection and Jury Deliberations

by Ken Lopez, Founder & CEO, A2L Consulting

Since first being exposed to the group psychology work of Wilfred Bion 15 years ago, I've been completely fascinated by it. I think his theories perfectly explain the behavior of every group that I've ever encountered. From boards that I sit on to groups on reality TV shows, they all behave in the same predictable ways, especially when placed under pressure.

I think the author Robert Young captures the essence of the group dynamics model Bion describes when he says, "My experience was that, sure enough, from time to time each group would fall into a species of madness and start arguing and forming factions over matters which, on later reflection, would not seem to justify so much passion and distress. More often than not, the row would end up in a split or in the departure or expulsion of one or more scapegoats."

I've written about Bion's work before in 5 Signs of a Dysfunctional Trial Team (and What to Do About It) and When a Good Trial Team Goes Bad: The Psychology of Team Anxiety. These articles and Young's article from the Human Nature Review provide a good introduction to Bion's group dynamics model. Here are the key aspects of Bion's group dynamics model.

In Bion's framework, groups are always functioning in one of two modes. Either they are working or they are operating dysfunctionally (he called this later state the Basic Assumption State). Both groups rely on a leader, and the members interact with the leader in predictable ways. In the working group, the group gets things done. They understand the meaning of the task at hand and cooperate to get it done without unnecessary emotional distress.

In the dysfunctional group, much less gets done, and the group moves through a progressively worse set of dysfunctional behaviors triggered by some anxiety or pressure. Initially, the dysfunctional group will attempt to look to the leader to make the anxiety go away by treating the leader as a type of wise superhuman. If that fails to make the anxiety go away, two or more members of the group will begin to conspire to replace the leader or form a new group. If that does not work, fighting and/or departures will begin. All of this is subconscious, but once you understand the patterns, you'll see them everywhere. Knowing where you are in the process of dysfunction can be one of the most valuable tools a manager, leader or consultant can have.

I bet you can guess another group that behaves in predictable ways that I have an interest in — that's right, juries. And they certainly behave in ways that solidly fit Bion's group dynamics model. If you understand how this works, you can use this knowledge during jury selection.

Our team has seen thousands of juries deliberate. That's unusual since jury deliberations are secret. Of course, when we see them deliberating, often four juries at a time, it is behind the one-way mirrors of mock trial facilities. The behavior we see from jury to jury is remarkably consistent. We've detailed some of these behaviors in the article 10 Things Every Mock Juror Ever Has Said and the webinar and the podcast 12 Things Every Mock Juror Ever Has Said. Furthermore, an article by A2L's Managing Director of Jury Consulting, Dr. Laurie Kuslansky, called 10 Ways to Spot Your Jury Foreman is a useful background piece for those interested in this area of study.

When a jury is operating effectively (a well functioning working group as described by Bion), it focuses systematically and logically on the task at hand. This jury moves through the evidence in an orderly way and avoids a result-driven approach to deliberations.

There is much that a litigator can do to help a jury operate in this way, including explaining to the jury how to calculate or why they shouldn't calculate damages, illustrating how to work through the verdict form, and making the case clear and compelling through the use of storytelling and professionally designed demonstrative evidence.

But, what if a jury becomes anxious? What if unanimity is required and there is a holdout (e.g. 12 Angry Men)? What if there is strong disagreement among jurors? What if the case is hopelessly confusing? Under these circumstances, a jury can become dysfunctional. Unfortunately, this happens more often than it should.

I asked our own Dr. Laurie Kuslansky about the application of group dynamics to juries, and she shared some key ideas to remember.

"Most jurors start out with a false consensus," she said. “They believe everyone will think the way that they do. If we do not screen for leadership and get the right amount on our jury, a jury becomes far less predictable. This is especially true if we are in a venue where it is socially acceptable to stand your ground like the Southern District of New York."

Juries are not irrational; they just look at things differently than a lawyer. They are looking for experts in the group, and they are looking for leadership. As we help to assemble a jury during the jury selection process, a key part of our job, both as jury consultants and as litigators, is to ensure the right types of leaders are present. If we do our job well, we can achieve better control over group dynamics.

Other articles and resources related to group dynamics, jury selection and jury consulting from A2L Consulting include:

- Webinar: 12 Things Every Mock Juror Ever Has Said
- Podcast: 12 Things Every Mock Juror Ever Has Said
- Free Download: A Litigator's Guide to Getting Value from Jury & Trial Consultants
- Contact A2L With A Question About A Mock Trial
- 12 Tips For Getting The Most Out Of Your Mock Trial
- Here Are 6 Good Reasons To Conduct A Mock Trial
- 7 Tips to Take “Dire” out of *Voir Dire*
- A2L Voted Best Jury Consultants by Readers of LegalTimes
- 5 Questions to Ask in *Voir Dire* . . . Always
- Jury Selection and *Voir Dire*: Don't Ask, Don't Know
- 15 Things Everyone Should Know About Jury Selection
- Trial Consultants: Unfair Advantage?

5. In House Counsel Should Make Outside Counsel Feel Safe

by Ken Lopez, Founder & CEO, A2L Consulting

Earlier this week I published *25 Things In-House Counsel Should Insist Outside Litigation Counsel Do.* I realized something important while writing that article and while participating in follow-up discussions with readers and colleagues. It's an important realization as I think recognition of it might just lead to better litigation results and money savings for in-house counsel.

Here it is. Because of the current state of the relationship between most in-house counsel and outside litigation counsel, outside counsel are not asking for budget for everything they believe would help win a case. This is leading to short-term savings and longer-term major expenses.

You see, outside litigation counsel really want to please in-house counsel. And why shouldn't they? In-house counsel pays the bills, they ARE the client, and they represent the Holy Grail—the hope of a longer and broader legal relationship that pays dividends for the relationship/billing partner for years to come.

So, what's wrong with having a service provider try to please you? We could all use more of that, right? Isn't that just good customer service?

Here's the problem. Outside litigation counsel is, ideally, not acting as a mere service provider. Rather, they are acting as, and please forgive the cliché, a trusted advisor. Unfortunately, I think most outside litigation counsel feel like the balance between trusted advisor status and mere service provider status has tipped a bit too far toward service provider status in recent years.

When you are a service provider, your motivations are a bit different than when you are a trusted advisor. As a service provider, your goal is to make the customer happy and preserve the business relationship. You wouldn't want your doctor to only tell you what you want to hear. You want them to tell you what you need to hear. The same is true for your outside litigation counsel. But how can we expect outside litigation counsel to tell us the truth if they don't feel safe doing so.

I think most outside litigation counsel are scared. They're scared of losing business. They're scared of RFPs. They're scared of asking for what they honestly believe they need. And I think it is negatively affecting litigation outcomes, and I think it is mostly up to in-house counsel to solve this.

My mentor recently said, if you're not getting what you want from a relationship, your partner is likely not experiencing you as safe. It's true in any relationship, of course. Translated for

litigation, if you're not getting the litigation outcomes you seek, it may be because outside litigation counsel does not feel safe asking you for the tools they need.

So, if you are in an in-house counsel role, ask yourself, are my litigators truly comfortable telling me, let alone asking for, what they need? Are they talking to me about mock trials, litigation consultants, and litigation graphics created based on persuasion science rather than the mere gut instinct of an inexpensive twenty-something graphic artist?

If they are not telling you that they need these things, it's likely either because they are afraid to ask or because they don't know that they should be asking. Either way, it's probably going to be up to you as in-house counsel to solve this problem, and my article from earlier this week about the in-house/outside counsel relationship provides a good framework for discussion.

Other articles by A2L Consulting focusing on litigation consulting, in-house counsel and value:

- 25 Things In-House Counsel Should Insist Outside Litigation Counsel Do
- In-House Counsel Hiring Methods for Litigation Counsel Are Surprising
- 9 Things Outside Litigation Counsel Say About In-house Counsel
- Litigator & Litigation Consultant Value Added: A "Simple" Final Product
- Explaining the Value of Litigation Consulting to In-House Counsel
- 12 Alternative Fee Arrangements We Use and You Could Too
- 10 Things Litigation Consultants Do That WOW Litigators

6. When a Good Trial Team Goes Bad: The Psychology of Team Anxiety

by Ken Lopez, Founder & CEO, A2L Consulting

Stories about a trial team breaking down at or just before trial are legendary. The breakdowns are typically triggered by some event that creates anxiety that then causes the team to engage in one of three progressively severe sets of behaviors:

1. **Deification of the Leader:** Looking to the leader of the team to make the anxiety go away or the leader taking dictatorial control over the team;

2. **Fights and Departures:** Fighting among members of the team or abrupt departures from the team;

3. **Coups:** Two or more people plotting to overthrow the leader or change leadership.

These breakdowns follow something going wrong in or around the trial team's work that produces fear. For example, I have seen trial teams slip into one of these behavior patterns after inter-team relationships are brought to light, when a judge discovers and makes public ethics problems on the team, when a client stops paying bills, when layoffs are being announced at the office, when something unexpected happens mid-case, when a team-member dies, when a ruling goes the wrong way or when the first chair is revealed to be unprepared, distracted or unqualified to try the case.

Ever see these things happen on a trial team or similar things happen to any team for that matter? Well, it turns out that these three behavior patterns were first described 68 years ago by the father of group psychology, Wilfred Bion. In my business career, nothing has proven more valuable than the knowledge Bion revealed, and for leaders of a trial team and the members of that team, learning a little bit about Bion can pay off enormously in the long run.

It turns out that the three patterns described at the beginning of this article are all increasingly severe subconscious group responses to anxiety and were described by Bion as:

1. **Dependence:** Where the followers subconsciously act in a way that forces the leader to take action to make the anxiety go away. If that fails, the team subconsciously moves onto the second and more severe breakdown.

2. **Fight/Flight:** Team members run away from the anxiety by fighting amongst themselves for distraction or try, as individuals, to escape the team altogether. As above, if this fails to make the anxiety go away, the team subconsciously proceeds to the next stage of breakdown.

3. **Pairing:** In this, the most destructive of the subconscious responses, a pair of team members plots to replace the leader through secret meetings or to find any other way to run away from the anxiety en masse.

In the eyes of Bion, teams are either in productive work mode or they are in moving through one of these three states, collectively called Basic Assumptions. The sole purpose of going into Basic Assumption mode is to make anxiety go away, a response that is completely knee-jerk and subconscious. Perhaps, you will not find it surprising to learn that these rules apply to any team whether it is a trial team, an executive committee, a club or even a family.

One noted expert in human behavior, Robert M. Young similarly remarked on his experience with groups and teams, "My experience was that, sure enough, from time to time each group would fall into a species of madness and start arguing and forming factions over matters which, on later reflection, would not seem to justify so much passion and distress. More often than not, the row would end up in a split or in the departure or expulsion of one or more scapegoats. This happened all over the place -- in high school, college dormitories and societies, university departments, teams making TV documentaries, collectives editing periodicals, communes, and psychotherapy training organizations. Every time this happened to groups of which I was a member I thought it was either my fault or that I had once again fallen among thieves, scoundrels, zealots, dim-wits or some combination of the above." This probably sounds familiar, right?

So, what is the takeaway? I think Bion's work is valuable to leaders of a trial team or leaders of teams of any sort for several reasons.

- First, if you know about Dependence, Fight/Flight and Pairing, you can always tell how far into distress your team really is by using these progressively worsening stages as something of a measuring stick.

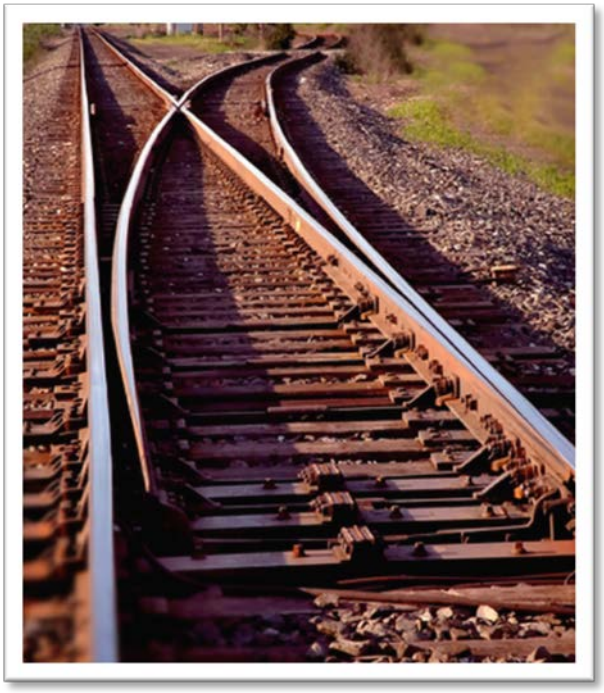
- Second, the leader should learn to keep their head, no matter what. For once a leader loses control of their own emotions, they too have succumbed to the Basic Assumption. Thus, one job of a leader is to constantly increase their own capacity to handle anxiety and to the extent possible, help their team increase their capacity for managing the stress.

- Third, there is actually a way for a skilled leader who has a team with enough emotional intelligence and intellectual strength to help pull the team out of Basic Assumption mode and return to productive work mode. Like many leadership lessons, however, it is simple, but it is not easy. All a leader needs to do is to force the group to talk about the thing at the root cause of the anxiety. With enough conversation and the right people, the team can return to productive work.

7. Planning For Courtroom Persuasion? Use a Two-Track Strategy

by Ryan H. Flax, Former 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.

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

8. In-House Counsel Hiring Methods for Litigation Counsel Are Surprising

by Ken Lopez, Founder & CEO, A2L Consulting

A little more than a month ago, I surveyed our readership and asked, "How does in-house counsel hire outside litigation counsel?" Six possible answers were presented in random order.

1. In-house chooses the **lowest priced firm** from a group of approved firms.
2. In-house hires the **best litigator based on prior experience**.
3. In-house hires the **best litigator based on their reputation**.
4. In-house hires their litigator **friends and former (or future) colleagues**.
5. In-house hires the litigator **most likely to generate a win**.
6. Finally, a write-in field for other responses answers

Having worked in the litigation industry for more than 20 years and seeing favoritism trump skill plenty of times, I expected some cynicism to show through in the answers provided. However, even with that expectation, I was still very surprised with the results.

A2L Consulting is quite precisely in the business of helping litigators improve their results at trial, primarily through mock trial testing, litigator coaching, and the development of persuasive litigation graphics. Said another way, we are in the business of helping trial teams win. Accordingly, perhaps seeing the world a bit too much through my own lens, I really did expect that the number-one result would be "in-house hires the litigator most likely to generate a win."

Boy, was I wrong. That answer didn't place in the top four. In fact, other than "Other," win-generation-likelihood was the factor ranked lowest for how in-house counsel hires outside litigation firms. I find that amazing. Isn't a win exactly what we seek when going to trial in the first place?

Well, the results get even more surprising. Two answers stood out as the dominant rationale for making hiring decisions. They are essentially tied for first place and are together twice as popular as the next two highest ranked answers. Based on 168 responses thus far, in-house counsel hires outside litigation counsel by:

- **Hiring the best litigator based on prior experience, and;**
- **Hiring their friends and former (or future) colleagues.**

Those are pretty surprising answers if you think about it. In-house counsels are, by and large, hiring their buddies and litigators they've used before. They are not hyper-prioritizing winning, reputation and price, at least not over other factors. That's not to say that those

factors are not considered. Rather, they are just factors not at the top of the list (albeit, by a wide margin).

There's nothing wrong with hiring a litigator who has generated good results before. Past performance is the best predictor of future performance. However, it is extraordinarily rare, if not impossible, to find a litigator that is the right fit for every case a business faces. Furthermore, most great litigators actually go to trial very rarely, so how can one reasonably predict great results based on one or two previous positive results? If favoritism is the dominant decision-making rationale, one can't really say they are deeply focused on winning. Trust may be important, but how much does it really contribute to getting great results at trial?

Putting on my CEO hat for a minute, I can't imagine our GC making a decision based on favoritism, and I wonder if CEOs and CFOs understand how the hiring of outside litigation counsel is being handled in their firms. How many dollars are being lost or left on the table (at trial or with outside counsel) because of this decision-making methodology? How would a CEO or Board of Directors even begin to evaluate whether the trial results they are getting are as good as they should be? I'm going to tackle this and many of these questions in future articles.

The write-in answers on this survey provide more clarity, confirmation of the dominant decision-making rationale and a few laughs. Here are a handful of answers that stood out to me when our readership was asked, how does in-house counsel hire outside litigation counsel, and chose "other":

- "In-house hires the firm where a member of the board of directors is a senior partner."
- "In-house hires the law firm least likely to cause in-house to be fired"
- "In-house hires "IBM", which is the litigator or firm that they will not be questioned about if they lose"
- "In-house hires the firm that presents the strongest strategic argument when interviewing the firms"
- "In-house hires the team with whom they see themselves being able to spend the next five to seven years of the lives."
- "In-house hires the litigator who best understands their business"
- "Hire a big firm regardless of price or litigation history."
- "Who they play golf with."

Other articles discussing litigation management, in-house counsel and working with litigation consultants like those at A2L Consulting:

- 1-Question Survey: How Does In-House Hire Outside Litigation Counsel?
- 17 Tips for Great Preferred Vendor Programs
- 10 Key Steps After: "I've Got a Case I Might Need Help With"
- 9 Things Outside Litigation Counsel Say About In-house Counsel
- 5 Signs of a Dysfunctional Trial Team (and What to Do About It)
- 5 Tips for Working Well As a Joint Defense Team
- 2 Metrics Showing Litigation Shifting to Midsize Law Firms
- 17 Trial Consulting and Jury Consulting Tips for Midsized Law Firms
- 7 Reasons In-House Counsel Should Want a Mock Trial
- 12 Alternative Fee Arrangements We Use and You Could Too
- Litigator & Litigation Consultant Value Added: A "Simple" Final Product
- FREE DOWNLOAD: Learn How to Get Value in The New Normal Legal Economy
- 9 Questions to Ask in Your Litigation Postmortem or Debrief

9. Can State and Local Governments Afford Litigation Consultants?

by Ken Lopez, Founder & CEO, A2L Consulting

Well, yes, of course they can. In fact, they hire us with some frequency. Let's be specific.

Our firm is just about 20 years old, and while our typical client is a medium-sized to mega-sized law firm, we work with a government entity every month of the year. Usually, our work is on behalf of some entity of the federal government, typically the U.S. Department of Justice or some other agency such as the Environmental Protection Agency.

A typical large engagement for A2L Consulting would involve conducting several multi-panel mock trials that would help inform the development of litigation graphics, the jury selection, and the overall trial strategy. It would involve the development of litigation graphics for both sides of the case through the mock trial. It would also involve a full development of our side of the case, including the incorporation of storytelling techniques into the opening statement presentation. It would then involve a trial technician who would develop the database of video depositions and documentary evidence for instantaneous display.

This is not what a government entity hires A2L for. More typically a government engagement, whether local, state or federal, would involve a subset of one of our service areas. Instead of a large multi-panel mock trial, a focus group study or micro-mock is often used. Instead of a deep and protracted engagement with the development of litigation graphics over months, incorporating storytelling and opening statement practice sessions, often our engagements will be limited to either the development of an opening statement, practice sessions, or a consulting engagement to help incorporate storytelling techniques.

After all, some of the cases in which state and local governments are involved are high-priority matters, such as environmental cleanup, zoning, eminent domain, and employment cases, where millions of dollars may be at stake. We know that we can help clients like this, even though they may have a limited budget.

We've written before about how to save money when engaging litigation consultants. Sometimes, this involves asking the right questions. Sometimes, it involves understanding the most cost-effective ways to proceed. Sometimes, it involves communicating your budget to your litigation-consulting firm, even if it is only $5,000, and asking what is possible. Something is always possible.

The articles below will help make you an expert in using litigation consultants in a cost-effective manner.

Other articles related to trial presentation services and cost saving tips from A2L include:

- 11 Small Projects You Probably Don't Think Litigation Consultants Do
- 12 Alternative Fee Arrangements We Use And You Could Too
- 10 Types Of Value Added By Litigation Graphics Consultants
- 10 Things Litigation Consultants Do That Wow Litigators
- What Does Litigation Animation Cost? (Includes Animation Examples)
- 24 Things To Know About The "New Normal" Of The Legal Economy
- 9 Ways To Save Money On Trial Graphics And Trial Technology
- 6 Triggers That Prompt A Call To Your Litigation Consultant
- 21 Ways To Work With Litigation Consultants On A Tight Budget
- 12 Questions To Ask When Hiring A Trial Graphics Consultant
- How Long Before Trial Should I Begin Preparing My Trial Graphics?
- 4 Litigation Graphics Tactics When The Usa Is A Client Or A Foe
- Trial Presentation Services: Not Just For Big Defense Teams
- 7 Ways To Prepare Trial Graphics Early & Manage Your Budget
- Saving Money On Courtroom Animation
- Fixed Fee Pricing For Trial Technicians And Hot Seat Operators

10. 18 Ways in Which Trial Can Be Like a Family Beach Vacation

by Ken Lopez, Founder & CEO, A2L Consulting

Well, no one ever said a trial was like a day at the beach. Except that there are a lot of similarities, if you look hard enough.

I'm just back from an annual two-week family vacation at the Outer Banks of North Carolina. My wife and I have seven-year-old triplet girls. My friend says that doesn't sound too much like a vacation, and his point is well taken in many ways. Although anyone who has done this type of trip with young kids will have some memories that seem as if they came from a Norman Rockwell painting, there are plenty of stressful or crazy moments. Fortunately, with time, the human brain can focus on the good memories.

This type of vacation time is chaotic, stressful, and, yes, fulfilling. And that reminds me an awful lot of what I do every day — high-stakes litigation. Let's consider how these two events are similar.

1) **Other stuff comes up.** I worked one 16-hour day at the beach. I had to. Two other managers were traveling, and one was slammed. I had to pitch in even if it was from 350 miles away. A long trial is no different. Often, you have to focus on other clients for a bit and you must plan for that possibility at trial.

2) **Breakdowns happen.** My clunky old Range Rover broke down at the beach. My wife was not pleased, but I'm always prepared for such an event. I have towing coverage that brought the car home, and I enjoyed driving on the beach in a four-door Jeep Wrangler instead. Things break down at trial too, often at the least opportune times. If you're not mentally prepared for that, if you haven't planned for it, you're going to look bad at trial. See 12 Ways to Avoid a Trial Technology Superbowl-style Courtroom Blackout.

3) **Surprise is the key**. My daughters are well behaved, but they need to see the unexpected from time to time, whether it's an unusual shell on the beach or a funny kind of ketchup bottle. If they don't have that, they become moody and distracted. Judges and jurors react similarly at trial. If you don't surprise them, they become bored and antsy. Learn the power of surprise. See Could Surprise Be One of Your Best Visual Persuasion Tools?

4) **Busy is hard to predict.** On vacation, you can plan a quiet day, but it doesn't turn out that way. In our trial business, like many litigation-focused firms we are often less busy in August. That's not true this year. We are quite busy.

5) **People get bored quickly.** Whether kids or jurors, it's not just about surprise when keeping them engaged, it's about intentional entertainment. Put that into your daily plan. These days, videogames are everywhere, they're usually not expensive, and they're fun. Video presentations for jurors are much more expensive, but they can be entertaining as

well. See Lights! Camera! Action! Verdict! A Trial Team's Responsibility to Visually Entertain and 12 Things Every Mock Juror Ever Has Said - Watch Anytime.

6) **You need a backup plan.** It can rain all day at the beach. A motion *in limine* can be rejected. You have to plan not just for tech failures but also for things not going the way you want. See 24 Mistakes That Make For a DeMONSTERative Evidence Nightmare.

7) **Eat well.** If you don't eat well on vacation, you won't have energy to do things you want to do. The same is true at trial. While you may think you just want comfort food, you have to eat like a warrior if you are going to be successful in battle.

8) **Exercise.** On vacation, you can start any day the right way with a run, a fast walk, or even some good stretching. At trial, don't neglect your body. You are more focused, happier, and better equipped to face adversity if you've exercised that day. See 10 Signs the Pressure is Getting to You and What to Do About It.

9) **Good movies work.** My wife and I can't keep the kids entertained the whole time. That's where Apple TV comes in. A good movie captivates and buys mom and dad some down time. In trial, if you fail to create drama that follows the pattern of a good movie, you'll probably lose. See Are You Smarter Than a Soap Opera Writer?

10) **Stories trigger memories.** I'll remember the stories from this trip for a lifetime. Think about that. Many have already been reduced to family lore. Jurors are likely to remember your case only if it's in the form of an easily understandable story. See Storytelling Proven to be Scientifically More Persuasive

11) **Learning really works only if it's fun.** It may be summer, but the kids have to keep learning right? Well, maybe. If you give them flashcards or force them to read books, they'll probably say no thanks. What if you ask them to count how many different types of birds they can see in the park? Again, jurors will learn the technicalities of software engineering for a patent case – if it doesn't seem like work. See How I Used Litigation Graphics as a Litigator and How You Could Too

12) **Know your environment.** You probably wouldn't plan a beach vacation without knowing in advance not only where the beaches were, but also the location of parks, restaurants, gas stations and other necessities. Similarly, you wouldn't plan a trial without knowing the physical setup of the courtroom, the judge's predilections and so on. See 21 Ingenious Ways to Research Your Judge

13) **Don't under-budget.** You don't need to spend a fortune on a beach vacation, but you need to plan it in advance to meet everyone's needs. In trial too, make sure you ask for the budget that you need in order to win. See In-House Counsel Should Make Outside Litigation Counsel Feel Safe

14) **Start strong.** The first day of a vacation often sets the tone. First impressions remain vivid. A juror's trial experience should be the same way. Jurors' thoughts about a case often are fixed by the first good version of the facts that they hear. Download: The Opening Statement Toolkit — Complimentary Download

15) **Emphasize multimedia experiences.** We went to aquariums, rode on airboats, and spent time on the beach. It didn't get boring. Jurors like to get information in many different ways – from live witnesses, from video and audio, and from carefully designed graphics. See How to Handle a Boring Case

16) **Give people room to make their own stories.** Kids will draw the damnedest and most interesting conclusions from a vacation. Similarly, you don't have to drag a story into jurors'

minds. You can suggest all the elements and let them fill in the rest. See Storytelling at Trial - Will Your Story Be Used?

17) **Push the boundaries.** Sometimes it's a great idea to challenge kids and to expose them to experiences they've never had. Jurors can react the same way. Sometimes a novel approach or an unusual presentation of data is just what they need.

18) **Don't take yourself too seriously.** Make sure the vacation is fun, not just a way to check off a box that you've had a vacation. Of course, trials are extremely important events, but if things aren't perfect, just know that you've done your best. Here's a 30-second video of my kids' daily obsession - the ice cream truck - that's sure to put a smile on your face.

Other articles and resources related to trial preparation, thoughtful mock trial testing, persuasive litigation graphics and trial technology considerations from A2L Consulting:

- The 13 Biggest Reasons To Avoid Last-Minute Trial Preparation
- The 14 Most Preventable Trial Preparation Mistakes
- $300 Million Of Litigation Consulting And Storytelling Validation
- Sample One-Year Trial Prep Calendar For High Stakes Cases
- 24 Mistakes That Make For A Demonsterative Evidence Nightmare
- 3 Ways To Force Yourself To Practice Your Trial Presentation
- Witness Preparation: Hit Or Myth?
- 25 Things In-House Counsel Should Insist Outside Litigation Counsel Do
- 10 Things Litigators Can Learn From Newscasters
- How Long Before Trial Should I Begin Preparing My Trial Graphics?
- 21 Reasons A Litigator Is Your Best Litigation Graphics Consultant
- 11 Problems With Mock Trials And How To Avoid Them
- 5 Things Every Jury Needs From You
- The 12 Worst PowerPoint Mistakes Litigators Make
- 6 Trial Presentation Errors Lawyers Can Easily Avoid
- How To Find Helpful Information Related To Your Practice Area
- Run A Conflicts Check With A2L For Jury Consulting, Litigation Graphics Consulting Or Trial Technicians

11. Trial 1 - Part 1 - Consider Litigation Costs and Opportunities

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

High-stakes litigation is hugely expensive these days. But what if there were a means of reducing litigation costs in a way that helps both the trial team and the client and doesn't sacrifice the quality of legal representation? That would make in-house counsel very happy, since an important part of their job is to budget and control litigation costs. There are a number of ways to do this, such as using alternative fee arrangements, streamlining litigation teams and bringing e-discovery in house.

But what about a more radical step – trying to win your case well before trial? That would indeed be a cost saver and would lead to an excellent result.

Let's first look at how expensive this type of litigation can be. A piece of employment litigation that is in the top 25 percent of costs (but not in the top one percent or anything like that), costs close to $1 million by the end of discovery – and that's before closing arguments. And the costs are mostly borne by the defendant.

Or consider a typical patent infringement case – say, one that involves possible damages of $1 million to $10 million. This kind of case usually ends up costing more than twice as much as that employment case. By the time discovery is over in the patent case, you're well past the $1 million mark in costs. Other types of cases – antitrust, environmental, contract cases and the like – are not quite as expensive, but costs add up there too.

But it doesn't have to work out that way. There are quite a few ways of winning a case without a trial.

First, we all know about dispositive motions – motions to dismiss, summary judgment motions, motions related to venue and jurisdiction, and the like. These can end a case before trial, but after the filing of a brief and usually an oral argument.

Second, a Markman hearing is a special type of proceeding in a patent case in which the court hears argument (and sometimes some expert testimony) and decides what the patented invention actually is by interpreting the patent claims and resolving disputes over claim language.

Third, a pre-indictment meeting is one that takes place when your client is under investigation by the government and you would reasonably expect charges to be presented against it. This usually involves an attempt by counsel to persuade the government to drop a case before it begins.

Finally, we all know about mediation, arbitration and settlement.

All of these are out-of-court occasions in which lawyers have a chance to argue their clients' cases before trial. They can happen in lieu of a trial or just before a possible trial.

What do all of these have in common? They are all opportunities, before trial, to begin winning your case by using the best practices of case framing and persuasion. If you can raise your game in these situations, if you can persuade the court or opposing counsel or the opposing party or a mediator or the opposition's star witness that you're a winner, how much better off would you be?

In our next post, we will discuss more about these best practices and how they can help you win. To be notified when subsequent articles are published, click here.

Additional articles and resources focused on pre-trial strategy and trial preparation from A2L Consulting:

- 14 Places Your Colleagues Are Using Persuasive Graphics (That Maybe You're Not)
- [New Webinar] Winning Cases BEFORE Trial Using Persuasive Graphics
- 4 Tips for Using Trial Graphics in Motions and Briefs
- Learn How to Get Value in The New Normal Legal Economy
- 24 Things to Know About The "New Normal" of The Legal Economy
- 9 Things In-House Counsel Say About Outside Litigation Counsel
- Repelling the Reptile Trial Strategy as Defense Counsel - Part 4 - 7 Reasons the Tactic Still Works
- With So Few Trials, Where Do You Find Trial Experience Now?
- How Long Before Trial Should I Begin Preparing My Trial Graphics?
- 7 Questions Will Save You Money with Litigation Graphics Consultants
- 9 Ways Prepping for Trial is Like Being a Dad of Triplets
- 11 Tips for Winning at Your Markman Hearings
- Making Good Use of Trial Director & Demonstratives in an Arbitration
- 11 Surprising Areas Where We Are Using Mock Exercises and Testing

12. 9 Things In-House Counsel Say About Outside Litigation Counsel

by Ken Lopez, Founder & CEO A2L Consulting

One month ago I wrote an article titled 9 Things Outside Litigation Counsel Say About In-house Counsel, and we recently included it in our free In-House Counsel Litigation Toolkit e-book. It is a popular piece read by several thousand people so far. Today's article looks at what is being said by in-house counsel about outside litigation counsel.

I've spent a lot of time talking with in-house counsel from large companies over the past two months. They have a lot to say about outside litigation counsel that I don't normally see reported in the popular press.

I expected to hear that outside counsel need to learn to manage budget and find ways to save money, since that's what I mostly read in legal publications. I heard some of that, but the feedback is more nuanced than simple price pressure, and the feedback speaks to a desire for more creativity from outside litigation counsel.

Of course, since I am most often talking to in-house counsel about jury consulting, litigation consulting and litigation graphics consulting, most of their comments relate to those subjects. With that in mind, here are nine things I've heard in-house counsel say about outside litigation counsel recently:

1. **"We have to stop deluding ourselves. At trial, the law is background noise."** Big companies are frustrated with having the law on their side and still losing jury trials. As one in-house lawyer said to me, "it is clear that having a good story is important, as one can be right on the facts and the law and still lose." I agree completely, and we have made this point many times in our Storytelling for Litigators eBook and Storytelling for Litigators webinar. More and more, getting the story right is the focus of what A2L Consulting is hired to do as litigation consultants.

2. **Opposing counsel is often more trial-savvy than our outside litigation counsel.** Defense-focused litigators from large law firms rarely go to trial, whereas their opposition in many types of cases like product liability, employment, securities, and other case types go to trial quite often. Plaintiff's counsel is quite comfortable relating to a jury, because they do it so often. Their experience comes across in their body language. Defense counsel must make up for this shortcoming with more frequent and repeated practice. Litigation consultants have an obvious role to play here in conducting structured practice, whether in front of a mock jury or more simply, in front of litigation consultants.

3. **Gone are the days when one law firm would manage a relationship for the company, so some cost efficiencies get lost as a result.** This includes how the company story is told from case to case and understanding the business well enough so that problems are avoided during litigation that might cause much bigger problems elsewhere (e.g. with investor relations or with marketing).

4. **In-house counsel want to hear outside counsel articulate a persuasive story for the case early, not only close to trial.** You can add "the client is tired of it" to my list of The 13 Biggest Reasons to Avoid Last-Minute Trial Preparation, because they are. Last minute trial prep makes bills higher not lower, and in-house counsel gets it. See, In-House Counsel Should Make Outside Litigation Counsel Feel Safe

5. **In-house wants to understand how persuasive the opposition's story is.** Too often it seems, the strength of the opposition's case is not well described, internalized or properly assessed early enough. See 7 Reasons In-House Counsel Should Want a Mock Trial.

6. **"If a trial team says it has all the answers, it's time to find new outside litigation counsel."** Working with litigation consultants makes sense for many reasons but particularly because of the rarity of trial for most litigators vs. the incredible frequency of trials for litigation consultants. In-house understands this point much more so than I imagined before interviewing so many recently. See Accepting Litigation Consulting is the New Hurdle for Litigators.

7. **In-house counsel wants to offer input on the story told at trial.** Too often, in-house counsel gives feedback but, as one said to me, "some words may change, but the book stays the same." The benefit of practice with in-house included early is something I've heard over and over.

8. **Most litigators get locked into their approach, and what won cases thirty years ago, may not work today.** We like trusted advisors who help us win, but they must prove that they change with the times. See 19 Ways in Which the World Has Changed Since 1995.

9. **Litigation budgets are often best addressed through early case assessment.** By analyzing whether a case should advance toward trial early on, money can be saved by settling early. Creativity here is especially important and is often hard to find. I think the work of author Dan Pink describing the role of creativity in the modern workforce is especially relevant here. See Daniel Pink, Conceptual Thinking and Trial Consulting.

Other articles and resources related to the work in-house counsel, outside litigation counsel and litigation consultants do together from A2L Consulting include:

- Litigator & Litigation Consultant Value Added: A "Simple" Final Product
- Free Download: The In-House Counsel Litigation Toolkit
- In-House Counsel Should Make Outside Litigation Counsel Feel Safe
- 25 Things In-House Counsel Should Insist Outside Litigation Counsel Do
- 7 Reasons In-House Counsel Should Want a Mock Trial
- 14 Differences Between a Theme and a Story in Litigation
- Accepting Litigation Consulting is the New Hurdle for Litigators
- 5 Tips for Working Well As a Joint Defense Team
- 7 Videos About Body Language Our Litigation Consultants Recommend
- How I Used Litigation Graphics as a Litigator and How You Could Too

- In-House Counsel Hiring Methods for Litigation Counsel Are Surprising

13. Poof! Seeing Litigation as a Business

by Ken Lopez, Founder & CEO, A2L Consulting

Litigation, that is, one piece of litigation, is what I call a "*poof business*."

Similar to any other business, a particular piece of litigation has revenue, expenses, full-time and part-time employees, consultants, sometimes a formal budget, some form of organization, a team culture and its success or failure can be measured in dollar terms. When compared to these typical business traits, a piece of litigation sounds like a business, right?

So, why "*poof*" you ask? Well, unlike most businesses built to last for many years, decades or even centuries, litigation has a finite lifespan. Poof! it's there, and poof!, it's gone.

It's a peculiar thing really, and I think it is a business model worthy of closer examination. In this article excerpt (download full article as part of a free e-book on litigation leadership here), I would like to briefly examine one element of the poof business model: **leadership**.

Poof Businesses

The litigation business is not without comparison. Other poof businesses do exist. For example, a movie production, a Broadway play, a concert tour or an election campaign. Each of these businesses shares traits with litigation that are more than just being created with an end in mind.

Non-poof businesses have a startup phase usually accompanied by some form of business plan. Companies like Google, Facebook and Amazon ran on very little cash in their first few years. Google only had $100,000 to fund its first year, and Amazon's first year investment consisted of a few hundred thousand dollars that came from founder Jeff Bezos' parents' life savings. Even Facebook started with a budget of near zero.

Poof businesses, on the other hand, spend millions of dollars in their short lifetimes. According to the AIPLA, the average cost of major patent litigation is estimated to be at least $6 million with many costing tens of millions.

Leadership in Poof Businesses

As intensely studied as traditional businesses are, poof businesses have, by comparison, received scant attention. Many authors devote their lives to educating people on leadership in business. Amazon lists more than 50,000 titles about leadership alone. Still, hardly any of these books give leadership in poof businesses (by any name) any attention.

Many of us in business leadership positions spend significant time and effort focused on becoming better leaders. Like more than 10,000 other CEOs in the U.S., I spend a full day each month attending Vistage meetings (a CEO focused organization) where the emphasis is on education, methods and ideas for improving leadership.

Leadership in the Business of Litigation

I believe litigation team leadership should be well defined and openly discussed.

One of the many best-practices that litigation teams can learn from other business teams is that a clear leadership model is imperative to the success of any business; even if that business is short lived by its very nature. I believe choosing the wrong leader for a team can lead to just as bad an outcome as choosing the wrong lawyer to try the case.

As celebrated Vistage Chair David Belden has said, "leadership is not about what you say, your followers are watching what you do and that is all that matters. To be seen as a leader, you must be seen leading." So, what does good leadership look like?

Achieving Level 5 Leadership in Litigation

In Good to Great, Jim Collins describes five attributes of a Level 5 leader, the type of leader associated with the most success. In two excellent articles on the topic (part 1, part 2), Dr. Carl Robinson offers a guide for becoming a Level 5 leader and summarizes their habits and traits.

Having worked with hundreds of the world's top litigators in my sixteen-year career in litigation consulting, I believe that those litigation team leaders with traits similar to those described by Collins and Robins have the best results.

Conclusion

I believe that a piece of litigation should be seen as business and can be categorized as a special type of business called a poof business. It's leadership should be clearly defined, and it's leader should be asking himself or herself how they can become, in the nomenclature of Good to Great, a Level 5 leader of their business. If they can recognize the importance of a clearly defined leadership structure and the importance of the leader having or developing Level 5 leadership qualities, I believe they will deliver the best results for their clients.

14. 10 Web Videos Our Jury Consultants Say All Litigators Must See

by Ken Lopez, Founder & CEO, A2L Consulting

As litigation consultants, jury consultants, trial technology consultants and litigation graphics consultants, we have the opportunity to share our decades of experience in over 10,000 cases, working with litigators from all major law firms, with our litigation clients every day. Clearly, this is a valuable service, and I believe great litigators become better litigators for having worked with our firm.

However, I also believe that litigators can learn a lot about trying cases, just as our jury consultants do, by watching other litigators. Unfortunately for most lawyers, especially those at large law firms, having the opportunity to watch other litigators try cases is actually quite rare.

Even a large law firm has relatively few cases that actually go to trial, and client demands do not allow litigators the ability to watch a case live from beginning to end simply for the professional development opportunity. Since few courtrooms record trials on video, how is a litigator to keep improving their skill set?

For most litigators looking to add to their experience, CLE programs like those at NITA, pro bono trial opportunities and mock trials run by jury consultants have historically helped fill the training void. However, one place where many of us go to learn and improve skills outside the courtroom, a place where we might expect to learn more about litigation - YouTube, actually has very few courtroom videos. As it is in many ways, the legal industry is peculiar when it comes to cameras in the courtroom - they're banned in federal courts.

Whereas one could easily go online and learn how to build a back yard pond, do the latest laparoscopic surgical technique, become a better salesperson or refinish a valuable antique; learning great litigation skills still largely requires live attendance at trial.

Fortunately, however, the times are beginning to change. Some great CLE programs, oral arguments, trial tactics and litigator training videos are making it onto the Internet. Pointing the way toward the future are companies like the Courtroom View Network, who are selling complete trials on DVD - what better way could there be to research the style and techniques of opposing counsel?

In the absence of that future ideal state where videos of great examples are plentiful and at arm's reach, or the click of a link, here are 10 must-see videos for litigators. Our litigation consultants and jury consultants have handpicked these videos, as each offers helpful techniques for the modern litigation team.

1. **Looking Your Best in a Video Deposition:** Have you ever wondered how your client can come off looking better in a video deposition? As our jury consultants will attest - it turns out that the way you sit in your chair can change how credible you appear.

2. **Will Trial Technology Make You Look Too Slick?** We covered this topic in a previous article and thought this powerful post-trial jury interview deserved a second look. This rural Arkansas jury is not shy about sharing their feelings toward trial technology and litigation graphics. Thankfully, the jury consultants in this case captured their opinions.

3. **What Percentage of Jurors Decide a Case After Opening?** According to this litigator, the number is shocking. It's consistent with the experience of our jury consultants too. You'll never look at opening the same way again.

4. **David Boies Talks About U.S. v. Microsoft**: More than 10 years have passed since this famous antitrust case. In that time, the legend that is David Boies has only grown.

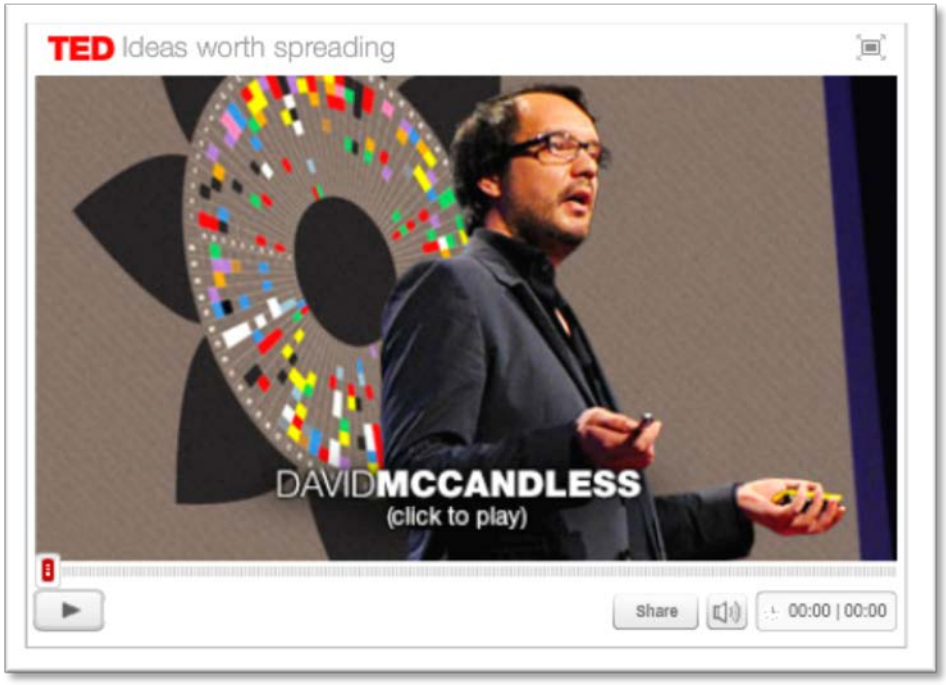
5. **F. Lee Bailey on Cross Examination:** Known for a quick mind and blistering cross, these F. Lee Bailey clips offer cross exam lessons for any litigator.

6. **Ted Olson and David Boies Deliver Oral Argument:** One of our jury consultants said this was like De Niro and Pacino appearing in the same movie. Famed litigators Ted Olson and David Boies argue Prop 8 before the court in *Perry v. Schwarzenegger*.

7. **What Should a Litigator to Do With Their Hands:** Here is a short reminder of how and when to gesture while speaking to a jury. Our jury consultants like this video because the instructor follows his own suggestions well and the tips are straightforward.

8. **What Jurors Want to See:** This video from a NITA (National Institute of Trial Advocacy) instructor is very much in alignment with the teachings of our jury consultants and our litigation graphics consultants.

9. **A TED Talk on Data Visualization:** We believe this speaker honors our profession with his message and approach. He reminds us that how we show data and what data we show will have a significant impact.



10. **What Litigators Can Learn About PowerPoint from a Comedian:** Don McMillan's take on what NOT to do with PowerPoint has long been a favorite of our firm. Although delivered in a comedic wrapper, these PowerPoint suggestions are especially applicable for litigators making courtroom presentations.

One day, hopefully soon, cameras will be allowed in all U.S. courts. Then, we litigation consultants, jury consultants and litigators will truly experience something special. Just imagine how much one could learn from a top 10 video list of the most effective opening statements of the last year. The practice of law would be better for it.

15. 10 Videos to Help Litigators Become Better at Storytelling

by Ken Lopez, Founder & CEO, A2L Consulting

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.

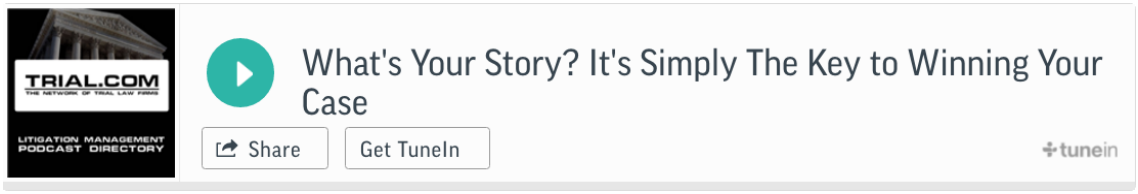
4. Ira Glass discusses the building blocks of storytelling. While he is discussing the elements of a journalistic style, his ideas are equally applicable to the courtroom.

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.

Below are some additional resources on our site and off our site that you may find useful:

- 6 Reasons the Opening Statement is The Most Important Part of the Case
- 5 Ways to Research Your Judge's Likes and Dislikes
- Free A2L Consulting E-Books for Download
- [Offsite] A Collection of Quotes and Resources on Storytelling for Lawyers
- [Offsite] More on Storytelling for Lawyers

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

by Alex Brown, Director, Operations, A2L Consulting

How do you determine value?

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

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

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

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

As a litigator, do you enjoy having the client sit next to you every step of the way, having the client in meetings when you discuss your next steps, and having them question you on every decision? Of course not. The client doesn’t have the experience, and these questions will drive

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

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

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

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

17. 5 Recommendations for Goliath v. Goliath Litigation

by Ken Lopez, Founder & CEO, A2L Consulting

We have discussed many situations in which a large company faces a court challenge from a smaller company, from the government, or from a class of consumers or purchasers. Sometimes, those situations will be "David v. Goliath" cases, in which the large company, usually the defendant, must step carefully during the trial to avoid being cast as the "heavy" with all the legal and other resources. Jurors sometimes don't look favorably on a big company.

But what about cases that could be termed "Goliath v. Goliath," in which both parties are large companies that jurors may be familiar with? It could be one airline against another, or one grocery chain against another, or one high-tech company against another. This type of case presents interesting challenges for the litigator.

The stakes in this type of case are often high; with two well-heeled parties, the litigation budgets are often relatively large; and a great many lawyers, usually from large law firms, are likely to be involved. In addition, there will usually be a good many consultants hired to help each side.

Even with or perhaps because of the many people involved, prepping the case will take longer, the trial is likely to take longer, and client expectations will be enormous.

In these challenging cases, we recommend the following:

1. **TEST THE CASE SEVERAL TIMES:** Since the other side will be very well prepared, testing in the form of mock trials and focus groups is crucial.

2. **MEASURE AND TACKLE THE CLIENT'S REPUTATION HEAD ON:** Your client's brand may be one that people like and trust (such as Coca-Cola, Amazon.com, or Southwest Airlines), or a brand that has come under criticism (such as Goldman Sachs, Halliburton, or Comcast). It may also be one that has no clear consumer profile. In any case, in a case like this, it's important for you to conduct surveys that indicate what consumer attitudes towards the client firm may be.

3. **TEST JUROR ATTITUDES TOWARD BIG COMPANIES, LIKE THESE, FIGHTING:** Sometimes, jurors will show apathy or lack of interest in what they view as a sandbox battle between two giants. It's important to test in advance and see whether this is the case.

4. **LET THE MOCK JURORS DRIVE THE LITIGATION GRAPHICS:** The feedback from mock jurors should inform the graphics team about what is working best and what does not work.

5. **PLAN FOR USING TRIAL TECHNOLOGY:** Both sides will use technology extensively. Reach an agreement with the judge well in advance about how it will be used.

There remain several unanswered questions that should be left up to the trial lawyer and the litigation consultant's discretion. There is often some question about how much a jury should be told about a large company that may seem familiar. We take the position that more is generally better. People can see companies like Google, Amazon or Facebook as old behemoths and forget that they were founded in 1998, 1994, and 2004 respectively, as start-ups.

There are also some questions about how much the trial graphics should follow the client's corporate colors, if at all. In the recent *Oracle v. Google* patent dispute in the Northern District of California, which Google won decisively, both sides adopted the corporate colors for their clients in their litigation graphic presentations. In this case, Google's graphics closely match the brand and Oracle's are a close derivation. You can download Google's successful opening presentation created by the Five Corners Group here and Oracle's opening presentation created by Impact Trial Consulting here.

Other resources on the A2L Consulting site related to this article:

- 6 Reasons the Opening Statement is the Most Important Part of the Case
- FREE DOWNLOAD: The Patent Litigation Trial Graphics E-Book
- A2L Jury Consulting Service
- 10 Videos our Jury Consultants Say All Litigators Must See

18. Say Goodbye to the David vs. Goliath Courtroom Myth

by Ken Lopez, Founder & CEO, A2L Consulting

We often hear from clients or prospective clients that it won't help them if they look like a big company that is attempting to overwhelm or dazzle its opponents with technology. Jurors won't buy that sort of stuff, we are told, even from a litigant that is actually a large company.

But although some may think that if the other side can present a "David vs. Goliath" story line, a major corporation will end up in danger of losing its case, research suggests that this is not so. In the first place, jurors have a pretty good idea about which corporations are large ones, and it won't help to "hide the ball."

In the second place, this sort of argument made more sense a decade or more in the past, when technology was just getting a foothold in America. Now, technology is simply a fact of daily existence, and jurors expect to see it.

In 2011, 78 percent of Americans used the Internet regularly, and just over 50 percent of Americans used Facebook. Forty-four percent of Americans owned a smartphone, up all the way from 18 percent just two years before. And these numbers are only going to go up.

Dr. Lou Genevie, a voir dire and trial consulting expert and founder of Litstrat, noted, "In our research, big companies that try to play small often pay a high price in a further erosion of their credibility. Finding the visual porridge for a big company that feels and looks 'just right' is a challenging process, very case specific, and the reason for testing the visual case long before rolling it out at the actual trial."

Trial consultant David Davis, a founder of R&D Strategic Solutions in Lexington, Mass., recalls: "In an agricultural area of Oklahoma, we worked for a client who was concerned about how their exhibits would be received by the jury and whether it would make the client appear to be slick and wealthy. In post-trial juror interviews we found there had been no problem. One juror commented, 'I see better things on my computer every day.' "

Trial Behavior Consulting's Sarah Murray, a social and cultural anthropologist recognized for her expertise in trial strategy, jury selection, witness preparation and visual communication, says, "My research and experience over the years consistently show that jurors like well-executed graphics and that a "David vs. Goliath" scenario is not a problem. The problem is when a team has not well thought out its graphics or graphic communication strategy and has a lot of graphics that go nowhere but show that a lot of money has been thrown at the case."

In a similar vein, a litigation support specialist for a United States Attorney's office has written in the *United States Attorneys' Bulletin* [pdf] "There is always some concern that using technology … will make the government look too slick or fuel the argument from defense counsel of the 'vast resources of the federal government.' In reality, the jury expects

the government to be prepared and smooth in presenting the case to them. They already know that the government has resources."

Thus, this supposed David versus Goliath issue ultimately doesn't appear to us to be as significant as it once might have been, for either the David who is considering using its status to its advantage, or the Goliath who is concerned about appearing a giant. High quality preparation, irrespective of stature, is what today's judges and juries are looking for and expecting.

19.13 Reasons Law Firm Litigation Graphics Departments Have Bad Luck

by Ken Lopez, Founder & CEO, A2L Consulting

I have seen some great law firm litigation graphics departments over the past 20 years. The best was at Howrey, which is where A2L's second team member and others came from in the mid-1990s. Back then, Howrey's litigation graphics department was led by an Academy Award-winning artist and producer.

These credentials commanded respect. Litigation graphics were largely a mystery to most lawyers at that time, and I believe that the litigators at Howrey were quite proud of the in-house graphics department. Smartly, it and other divisions of Howrey were separate profit centers. The idea was visionary, but it failed. And it failed long before the firm did.

Having been in the industry for 18 years, I have seen many firms, vendors, and law firm graphics departments fail. I see a pattern in those failures and have come to believe that a law firm graphics department can, at best, only achieve short-term success.

Here are 13 reasons why I believe that in-house law firm litigation graphics/trial graphics/animation departments are mostly doomed for failure:

1. **Law firms rarely go to trial.** By far the biggest thing working against an in-house trial/litigation graphics department is how rarely it is used. Even the largest law firms only make it all the way to trial maybe a dozen times per year, and that is across 15 or more offices. Even if you imagine that every one of those trials was handled by an in-house team, it's just not that much work. Contrast that with our firm, which goes all the way to trial 25 to 75 times per year in addition to a lot of related work. More trials equal more meaningful experience.

2. **Litigators don't need graphics; they need advice.** In the 1990s, litigators were just adopting visual trial presentations for the first time. Then, most any graphic artist would do, since it was all new anyway. In the 2000s, good artists took courses from Edward Tufte and began to educate litigators on principles of information design. In other words, they began to give advice. In the 2010s, serious litigators rely on sophisticated litigation consulting firms, not an art or multimedia department, to support them at trial. These firms, such as A2L, have integrated Ph.D. social scientists with former litigators and litigation graphics departments so that the advice is drawn from science, data and experience, not only the gut instinct of an artist.

3. **Lawyers under pressure can be, well, difficult.** The in-house law firm artists I know would basically put litigators into two camps, those that screamed at them and those who didn't. This would be a difficult work environment for anyone, but for an artist it is a recipe for failure.

4. **Artists take things personally.** We creative types are sensitive. When we make art, we give a piece of ourselves away and put it out there for criticism. If you've done this for as long as I have, criticism is welcomed, but if you are more junior, to criticize the art is to criticize the person.

5. **Being a non-lawyer in a law firm is tough enough.** We all know it is never easy to be a non-lawyer in a law firm. If the culture is bad at the firm, non-lawyers feel a sense of disdain. This includes the art department.

6. **The good ones command more value elsewhere.** Increasingly there is a revolving door between law firm staff and outside firms. From trial technicians to e-discovery personnel to litigation support staff, there is a relationship between law firms and outside vendors that is quite similar to the relationship between government and the private sector. You put in your time at the law firm and then you go out to an outside firm to earn more money by selling back to your old firm. We have a number of former big law firm staff on our team.

7. **No great artist ever said that he or she hopes to work in a law firm someday.** If you are a great artist, you grew up sketching. Some people, on the other hand, picked up some form of creative design later in life, as I did with 3D animation during law school. If you see yourself as an artist, I think it is hard to see yourself at a law firm.

8. **Outsourcing everything is de rigueur.** We are in an era where it is possible to outsource everything that is not core to your business. Most startups outsource everything now from IT, to creative, to HR. Law firms are a little behind the curve on this one, but they are catching up.

9. **The pride and mystery are mostly gone.** In the 1990s, when litigation graphics were new, artists were seen as magicians who could conjure up clever ways of explaining simple concepts. Now, that is simply your entry ticket to the game. Unless you can go beyond that, it is hard to be seen as much more than a clever person with some artistic skills.

10. **Artists go for stability and find layoffs.** Many creative firms suffer from poor management, so many artists leave them to seek stability and a good salary at a major law firm. It makes sense to a degree as not every artist can join Ogilvy & Mather, Pixar or even A2L. However, with the number of staff layoffs at law firms, the best reasons for being at a law firm are not actually there for most people.

11. **Everyone needs to grow.** In a litigation-consulting firm such as ours, we are pushing the boundaries of litigation graphics every day. We are constantly exploring new and interesting ways of telling stories, illustrating points and persuading in the courtroom. This is possible since we have a team that learns from one another. It is rare for a law firm to have more than one real talent on staff. Eventually that is a recipe for stagnation.

12. **The best litigators will look outside the firm.** Even though Howrey had one of the best in-house litigation graphics departments in history, the firm was still one of our best clients for A2L, and many of their former litigators still are. Why? First, it is hard for an in-house department to be better than even an average litigation consulting firm, and the best litigators know that intuitively and so do trial-savvy in-house counsel. Second, the alpha personality type typical of so many successful litigators does not take well to rules, like being told they must use the in-house department.

13. **The law firm environment is distinctly non-creative.** To be creative, you must work in a creative environment. I take this seriously at A2L, and our headquarters office is an open creative space with exposed brick, tin ceilings and a lot of splashes of color. I even insist (although I'm still too often ignored) that everything down to our office supplies "look as if a designer touched it." Yes, that's my stapler and tape dispenser pictured to the right. Why? I believe good creative people see good design everywhere they go. Those who don't, end up not being good creative people.

In summary, Howrey did it right. They set up their graphics department with a leader you could respect and learn from. They saw their graphics department as a profit center not as overhead. Perhaps some law firm will get this right eventually, but I'm not familiar with one that has.

Law firms have a challenge with outsourced services: they can't make money from them, or can they? I'll cover this topic in an article in the near future.

You might also enjoy these other articles and resources on A2L Consulting's site related to trial presentation, litigation graphics and trial graphics:

- Free Download: Persuading With Litigation Graphics
- 5 Signs Of A Dysfunctional Trial Team
- Creating Simplicity Makes It Look Too Easy
- Free Download: Leadership For Lawyers
- Seeing Litigation As A Business
- A2L Voted Best National Graphics Firm By The Readers Of The NLJ

20. 24 Things to Know About the "New Normal" of The Legal Economy

by Ken Lopez, Founder & CEO, A2L Consulting

The term the "new normal" is a term that is frequently used today to describe the changing state of the legal market.

In its present connotation, the term was apparently coined by Mohamed A. El-Erian, the head of PIMCO, a major global financial firm, to describe the new post-recession world of slower economic growth. It was quickly applied to the legal market by other theorists. The concept was recently mentioned in connection with the current Weil Gotshal layoffs and other efforts by law firms to reduce staff to meet reduced demand. We have written about the topic recently and plan to release an e-book about the new normal in a couple of weeks (* subscribe for free and be notified of its release).

The reason we are writing about the new normal is because we believe there has been a permanent shift that mirrors what is happening in the economy as a whole. With the rise of the Internet, buyers of almost anything can now quickly find information about various products or services and compare price. This used to be quite difficult not all that long ago, especially in the legal market.

In business, this process is called commoditization. When a product becomes commoditized, buyers learn what the product or service actually consists of, and they learn to compare similar providers. Once that occurs, RFPs appear in the marketplace, and price eventually becomes the biggest factor in purchasing decisions.

In our industry, it was printed trial boards that were commoditized first. Then it was courtroom trial technician support and increasingly it is graphics and jury work. Price is not the only consideration, but it is a big one, especially for in-house counsel, and it should be. The speed with which e-discovery services were commoditized surprised even experts.

Being much smaller than a large law firm, we adapted to the new normal back in 2008 when we first announced fixed-fee pricing and other discounting methods to create predictable pricing. We continue to offer a variety of innovative alternative fee arrangements and we routinely participate in preferred litigation support vendor discounting programs.

Not only have we adopted new pricing methods, thus embracing commoditization in one part of our business, but we continue to innovate and add new service offerings like mock hearings and sophisticated jury consulting services. For a firm to thrive for decades as ours has, that is the only way to address commoditization unless you intend to become the Wal-Mart of your industry. Law firms must do the same – strive to deliver many services much more efficiently, while at the same time introducing novel elements to their businesses.

Below are 24 great resources that discuss the new normal, divided into 11 topic areas.

1. The ABA has 30 pages of article titles devoted to the new normal with the first mention of the term back in October 2010.

2. The *New Republic* article last week, The Last Days of Big Law, has been widely discussed as an example of the "new normal." I think it was a bit of a hatchet job on Mayer Brown, which is a great firm. This ABA article discusses the *New Republic* article and includes Mayer Brown's statement on the article. So many have written about the *New Republic* article in the last ten days that the author has already penned a rebuttal to critics.

3. The Weil Gotshal layoffs last month generated a lot of discussion about the new normal. This New York Law Journal article discusses the reaction of other law firm leaders. What was especially noteworthy was that Weil Gotshal's executive partner attributed the layoffs to the "new normal."

4. I love this article discussing business basics as it applies to the new normal. The author does a great job creating a financial primer for law firm management.

5. The reports of Citi and Hildebrandt on law firm management always generate good discussion, and increasingly that is focused overtly on the new normal. Here is a good Above the Law article commenting on the specifics of a recent Citi/Hildebrandt report.

6. Many industry observers have discussed alternative fee arrangements (AFAs). Broadly defined, that means anything that isn't simple billable hours times an hourly rate. We have written about AFAs, DuPont is a thought leader on the topic, and there are many good articles such as this ABA piece.

7. Pricing specialists. The new normal has given rise to a new position at law firms, strategic pricing specialists. If you were a large corporation, you would want to work with law firms that have a pricing specialist on staff. Firms like Akin Gump, Crowell & Moring, and others have great programs in place. Good articles have been written about this topic such as this article in the Legal Intelligencer. Here is a great blog article on who holds these positions at large law firms.

8. Discussion of the death of the billable hour. A discussion of the new normal essentially goes hand in hand with a discussion of the passing of the billable hour.

9. I like this 2013 report [PDF] from Georgetown Law describing the state of the legal market. It is a good rational discussion backed up by a lot of data. Altman Weil's 2013 Law Firms in Transition Survey [PDF] is also illuminating.

10. Perhaps the whole industry should get a copy of Who Moved My Cheese? because the apparent shock expressed by some to the industry changes is surprising. This article talks about Motivation and Morale in the New Normal.

11. There are many good blogs discussing the new normal, the business of law and law firm economics. Here are a few I think are worth a look: Adam Smith, Esq., Leadership for Lawyers, Corcoran's Business of Law, Legal Bill Reviewer.

What is the silver lining in all of this? First, everything is going to be okay. We adapted our pricing models very quickly five years ago, and I have come to prefer fixed-price engagements for our jury consulting, litigation graphics and courtroom technology assignments. Such an alternative fee arrangement removes a lot of anxiety and allows us and the trial team to focus more deeply on winning.

Furthermore, just as it is a bad sign when people say it's a new economy when the market is soaring, it is probably a good sign that people are talking about a fundamental shift having taken place now. It suggests we are at or past the bottom, and that likely means good times are just

around the corner. Here's an encouraging pair of articles that remind us that despite all we hear, law firm hiring is up 27% and revenue per lawyer at large law firms rose by 8.5% in 2012.

21. The Top 5 Qualities of a Good Lawyer

by Ken Lopez, Founder & CEO, A2L Consulting

I'm often asked for advice on hiring a lawyer. In fact, I refer about two dozen cases/clients out to trustworthy lawyers each year. Usually, they range in value from family law-types of cases to $100 million complex commercial disputes.

I am in a unique position. While trained as a lawyer, I don't practice. I spend the majority of my time running A2L, a litigation-consulting firm, and I publish what is likely the most widely read litigation blog. However, I think what really qualifies me to make great referrals is the twenty years I've spent working with top litigators both as a consultant and as a client. In that time, I've had a chance to see how 1,000 lawyers or so perform, and I've learned a lot about who is good and who is average.

When someone calls and says to me, "I need a good lawyer," I need to know a lot more than that. In fact, I'm convinced that most people don't know what "a good lawyer" means exactly. I'm not even sure many *lawyers* know what makes a good lawyer.

From the outside of the industry, however, I think it's almost impossible to tell who is good. "Good" is almost entirely based on word-of-mouth, and world-of-mouth is usually affected by some form of confirmation bias. That is, people want to recommend a lawyer they've used before, since making that recommendation helps them reinforce the decision they made to hire that lawyer in the first place.

Knowing that someone is a SuperLawyer is good, being AV rated is good too, and even having a reasonable Avvo score is a plus. However, even among lawyers meeting these three criteria, I observe wide variations in talent. So, to give a good referral, I really have to both understand who is a good lawyer, and recommend the right lawyer for the situation.

Reflecting on 20 years of experience, here are five traits that define a good lawyer for me when I am making a referral:

1. **Negotiation talent**. Far more important than any other trait, negotiation skill will get you the most value from a lawyer. Good lawyer-negotiators seek to leave all parties feeling like a reasonable outcome was achieved, rather than trying to run over the opposition. This does not mean they get you less than you seek. It means you get a fair outcome, ***and*** you feel good about your outcome. It means the outcome is also workable and has staying power. Good lawyers manage expectations on both sides of the "v." and are masters of selectively using leverage to help guide a dispute toward resolution. They have a warrior spirit that is fed by cleverly getting to the desired outcome. They play chess, not checkers. When a lawyer is not a good negotiator, disputes cost more and outcomes are less favorable. The problem is that this skill is very, very hard to evaluate unless you have seen someone conduct a negotiation.

2. **Good Paper Talent.** Good lawyers draft correspondence, motions and briefs that are well cited and well written. Typos are non-existent, and they maintain a sense of decorum unless it is truly helpful to do otherwise. Their emails are well thought through, and they avoid common grammar issues. They get things done on time, and they are familiar with using storytelling and persuasive graphics in pleadings to maximize persuasiveness. Of course, they get the law right, but that really should be a given.

3. **Presentation Talent.** Good lawyers present well when they are being spontaneous, and they present fantastically well when they have time to prepare a trial presentation. They are confident. They are familiar with the latest thinking about litigation graphics. They are comfortable relying on litigation consultants and others for good ideas.

4. **Specific Experience.** Just like a job interview, you really want to hire someone who has handled a problem like yours many times before. This is not always possible when hiring a lawyer as many problems are unique. Furthermore, if I had to balance negotiation skills vs. experience with a particular subject, I'd still very heavily weight my decision in favor a lawyer with superior negotiation skills.

5. **Reasonable Accessibility.** Good lawyers make themselves available to you, and you should not have to beg them to talk with you. That does not mean you have a right to be high-maintenance, it means their availability should vary proportionally to the seriousness of what you are facing at that moment. Good lawyers are busy, but as they say, if you want something done, ask a busy person to do it.

Notice I did not mention fees or rates in my top-five list. As my favorite outside counsel says to me, perhaps in a self-serving way, "there's nothing more expensive than a cheap lawyer." Fortunately, I happen to agree with him.

You can probably tell that I enjoy making referrals, and, in fact, I happened to give three yesterday. My hope is always that I have made a good match for all involved, and so far, that's always been true. Please comment with other traits you think I overlooked.

Other A2L articles related to business development, pricing and litigation consulting:

- 12 Alternative Fee Arrangements We Use and You Could Too
- Accepting Litigation Consulting is the New Hurdle for Litigators
- The Top 10 Tips for Selling Professional Services
- Free Download: What is the Value of Using a Litigation Consultant?
- 9 Things Outside Litigation Counsel Say About In-house Counsel
- 2014 Economic Forecast for the Litigation & Litigation Support Markets
- Watch Free: Storytelling for Lawyers and Litigators
- Free Download: Using Litigation Graphics Persuasively
- 6 Lessons Our Trial Consultants Learned from the Sales Process

22. 5 Tips for Working Well As a Joint Defense Team

by Ken Lopez, Founder & CEO, A2L Consulting

We often work on large cases, and large cases often have joint defense teams. A joint defense team is simply a group of law firms working for a group of clients and/or working on some issues together in a case.

Some joint defense teams work together brilliantly. It's like watching the best NFL players come together for the Pro Bowl game when each of them plays as a member of the same team. In a trial, sometimes the whole “dream team” unites to prevail. It's a beautiful thing to watch -- when it works.

Unfortunately, it doesn't seem to work that way very often.

In a recent engagement I watched a well organized team in the run-up to trial perform beautifully. They had sorted out communication, who handled what issues, leadership, client communications, and billing arrangements with no apparent drama.

I can contrast that with any number of large cases where the opposite is true. These are unfortunately the majority of joint defense efforts. In these cases, turf battles are common. As much time is spent on politics as is spent on winning the case. I suspect cases have been lost entirely because a joint defense effort has failed.

So what's the difference between the joint defense teams that succeed and those that fail? I think the critical difference as with any NFL team, any military division or any serious business team, is in how the leader performs.

I have seen in-house counsel take the leadership role. I have seen joint defense teams elect a coordinating counsel. I have even seen co-leaders successfully prepare for and go to trial.

The common element is not the structure. The common element is the skill of the leader(s) and how the leader(s) runs the team. Here are five tips based on 18 years of watching joint defense teams that found success.

1. **Make the leadership clear.** If you are an in-house counsel who wants to be the leader, that can work but you have to be very explicit that final decisions are made by you. Failure to define this can by itself destroy a functioning joint defense team. In general I find it's best to convey that everyone has a voice but there is only one vote.

2. **Assign specific roles to specific lawyers and let them build their teams.** If you have a case that has antitrust, patent and pharmaceutical as well as bankruptcy claims and have six law firms, break down the issues in the case and assign the best lawyers for that issue solely. Only the leader should be able to overrule them.

3. **Lawyers should be assigned roles typical to their roles in the corporation.** There should be a lawyer in charge of all things billing. There should be a lawyer in charge of running the trial

consultant team. There should be a lawyer in charge of coordinating the development of litigation graphics. You can sort this out early by breaking down all of the roles (e.g. opening, mock opposition counsel, point person for jury consulting work, etc.)

4. **Constantly remind the joint defense team of the mission at hand.** The leader should frequently say, “Don't forget these people are trying to get us and it's up to you to make sure they don't. The battle is never among the law firms. Remember, the battle is being fought for our company. And I'm counting on you.”

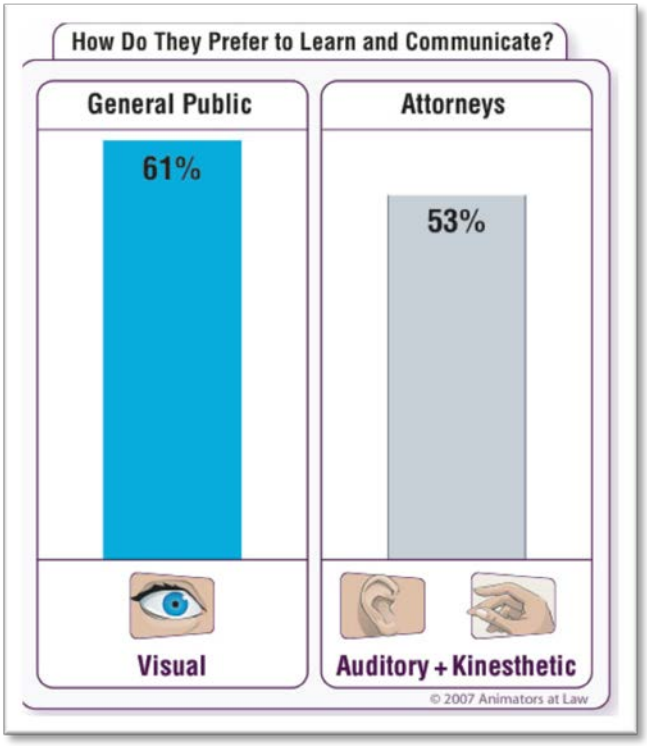
5. **Find a way to make sure communications flow smoothly.** As the leader, schedule regular meetings to communicate where the various teams stand. This way if people have some expertise yet are assigned to another team, they will still be able to provide input during these meetings.

Here are some additional articles related to litigation team management, leadership and how trial teams function on A2L Consulting's site:

- Free E-Book Download: Leadership for Lawyers
- 5 signs of a dysfunctional trial team and what to do about it
- When a good trial team goes bad - the psychology of team anxiety
- 10 signs that the pressure is getting to you and how to fix it
- Free Subscription to this Blog

23. 6 Studies That Support Litigation Graphics in Courtroom Presentations

by Ken Lopez, Founder & CEO, A2L Consulting



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- 10 Signs That The Pressure Is Getting To You And How To Fix It
- Free Subscription To This Blog

24. 24 Mistakes That Make For a DeMONSTERative Evidence Nightmare

by Ken Lopez, Founder & CEO, A2L Consulting

Happy Halloween. This article will help you avoid some common mistakes of demonstrative evidence so that you do not put the "monster" in "demonstrative."

Demonstrative evidence is a general term for evidence introduced in litigation that is neither spoken testimony nor “real” evidence like an actual murder weapon. Demonstrative evidence is introduced in order to make evidence and facts in a case easier for the judge or jury to understand.

Examples of demonstrative evidence include charts, timelines, scale models, photo enlargements, animations, films, videos, checklist exhibits, and PowerPoint presentations.

Here are some common mistakes to avoid.

1. **Waiting until it is too late.** From the very beginning, plan your case with an eye toward its presentation to a jury. See our article on using a dual-track strategy in trial preparation.

2. **Cheating on your charts.** There are many ways to lie using charts, including axis changes, using logarithmic scales, cherry picking data, and much more. These “black-hat” techniques are not only inappropriate but if you get caught, they are likely to draw sanctions or worse.

3. **Glossing over details in an animation and not getting it admitted.** Remember – everything must pass muster under the relevant rules of evidence. Here is an article discussing how to get courtroom animation admitted in 6 easy steps.

4. **Using legends and keys.** I first learned this simple notion from Edward Tufte, and it is surprisingly powerful. Most of the time, you can avoid using a legend or key on a chart. There is rarely a good reason to use them when simple labeling can replace a legend or key. Tufte correctly calls such elements "chartjunk."

5. **Using garish colors or culturally inappropriate colors.** Remember, in this decade, jurors are looking for a high-quality presentation. Also, remember that not every juror has been raised in a country that associates red with stop or green with go. Here is an article on trial graphics, color and culture.

6. **Failing to tell a story.** In a complex case, jurors will tend to simplify and "do what is right." They will remember a believable story, but you must remember to tell one - just as we discussed in the Apple v. Samsung case.

7. **Forgetting to mix your media.** Printed and mounted foam core trial boards still have a place in a high-tech world as do scale models for litigation.

8. **Failing to work with expert witnesses to prepare demonstrative evidence.** A well-prepared expert witness is invaluable; one who is not well prepared can be a disaster. As much as an expert firm will insist they can prepare demonstratives, it is always best to have expert witnesses work with litigation graphics experts.

9. **Asking your law firm associate to make charts.** A professional trial graphics consultant will add graphic design skill and a degree of litigation experience that most attorneys won't normally have. It is not a good idea to have your associates and paralegals prepare demonstratives, and this article explains why.

10. **Failing to consider many options.** The best demonstrative evidence product results from a whittling-down process. Therefore, it is normally best to overproduce the number of graphics early in a project.

11. **Failing to use demonstrative evidence where you could.** Hint: demonstrative exhibits are not just for jury trials.

12. **Failing to consider the latest scientific research on presentations.** There is a method to making a good presentation, and there are common and well-known traps to avoid.

13. **Forgetting that Hollywood is a great place to learn** how to tell a courtroom story and that juries are accustomed to the way Hollywood tells stories.

14. **Making the mistake of believing you can't afford to hire a trial presentation company**. Here are some tips for how you can save money on trial preparation.

15. **Failing to use demonstrative evidence at all**. Few need reminding why graphics are essential in bench or jury trials, but here is the science behind it.

16. **Failing to prepare opening statement graphics thoughtfully**. An opening statement is often the most important part of your presentation, and here are some tips for preparing openings effectively.

17. **Using bullet points in your demonstrative evidence**. Evidence shows that jurors are turned off by the use of bullet points, and bullet points are actually harmful to your presentation.

18. **Trying to get group consensus on your demonstrative evidence**. Often, a piece of evidence designed by a committee loses its beauty and coherence. Our article on group-design of litigation graphics explains this best.

19. **Using demonstrative evidence only sporadically**. A "graphically immersive" presentation usually works best.

20. **Failing to bring in a qualified operator to handle your trial presentation software**. You do not get a second chance in litigation, and technology should be low on your list of worries. A qualified trial technician will run the courtroom hotseat and leave you free to

focus on the case.

21. **Not testing graphics in a mock trial format**. Testing litigation graphics in front of a mock jury can find all sorts of problems and issues with your graphics before you need to use them at trial.

22. **Hiring the wrong trial graphics consultants**. I sometimes see trial teams leading clients astray. The most effective hiring process involves relying on references and prior experience. The worst process is handing the decision off to an inexperienced client and forcing them to essentially make a decision on price. Why hire the best lawyers and subpar graphics or technology consultants? Nightmares do happen. Here is a summary of the best hiring process for litigation graphics consultants based on 17 years of being hired by the best in the business.

23. **Creating boring graphics**. A good trial consultant can make any subject interesting to a jury. Here is an article describing five ways litigation consultants add pizazz to a case.

24. **Fearing technology**. It is a myth that jurors are turned off by technology that is "too slick." Here is what one Arkansas jury had to say about technology.

Forgetting to heed these warnings will surely lead you into a foggy graveyard at night filled with de-monster-ative evidence spirits. Prepare your litigation graphics well, and have a happy and safe Halloween everyone.

25. Working in Parallel vs. Series with Trial Presentation Consultants

by Ken Lopez, Founder & CEO, A2L Consulting

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

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

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

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

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

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

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

In trial presentation, freedom combined with some structure allows for maximum creativity. And it is creativity quite specifically that a trial team is seeking to outsource. The more freedom within reasonable boundaries, the better the results, but both approaches can and do produce good results.

One of the great challenges for our frontline litigation consultants who in our firm are usually former litigators themselves, is assessing whether this trial team who is in front of them wants

them to operate in parallel or in series. Asking the question in an otherwise heated trial environment does not always produce a real answer.

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

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

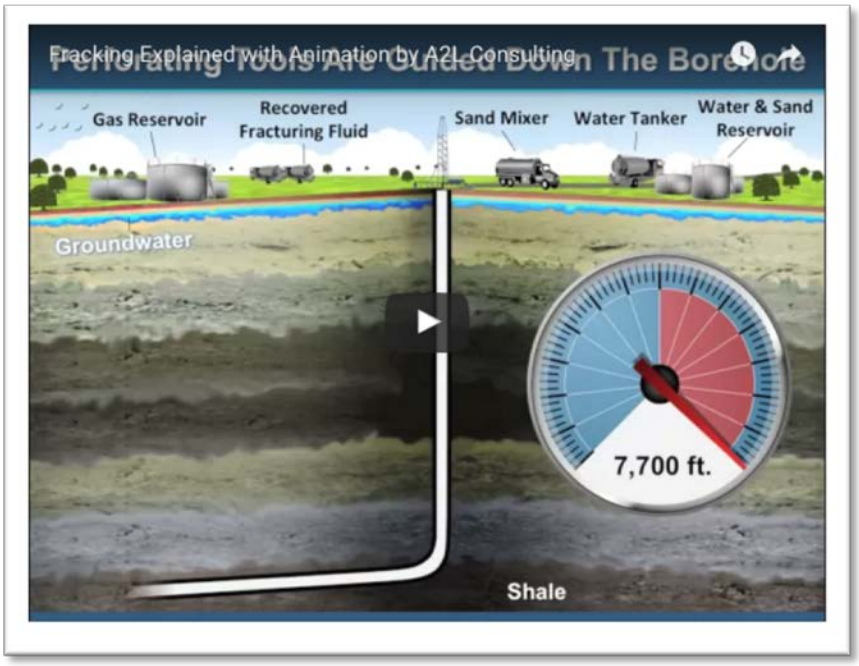
Articles related to trial presentation consultants on A2L's site:

- Free E-Book Download: Using Litigation Graphics To Prevail At Trial
- A2L's Trial Presentation Consulting Homepage
- What Does Trial Presentation Consulting Cost?
- What Does Litigation Animation Cost?
- 16 Trial Presentation Tips You Can Learn From Hollywood
- How Does A Trial Presentation Consulting Firm Work?

26. Litigation Graphics, Trial Exhibits, Physical Models, PowerPoint Presentations and 2D and 3D Animation

At A2L Consulting, our primary goal is to help lawyers communicate their message with maximum effectiveness. Often, this involves helping to explain difficult concepts to judges and jurors through the use of visual design and technology -- collectively called **litigation graphics**. Whether you need assistance designing your message or using the technology required to deliver your message, we can help. We do it everyday, nationwide.

In this litigation graphics presentation, we make the case for the beneficial aspects of hydraulic fracturing (fracking). We believe in early preparation of litigation graphics whenever possible. Please download our free whitepaper on 10 reasons why early preparation of litigation graphics is beneficial.



Our attorney/consultants and designers will expertly develop your most effective trial presentation strategy and designs for litigation graphics and demonstrative evidence in the courtroom. Our years of experience have proved what the ABA once revealed through study: jurors will understand and retain information **650 percent faster when a visual presentation is used**.

With A2L, you are working with a firm that has consulted on over 10,000 cases, has worked with every major law firm and since 1995 has consulted on cases with trillions of dollars cumulatively at stake. We are a firm you can trust to not let your team down and enhance your likelihood of meaningfully connecting with your judge or jury.

Additional Information About A2L Consulting's Litigation Graphics:

- Litigation Graphics Tip: Top 5 Trial Timeline Tips
- Using Litigation Graphics to Convey Size and Scale
- All A2L Articles on Litigation Graphics
- Courtroom Animation: 2D, 3D, PowerPoint Animation

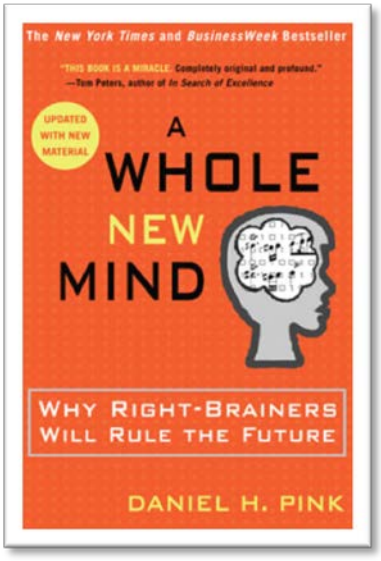
Litigation graphics are powerful tools for explaining and communicating complex concepts or abstract ideas. Trial exhibits serve as representations of pertinent information that facilitate a more lasting and believable impression. Most trial exhibits we produce are electronic, however our traditional exhibits range from exhibits mounted on foam core to more elaborate flip-boards, document callouts, and timelines to super-enlarged photographs, physical models and custom illustrations. We will design your litigation graphics to be easily understood and very persuasive. We have created tens of thousands, and no two are exactly alike.

Litigation graphics can be either printed or presented electronically using customized software or off-the-shelf software such as Sanction, Trial Director or PowerPoint. We routinely create a mix of print and electronic exhibits for large trials to keep cost down and to stimulate judge and juror interest. A2L's state-of-the-art printing technology allows for the production of a trial’s worth of printed trial exhibits overnight and, since our founding in 1995, we have never missed a deadline.

27. Daniel Pink, Conceptual Thinking and Trial Consulting

by Ken Lopez, Founder & CEO, A2L Consulting

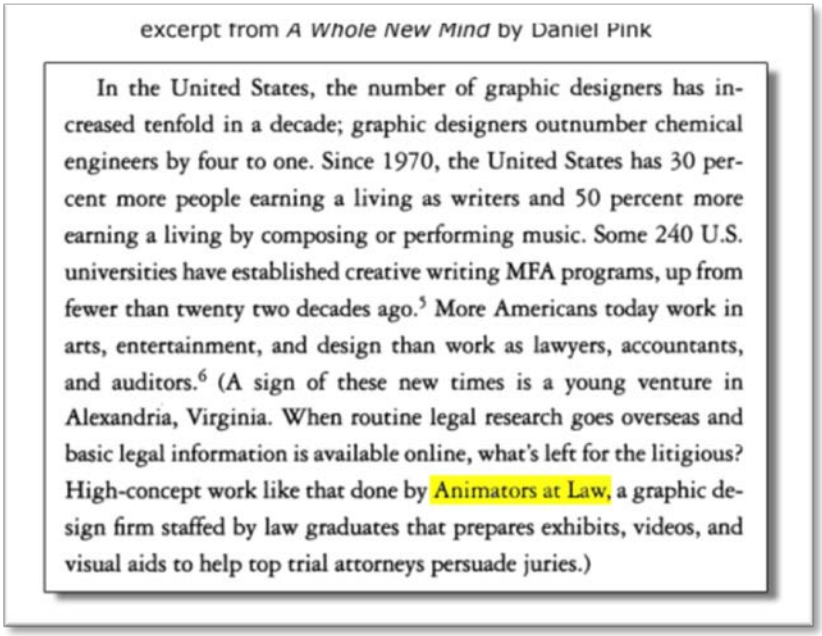
Daniel Pink's 2005 bestseller A Whole New Mind changed the way business leaders thought about the future. His futurist thinking of six years ago presciently describes the current economic transition the U.S. is facing. He also gave business strategists a vocabulary to discuss the emerging conceptual economy, and he inspired young business minds to focus less on traditional and easily outsourced MBA studies and focus more on deeper problem-solving business pursuits. Most importantly, he highlighted our firm, Animators at Law (now A2L Consulting), as an example of one of those companies already living in the conceptual economy.



It was a great honor to have been noticed by Dan Pink. He has firmly established himself as one of the top business thinkers in the world. His book has now been translated into 20 languages, he appears regularly on morning and daytime talk shows and his TED Talks are legendary in business circles.

Being recognized is an honor, but I believe one of the greatest experiences one can have is to be *understood*. I believe Dan Pink understands Animators for exactly what makes Animators special: our unique approach to trial consulting. Our clients are the top litigators in the world (we have worked with more than 95% of top law firms to date), and we provide them with precisely the creative problem solving that Dan Pink describes.

In his book he lays out the six fundamental aptitudes of the new conceptual economy, worker or organization: *Design, Story, Symphony, Empathy, Play & Meaning*. These aptitudes read like a job description at Animators at Law, or the way that we describe our trial consulting services to litigators. I believe they also read like a script of how the modern litigator should communicate and are thus worthy of a loser look.



excerpt from *A Whole New Mind* by Daniel Pink

In the United States, the number of graphic designers has increased tenfold in a decade; graphic designers outnumber chemical engineers by four to one. Since 1970, the United States has 30 percent more people earning a living as writers and 50 percent more earning a living by composing or performing music. Some 240 U.S. universities have established creative writing MFA programs, up from fewer than twenty two decades ago.[5] More Americans today work in arts, entertainment, and design than work as lawyers, accountants, and auditors.[6] (A sign of these new times is a young venture in Alexandria, Virginia. When routine legal research goes overseas and basic legal information is available online, what's left for the litigious? High-concept work like that done by Animators at Law, a graphic design firm staffed by law graduates that prepares exhibits, videos, and visual aids to help top trial attorneys persuade juries.)

Design: Good design is well

planned. Great information design often goes unnoticed, because we see it as simply something that works (e.g. effective signage or a great newspaper info graphic). A compelling trial presentation resulting from effective trial consulting should be just that; it should work without a lot of fanfare. The oral presentation should work similarly and be well planned in advance and thus well designed. Paraphrasing a recently retired litigation legend and Animators client, your presentation should be so well planned that when traveling for a long trial, you should never sleep better.

Story: The facts and information that support your case are part of the story, but as Pink would say and I would completely agree, it is "the ability to place these facts in context and to deliver them with emotional impact" that matters most. The art of oral storytelling is not lost and certainly should not be lost on the modern litigator. Storytellers make people care. They make things memorable. They provide the necessary drama that humans require for long-term memory to take hold. Your fact-finders must care, and effective trial consulting that delivers storytelling techniques and effective trial presentations is an essential tool of the modern litigator.

Symphony: Pink describes symphony as an ability to paint connections between seemingly unrelated relationships. I imagine he would also describe the big picture that a litigator must paint in opening and closing as an example of symphony. Opening and closing are the opportunity for a litigator to connect the dots. This should be accomplished through a combination of trial graphics and an oral presentation. Done right, order is made from chaos.

Empathy: Great litigators can imagine how judges and jurors will receive their message. Those who are effective empathizers understand how a particular message will land on their fact-finder and what emotions that message will evoke. Clients who work with Animators often test graphics and argument themes using focus groups and mock juries for good reason. Our goal in conducting jury research or research for a bench trial is to tweak the combined approaches of the graphics team and trial team until we receive a replicable winning outcome in testing.

Play: Play is not a word we usually associate with litigation, however it does have a place here. Pink does not mean being childish. Instead he talks about making the art of doing business an enjoyable undertaking. The litigator's trial presentation should go beyond dry and boring slides. In my view, it should just cross the line between information and entertainment. It should never be cute, but it is okay to cause judge or jury to chuckle. Our goal in every trial consulting engagement is to find the right balance between information and entertainment.

Meaning: Who cares? This is the question that a litigator should be asking. Why should the fact-finder care about your client at all? Whether an inventor whose idea has been stolen, a foreign electronics manufacturer or a major oil company, the audience still has to care. It is the job of the litigator to find this meaning no matter how seemingly unsympathetic their audience.

At Animators at Law, we do what we do because we love it. Our clients are equally passionate about winning, and our trial consulting services contribute significantly to that effort. Whether you are on our team or a customer, I know you will be better conceptual thinker for it. I believe Dan Pink would agree.

28. 10 Reasons The Litigation Graphics You DO NOT Use Are Important

by Ken Lopez, Founder & CEO, A2L Consulting

Like creating a new logo or a new ad campaign or hiring a speech writer - or perhaps the best comparison of all, like a trial attorney preparing for trial - we normally find that a lot of work goes into creating draft litigation graphics that are not ultimately used at trial, in a hearing or for some other originally intended purpose.

Michelangelo, sculptor, artist and architect, said, "Every block of stone has a statue inside it and it is the task of the sculptor to discover it."

Creating litigation graphics is a lot like that. When we come into a case, more often than not the trial team has not considered how to present the case, and we are just months or weeks from trial. Our job is to quickly understand the case, assess the trial team's style, whether creative or plain, whether wordy or more modern, whether multimedia or single-channel, and then begin generating litigation graphics, sometimes hundreds of them, in short order.

What may seem like chaos is actually a well-rehearsed act of creativity. Like Michelangelo's block of stone, we begin to visualize the finished piece by chipping away the unnecessary portions of stone. In practical terms, that means running a lot of litigation graphics by the trial team and then paring down. So, in a sense, we have to both build the stone and sculpt it. From chaos comes order.

Just as a branding firm will usually give you three to nine designs to pick from, or as a speech is refined over time, or as a trial team will abandon themes, arguments, or claims at trial, when creating litigation graphics **the final product is *properly* a product of a whittling down process**. Thus it is in a trial team's best interest and the client's best interest to accept a large number of litigation graphics early on that won't be used in the final product.

You see, without a set of boundaries or a map to navigate by, the trial team has to work harder under increasingly stressful conditions to express their desires clearly to the litigation graphics consultants. Thus, it is best to be frugal closer to trial rather than earlier in the development of litigation graphic designs. Otherwise, one is being penny-wise and pound-foolish.

Here are 10 reasons that those bits of creative stone you chipped away when creating litigation graphics were more important than the finished product.

1. **You may not know what you like until you know what you don't like.** Whether you are picking out new furniture, a new car or deciding on the right approach for litigation graphics, it is normally easier to rule things out than conjure the perfect end result.

2. **You know it when you see it.** Many people have a good artistic eye but lack the experience and training to execute the vision. This is typical and a good quality among

most litigators.

3. **Choosing from a menu of options is easier than designing from scratch.** You don't often go to a restaurant and say I'd like you to combine these 10 ingredients into something I like. The same is true of litigation graphics. You order from a menu, because it is easier for you.

4. **Choosing from a menu of options is faster** than designing or describing in precise detail what your end product should look like (and your hourly rate is higher than ours).

5. **It's easier to pick and choose elements.** If you have ever been involved in a logo design project or redecorated a house, you'll surely have experienced this phenomenon. You'll often like one thing from here and another from there. It's normal.

6. **You can avoid the problem of "a horse designed by committee."** (It results in a camel, in case you were wondering.) A graphic in draft form has some amount of stickiness; it is less likely to be radically changed than an idea in someone's head.

7. **This process helps the litigation graphics firm match your style earlier, not later.** Different trial teams have wildly different approaches. One of the best ways to assess a team's approach is to put work in front of them and assess their reaction. This is why we insist that the first review of any first draft presentations is done in person or by video call. Our litigation graphics consultants must work from the team's reactions.

8. **You find an opportunity to assess admissibility.** Sometimes a graphic that someone on the team wanted to create is just not going to be admitted, but it needs to be created anyway - just to get ruled out. At the insistence of counsel, we've put devil horns on alleged thieves, we've made people look like they had a mug shot, and we've illustrated the opposing party's image to look like a robber baron. We know they won't be used and won't be admitted, but it was an exercise that had to be seen through.

9. **Time to reflect produces better results.** Whether it is a new way of looking at analogy or a way we open the door to evidence we don't want in - putting more exhibits out there helps us deliver a high level of creativity.

10. **Most importantly, without having gone through the process of many drafts becoming one final graphic, you would not have arrived at what is your David or Sistine Chapel** - whether that be your opening presentation, your Markman hearing, your patent tutorial, your ITC hearing or your arbitration, without all the efforts to get there.

29. Teaching Science to a Jury: A Trial Consulting Challenge

by Ken Lopez, Founder & CEO, A2L Consulting

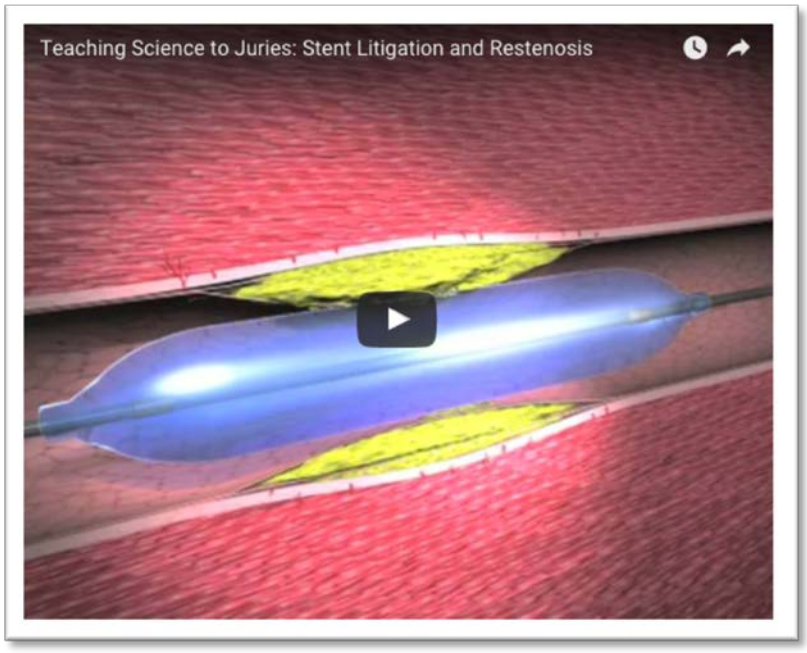
Very often, trial attorneys in complex cases need to explain extremely difficult and elusive scientific concepts to jurors who are not well versed in science. The lawyer's job is to convey the science correctly to the jury so that they can make a rational decision – yet not to bury the jury under a blizzard of scientific terms and concepts that they will never understand.

The answer is to use visuals in the form of photographs, schematic diagrams, animation, timelines, demonstrative evidence, document call outs or whatever is suited to the situation, and to explain them in terms that jurors who are not specialists in the scientific subject can understand.

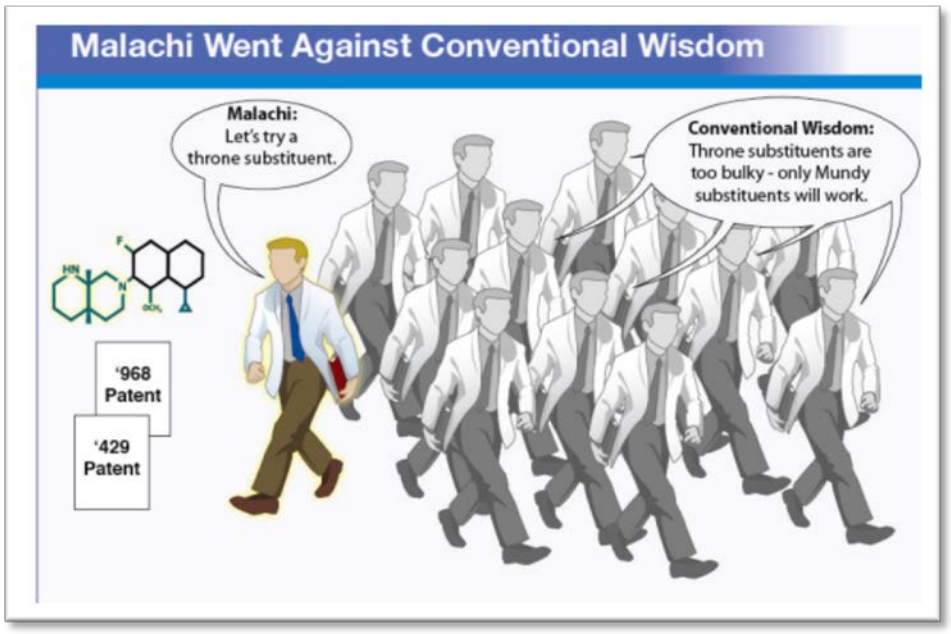
Analogies (in other words, what is something like?), contrasts (how is something different from something else?), and simple definitions (what are the components of an object? how is it used?) are very useful tools for the trial lawyer.

As Jan D'Arcy wrote in 1998 in *Technically Speaking*, "Many scientific subjects are hard to describe; they can be difficult to see, touch, measure or imagine. A presenter should find ways to illuminate a concept in known terms with the least amount of distortion. . . . Comparisons and contrasts are two of the best ways to translate your information clearly to your audience. Similes, metaphors, and analogies are comparisons that can often lead to amazing insights."

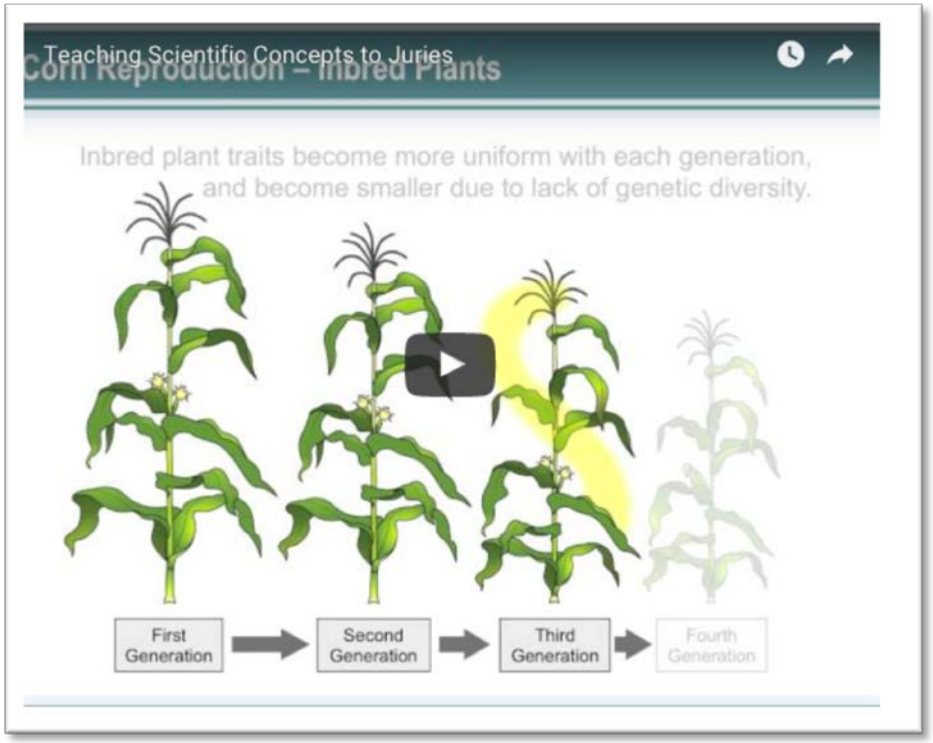
The brief movie below shows how restenosis (the formation of new blockages at the site of an angioplasty or stent placement) can form in blood vessels when a non-drug-eluting stent (one that does not contain an anti-stenosis drug) is used by a heart surgeon. This is a highly technical medical subject, yet after seeing the presentation, jurors will understand how stents work and why such drugs are used. Just months ago, this A2L Consulting animation and others like it helped a long-time client win the 6th largest patent litigation verdict in history totaling $593,000,000.



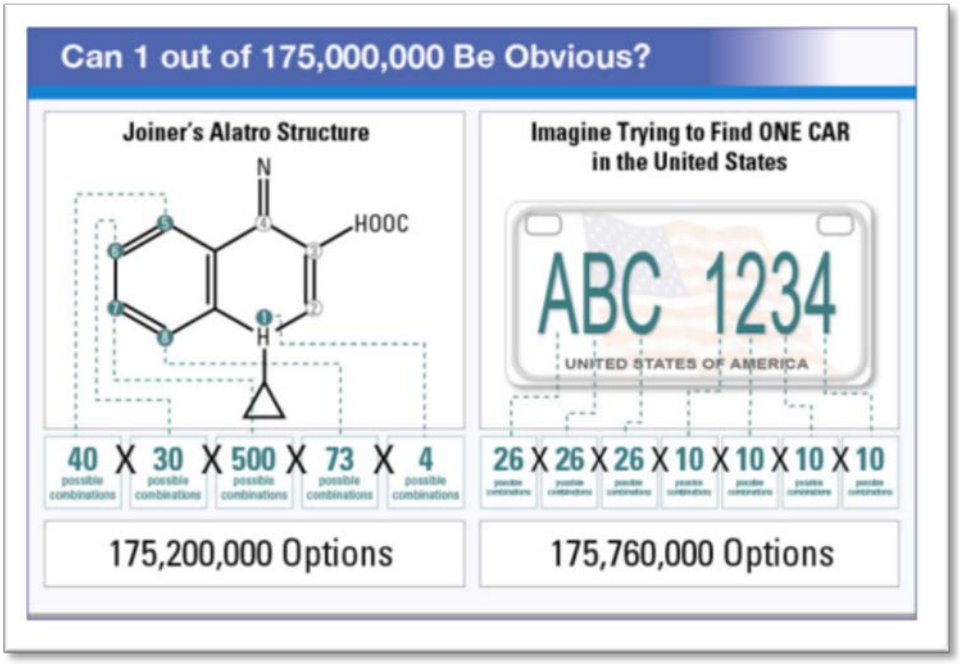
Below, we created a very straightforward, highly memorable patent litigation graphic that shows one person walking his own path, away from conventional wisdom, to show that an inventor's idea was unique and non-obvious.



Similarly, we have devised a 78-second video presentation that details the challenges of inbred reproduction, and the advantages of hybrid reproduction, in the corn plant. This is easily understandable to a juror, even one who does not have a background in biology or food science.



Finally, the schematic diagram below uses the excellent analogy to the letters and numbers in a license plate – an object familiar to jurors – to indicate how many possible structures of a chemical compound can exist and thus how the one structure designed by a client was not obvious and therefore was deserving of patent protection.



As Matthew Weinberg, CEO of the scientific consulting firm The Weinberg Group notes, "Successful litigation relies upon a strong science story. An expert who can explain the science easily and clearly makes a difference. Juries want to understand the science and can be helped by an expert who makes it interesting and believable."

We believe that no scientific concept is too difficult to teach to a jury. In our 16 year history, we have found a way to successfully teach and persuade about everything from the genetic development of cancer, genetically modified corn, stem cells, physical separation in patented pharmaceuticals, metal fatigue, the transportation of air, water and ground pollution, DNA, bioequivalence, how allergies work, epidemiology, physics, chemistry and countless applied science medical principles.

With the right combination of trial team, trial consulting firm and expert consulting firm, any concept can be made understandable by combining a good explanation and a good visual.

30. 6 Reasons The Opening Statement is The Most Important Part of a Case

by Ken Lopez, Founder & CEO, A2L Consulting

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 sides.

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*]

Additional resources related to opening statements on A2L Consulting's web site:

- A2L articles referencing opening statements
- Example opening statement players chart from Hatch Waxman litigation
- Learn more about using demonstrative evidence seeing examples
- Free E-Books Related to Litigation

31. 8 Traits of Great Business Developers (In or Out of Law Firms)

by Alex Brown, Director, Operations, A2L Consulting

These days, there's no question that sales (or business development as law firms like to call it) is essential to the success of nearly every law firm. Law firms can't exist without clients – and whether a firm prefers to expand its client base or to get more work from its existing clients, it needs to have a business development function. Accordingly, any law firm needs to hire people who know how to bring in business.

Some law firms rely on their partners to generate business; that's the typical "rainmaker" paradigm. Some other law firms have a dedicated sales force that may report to the chief marketing officer, to the management committee, or in some other way. Some firms do a mixture of both.

But however you look at it, great business development people are hard to find (I'm the hiring manager at A2L). One reason that this is so is that many law firms don't know how to look for a great business development person. For example, a firm might hire someone who is bright, charismatic and articulate but can't get anything done. That person won't last long. Or there might be someone who is highly networked and wants to bring in clients but doesn't know how to put together an agreement. That person won't last long either.

In my next few blog posts, I will share with you the characteristics of a good and of a bad business developer --and how to find one and determine whether you have the right one.

The best business developers I have ever met have the following traits:

1. **Intelligence.** They are smart and think well on their feet.

2. **Excellent communication skills.** They can communicate well with both the law firm's partners and other lawyers and with the client or potential client.

3. **Creativity.** The best business developers are fearless and willing to make a seemingly outlandish request. They have the intuition to know that even if their proposal is rejected, they are at least being heard. They have their "foot in the door."

4. **Adaptability.** While extensive research on a client or matter is ideal, when there's no time or the research can't be done, the great business developer can use whatever information he or she has at hand.

5. **A sense of structure.** A good business developer can hit all the marks – mining, pitching, negotiating, closing and implementing. An unstructured person is always planning but never closing.

6. **A sense of the big picture.** A good business developer follows a simple formula: Find out what is important, try to achieve it, and get the work. Great business developers do not focus on the little things that don't really matter; sometimes they have to be willing to walk away. Only someone that sees the big picture can make that decision.

7. **Stamina.** Getting a new client can take a long time and involve a lot of back and forth. Bad business developers tend to concede too much at the very end in the interest of closing the deal and often lose a lot of value for the firm.

8. **Moral compass.** A great business developer, like any great employee, will do the right thing even if it is uncomfortable or against his or her self-interest to do so. There are all sorts of ways in which business people may act to benefit themselves rather than the company. Character matters.

Other A2L Consulting articles related to professional services sales, business development and rainmaking:

- The Top 10 Tips For Selling Professional Services
- DOWNLOAD: The Real Value Litigation Consultants Give Litigators
- 17 Tips For Great Preferred Vendor Programs
- 12 Alternative Fee Arrangements We Use And You Could Too
- 6 Lessons Our Trial Consultants Learned From The Sales Process
- Mid-2014 Economic Outlook For The Litigation Industry
- 9 Things Outside Litigation Counsel Say About In-House Counsel
- 10 Ways Timely Payment Helps You Save Money On Litigation Consulting
- Learn How To Get Value In The New Normal Legal Economy

32. 9 Things Outside Litigation Counsel Say About In-house Counsel

by Ken Lopez, Founder & CEO, A2L Consulting

Even behind closed doors, our law firm clients have very good things to say about *their* in-house clients. It's relatively rare that I hear any serious complaints. Almost without exception, our outside litigation counsel clients are actually quite proud of the relationship they have with their mostly Fortune 1000® corporate clients.

However, especially in these times of change, with all the talk of a legal industry new normal, I do hear some frustrations being discussed regularly. Below are nine things I hear outside litigation counsel say regarding in-house counsel that deserve more attention:

1. **We would all benefit from better early case assessment:** Outside litigation counsel understands that litigation costs are under fire. By making outside counsel part of the solution rather than a line item to avoid later, better decisions can be made. A2L, for example, is being increasingly asked to use a variation of our Micro-Mock process to help both in-house and outside litigation counsel assess the potential merits of a case closer to filing than to trial. Failing to do this type of formal analysis often leaves too much to instinct and emotion.

2. **When the stakes are high, let litigation counsel do what they are good at:** Some corporations are often involved in litigation but are still rarely involved in high-stakes litigation. The two types could not be more different. Controlling costs in small cases is critical. However, trying to control the throttle too much when hundreds of millions or more are at stake can be like jumping over dollars to pick up dimes. Outside litigation counsel who is expert at their craft need room for creativity. However, that does not mean the relationship should be without structure. Rather, I believe that it is the structure, in the form of budgets, reporting and deadlines, that allows for maximum creativity by outside litigation counsel.

3. **Put settlement and trial preparation on separate tracks:** Settlement talks often fail. Sometimes one side may disingenuously signal settlement just to slow down trial preparation. For these reasons and more, it is important to allow settlement talks to proceed while fervent trial preparations continue. It is normally best to create a separate settlement team when settlement is a possibility and trial is approaching. See related article about two-track trial preparation strategies: *Litigation Consultant: Embrace a Two-Track Strategy & Win the War*.

4. **Enthusiastically embrace mock trials:** This is one of the most common frustrations I hear from outside litigation counsel. They want to conduct mock trials, but frequently get resistance from in-house. Once they get that resistance, they sometimes fear that insisting on a mock makes them look like they don't know what they are doing when exactly the opposite is true. After all, if practice didn't matter why would all great athletes and great actors do it almost obsessively? In this era when trials are quite rare at large law firms, in-house counsel should want to encourage practice via mock trials since it will help them get a better result and may help inform settlement. See *7 Reasons In-House Counsel Should Want a Mock Trial.*

5. **Watch the mock exercises:** While I think outside litigation counsel from prior generations preferred to run a case with minimal regular input from in-house counsel, these days, in-house counsel are involved more regularly. One area where in-house counsel should increase their involvement further is in the attendance of mock trials. From behind a one-way mirror, you will learn more about your case, the perception of your firm, and your choice of outside litigation counsel in one day than in the year(s) of preparation that preceded it. The great lawyers will want you there while the less confident prefer to prepare privately and avoid mock trials altogether. Keep an eye out for this litigation counsel red flag.

6. **Be clear with your leadership approach:** In a recent article about joint defense teams, I touched on the topic of litigation leadership by in-house counsel. Generally, I believe that a variety of team structures will work so long as they are clearly defined and executed. Trouble arises when there is confusion about who is in charge. See *5 Tips for Working Well As a Joint Defense Team* as the lessons discussed here apply just as well when working with a single law firm.

7. **Litigation consulting vendors are not created equal:** Preferred vendor relationships are on the rise for litigation consulting firms. We participate in them at A2L and encourage them. However, market disruptions are putting the future of some trial graphics firms (not ours) that regularly appear as preferred vendors in question. Procurement departments and in-house counsel are going to have less visibility into vendor stability than outside counsel, and outside counsel should generally make the final decision about who to use for jury consulting, litigation graphics, and trial tech for best results.

8. **Pay vendor bills on time:** Litigators never want to deal with getting bills paid as they prepare for trial. It's distracting and annoying. All relationships on the team are weakened when bills are not paid timely. The bottom-line benefits of simply paying bills on time was covered in more detail in a recent article, *10 Ways Timely Payment Helps You Save Money On Litigation Consulting*.

9. **There's more that outside counsel can and should be doing:** From early case assessment by litigators, to client counseling about the very things they try cases about, to participating in non-litigation messaging, to assisting in lobbying and legislative activities, outside litigation believe they have a lot more to contribute to the operation of a business than they are being asked to do. As an informed outsider, may I suggest that in-house counsel consider starting off 2014 by asking your outside litigation counsel how they can help you manage budget better and run the business more effectively. The best litigation counsel will have an informed answer for you. The litigators that you will soon want to relegate to your slip-and-fall cases will look at you like a doe in the headlights.

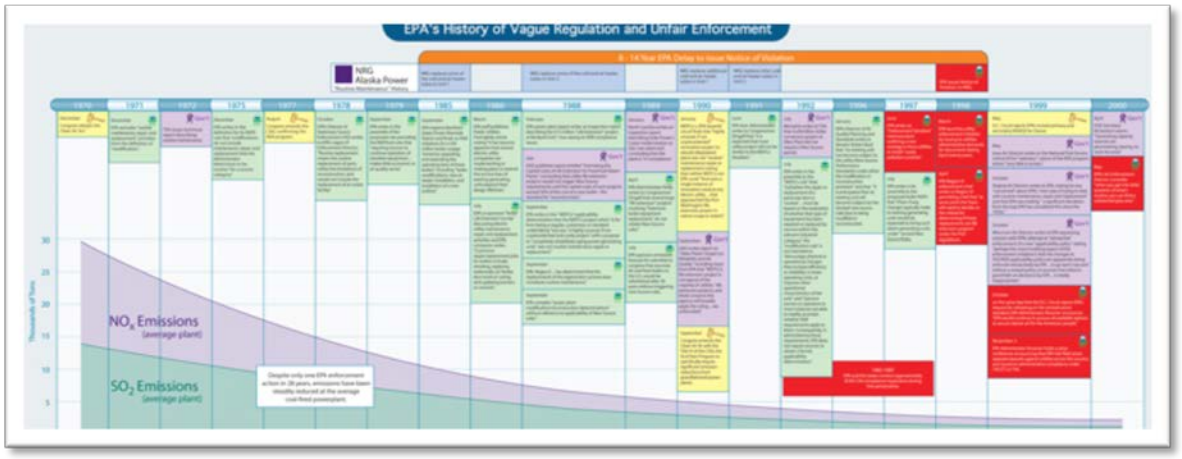
Articles related to the role in-house counsel can play in litigation and managing litigation costs:

- Secrets Of Great Preferred Litigation Support Vendor Agreements
- 12 Alternative Fee Arrangements We Use And You Could Too
- Free E-Book Download: Getting Value In The New Normal Legal Economy
- Explaining The Value Of Litigation Consulting To In-House Counsel
- Litigator & Litigation Consultant Value Added: A "Simple" Final Product

33. Top 5 Trial Timeline Tips

by Ken Lopez, Founder & CEO, A2L Consulting

Although trial consultants prepare dozens of different types of exhibits that help judges and



jurors understand a case, timelines are one of the oldest and most reliable. After all, most cases involve some sort of time sequence, and the order and timing of events can be crucial. Timelines give jurors an intuitive understanding of a case – if they are done well.

While it seems simple to prepare a timeline, it is actually an art that requires practice and experience, just as any form of trial presentation would be. The following suggestions have worked well for our firm in over 10,000 cases since 1995:

1. **Engage Your Audience:** The timeline is meant for the jurors or the judge to understand. It's a device that makes the case clearer to them. The timeline is not something that is intended to jog your memory. You should know your case perfectly or nearly perfectly without the timeline. In fact, in order to keep your audience engaged, you should feel free to add devices like photos, videos, charts, and the like. The more your timeline tells a story without explanation, the better it is.

2. **It's Not About the Bar:** In general, the timeline should focus on the relative position of the events in the story that it tells, not on the date bar. If you are going to highlight a portion of the timeline, highlight the events themselves, and don't make the date bar the focal point. When was the device invented? When was it marketed? When did a competing device enter the market? Those can be key facts in a patent case, and they should be the focus of the timeline. If anything in the timeline should be highlighted with color or other design elements, it should be these events.

3. **The Key Is Not the Key:** Although a lot of people think a timeline needs a complicated legend or key, the truth is that it should be fairly self-explanatory. Rather than a legend, use logos, icons, company symbols, or other design elements to explain what the timeline represents.

4. **Keep It Short:** Jurors' attention won't remain on a timeline that is too long and complicated. Revise and redraft your timeline so that it focuses on the most

important events, not on all events that are conceivably relevant.

5. **Keep It Large:** Don't make the timeline too small. Otherwise, jurors will lose interest. We think the timeline should use no smaller than 20-point type.

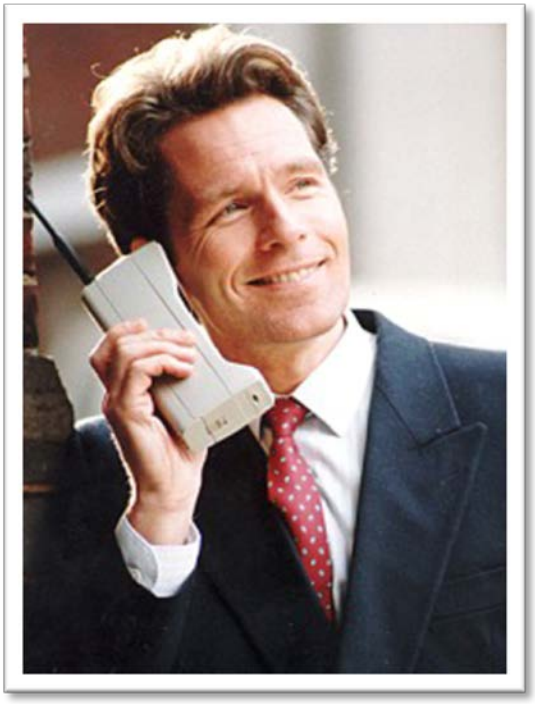
If you follow these tips, we think you can create a very effective timeline. If you have additional tips or comments, please use the comments box below.

Here are several other A2L Consulting resources on timelines and litigation graphics:

- Trial Graphics: Using Timelines to Persuade
- Using Prezi to Make a Timeline
- Top 10 Reasons to Prep Trial Graphics Early
- The Effective Use of Demonstrative Evidence
- 3 Year Juror-Litigator Study Results
- A Litigators Duty to Entertain a Jury

34. 12 Reasons Bullet Points Are Bad (in Trial Graphics or Anywhere)

by Ken Lopez, Founder & CEO, A2L Consulting



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 the video below.

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.

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: 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 I*nconvenient 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:

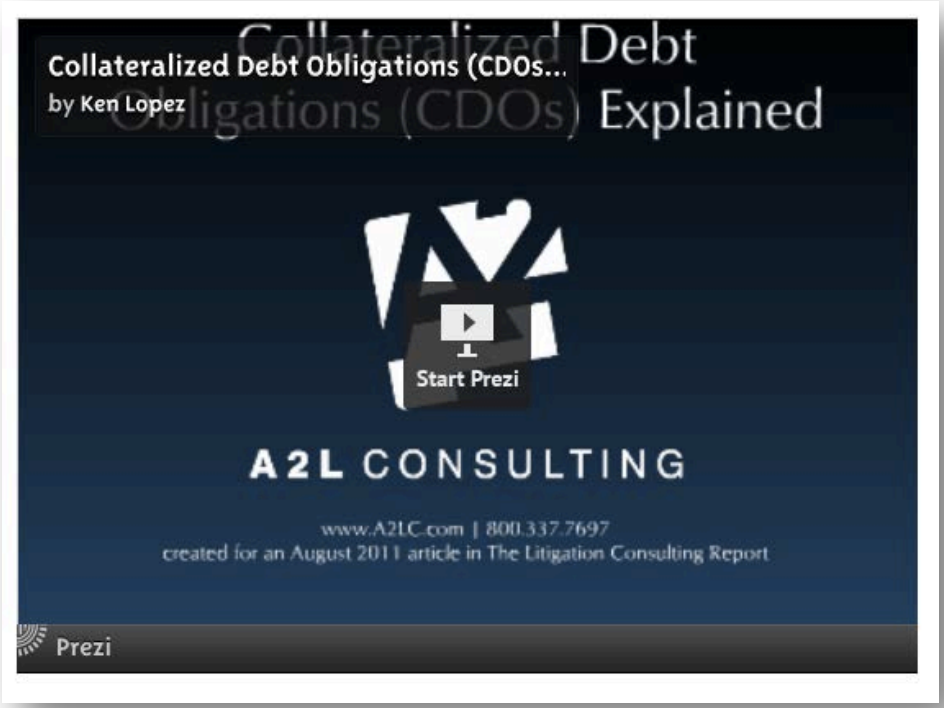
and an easy way to handle dates:

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.

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: 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



12.
Finally, while A2L Consulting would be thrilled to help, here are 74 ways to remove bullet points on your own.

1. 6 Inspiring Non-Bullet Point Options
2. 41 Great Alternatives To Bullet Points
3. 4 Before Bullet Point And After Bullet Point Examples
4. 4 Great Before And After Bullet Points From Garr Reynolds (See Slides 5 Through 8 - Although His Entire Presentation Is Helpful)
5. 7 Ways To Replace Bullet Points Altogether
6. 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.

35. The 5 Best Reasons for Litigators to Embrace Social Media

by Ken Lopez, Founder & CEO, A2L Consulting

I believe social media is one of the top technological advances of our lifetimes. It ranks up there with personal computing, mobile phones and the Internet.

I didn't always think this was true. In fact as recently as 2011, I dismissed using social media for business purposes as "dumb." I've since publicly apologized for this assessment.

Why the change of heart? Well, in the beginning of 2011, A2L had about 800 unique visitors per month visiting our site. I thought that was plenty since we work on relatively few cases each month anyway. Well, in the next month or two, we will have seen that monthly visitor figure rise to more than 20,000 unique visitors to our site each month. Most come to this blog and most hear about this blog from social media.

Yes, it works for business.

This was the premise of a talk I gave recently at the Federal Bench Bar Conference in Columbus, Ohio. It was a great audience; I was on an excellent panel but I could tell there were still skeptics. How could there not be, with all the horror stories that get aired during these sorts of events? Most are common sense, of course. Don't use social media in violation of a judge's order in litigation. Don't discriminate against potential employees after researching them on social media. Don't say something on social media that you wouldn't want the public to know. But there are closer calls.

On balance, I think the rewards of social media far exceed the risks. Assuming you are using common sense in social media just as you would in your personal dealings as a lawyer, here are the five best reasons why I think litigators, in particular, should enthusiastically embrace social media:

> 1) **You'll Get Better at Your Craft:** Before the Internet, we exchanged best practices mostly by word of mouth. It was slow, and the rate at which people improved themselves was similarly slow. Now, when someone finds something works, whether it's green buttons websites (yes, they work) or storytelling in the courtroom as a persuasion device, word spreads fast.

These are not just baseless fads. Rather, something is working and when it is, word spreads quickly. And the principal way that things spread is via social media now. If you are not on social media, your colleagues are going to speed past you in their own personal development.

2) **News Travels Fast:** Collecting news in the legal industry is more important than ever. From who is representing whom in a big corporate merger this week, to which law firms are supposedly teetering on the edge of failure, to who just published an article relevant to you. If you are not monitoring social media, you are just not going to see these headlines. There is just too much noise in the traditional media. Social media allows you to sort the critical from the superfluous, but you must learn how to do this and use these tools effectively. If you already are doing this, that is excellent. If you're not, then it is a little like the best time to plant a tree. The answer is five years ago, but the second best answer is now.

3) **The LinkedIn News Feed:** One million out of 1.2 million of America's active lawyers are on LinkedIn already. The newsfeed on LinkedIn has become the business homepage of your industry. This is true because your colleagues and connections are routinely posting articles of interest about your industry. If you are not watching and monitoring job changes in your network, you are surely going to be left behind. Please do connect with me and be sure to follow A2L Consulting too.

4) **LinkedIn Discussion Groups:** The best discussions about litigation are not occurring at conferences, retreats or in the hallways of law firms. They are being conducted on LinkedIn in the popular discussion groups. Not using them or not sure which ones are best suited to litigation? Have a look here at our guide to the best LinkedIn groups for litigators and lawyers generally.

5) **We are Our Networks:** Business development has moved from golf courses to online. A recent survey of general counsel revealed that more than 90 percent say they search for or vet outside counsel using LinkedIn. Think about it: Would you really want to work with outside counsel (or a consultant) that happens to have an extra five hours to spend on a golf course or one that is busy? I know I don't have five hours to spare.

Now, let me be clear that when I encourage litigators to embrace social media, I don't think litigators really need to spend time on Twitter unless they need to monitor something relevant to their client. However, I think LinkedIn is now 100% mandatory for all lawyers and litigation support staff, and Facebook is a close second.

Other A2L related to social media for litigators, trial attorneys and litigation support:

- FREE E-BOOK DOWNLOAD: Social Media For Litigators
- Social Media And Jury Consulting
- The Top 50 Twitter Accounts To Follow For Litigators
- Look At All The Ways We Connect On Social Media At A2L
- The Best Blogs For Litigators To Read

36. 14 Places Your Colleagues Are Using Persuasive Graphics (That Maybe You're Not)

by Ken Lopez, Founder & CEO, A2L Consulting

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

1. **In motions:** A juror will never see them but a judge will. For more on this topic, read our article on using litigation and trial graphics in motions.

2. **In briefs:** Generally, trial graphics are used for perfectly normal reasons in briefs. Occasionally, an attorney will use them for the sake of humor or just to prove a point. See this comical courtroom brief.

3. **In depositions:** One of our clients recently asked us to prepare litigation graphics for depositions with an eye toward using those same graphics at trial.

4. **In mock trials:** These can be an excellent investment of money and time in a case that is large enough and significant enough to justify the use of litigation graphics during the mock. See our article on using litigation graphics during a mock trial.

5. **In pre-trial hearings:** We all know graphics are used in Markman hearings, but they are also frequently used in summary judgment hearings and in hearings on motions to dismiss. Again, the jury will not see the exhibits but a judge will.

6. **In arbitration and alternative dispute resolution:** This use of trial graphics is overlooked more than others. Many arbitrations follow rules of evidence and resemble trials, and litigation graphics are quite appropriate in them and in ADR generally.

7. **In class certification hearings:** Graphic demonstrations can be used in many aspect of class actions, and the issue of "predominance" is one in which they are especially useful.

8. **In advocacy and lobbying presentations:** Hydraulic fracturing is a controversial issue, and the graphic that we prepared shows how fracking works and may dispel some unwarranted myths and fears about fracking. It's received 60,000 views as of

this writing demonstrating how one might use PowerPoint and video to get a message out.

9. **In presentation graphics:** Most of us prepare and deliver presentations as part of our work. This article on presentation graphics showing how the President prepares and delivers an effective visual presentation using persuasive graphics is a good guide for any of us.

10. **In e-briefs:** This technique is being used more and more frequently by trial lawyers, and e-briefs are now including litigation graphics, sometimes animated graphics too.

11. **In e-discovery disputes:** Sometimes, a courtroom presentation consultant will demonstrate what documents were missing and why sanctions were warranted. Sometime the graphics illustrate, to the contrary, that the documents were completely or largely produced or that the matter in dispute is not large enough to require sanctions. E-discovery hearings are utilizing persuasive graphics more and more.

12. **In settlement discussions:** We have seen trial graphics prepared for settlement many times in the last two decades. Recently, however, the sophistication demanded of those graphics has been on the rise. Sometimes, even high-end 3-D animations are prepared. The trick, of course, is to balance the persuasive benefit of the graphics with the risk that settlement talks fail, and you tip your hand leading up to trial.

13. **In pre-indictment meetings:** As government budgets have increased over the last four years, so too have pre-indictment meetings with prosecutors. We have prepared countless 'clopening' style presentations for these meetings hoping to help our client avoid indictment altogether. Well-thought-through persuasive graphics may help avoid a negative life or company changing event.

14. **In technology tutorials:** No longer are technology tutorials used only in patent cases to help educate the judge. Litigators are requesting to submit them in other cases where educating the judge is beneficial to both sides. This could include complex financial cases, large antitrust matters with a complex product at issue and many other types of cases.

37. 16 Trial Presentation Tips You Can Learn from Hollywood

by Ken Lopez, Founder & CEO, A2L Consulting

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 storytellers 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 Reaves, 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 makes 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.

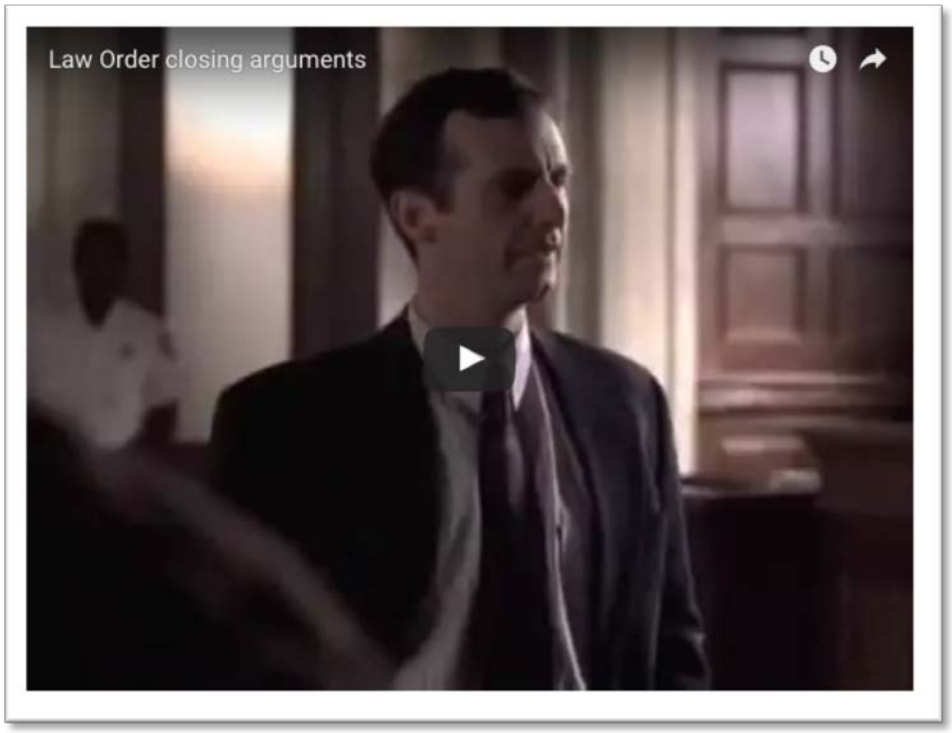
10. **Tell a Story**. You don't need Hollywood to remind you of the importance of storytelling, you need only refer back to our article on the topic: http://www.a2lc.com/blog/bid/53536/10-Videos-to-Help-Litigators-Become-Better-at-Storytelling

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.

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.

Other resources on an off A2L's website:

- Read our post on Telling Better Stories in the Courtroom
- Take an acting for lawyers workshop - here are a couple: one, two

- Find a local acting coach
- How trial consultants can help with closing statements
- How to draft a great opening
- Why opening statement is the most important in the case
- Download: The BIG Litigation Interactive E-Book

38. 21 Secrets for Using Litigation Consultants on a Tight Budget

by Ken Lopez, Founder & CEO A2L Consulting

In Part 1 of this article, we discussed how to use litigation consultants to win a case when there are no budget constraints. Here in Part 2, we tackle the opposite end of the budget spectrum: how to best use litigation consultants when budget is severely constrained.

The good news is that in any case that has more than $1 million at stake or is a possible example of pattern litigation, there is a litigation consulting strategy that can fit the budget and deliver high value, regardless of budget. While every case has different needs, and there is a big difference between bench and jury trials, here is a prescription for utilizing litigation consultants in a tight budget.

The primary cost difference between a small litigation budget and a large litigation budget will be the amount of time spent on testing and varying strategic approaches to the case. In a tight budget scenario, rather than relying on feedback from mock jurors and judges to help guide which themes to emphasize and the best ways to explain elements of the case, you will likely have to rely heavily on gut instinct. Of course, that is not always a bad thing.

Looking at the three primary types of services that litigation consultants provide -- trial consulting, litigation graphics, and courtroom technology support -- our general recommendation would be to spend your money where you most need to. In the majority of

cases, the money is best spent on litigation graphics. A small budget generally rules out meaningful trial or jury consulting. Further, you can ask your litigation graphics firm to create your graphics primarily in PowerPoint to avoid the need for specialty trial presentation software or personnel. Here's our specific recipe of do's and don'ts on a limited budget:

- Don't conduct any formal mock trial work whether online, in person or otherwise
- Don't use courtroom technology support or hot-seat operators
- Do use the court's technology when possible
- Do split technology costs with opposing counsel when possible
- Do use your own laptop in court with a rented projector and screen if necessary
- Do bring a 2nd (backup) laptop with a copy of your presentation(s)
- Do work with highly experienced litigation graphics experts and ask their advice
- Do expect the highly experienced litigation graphics experts to provide added value by virtue of their extensive litigation graphics previous experiences
- Do provide a refined list of trial graphics you are hoping to use
- Do prioritize the trial graphics that are most important
- Don't be afraid to hand draw a rough version of any image that you want if you feel so inclined
- Do give your graphics firm the latitude to add new graphics that they may come up with, as much as 25 percent more of them (as long as costs were discussed up front)
- Do insist on a fixed price for the work
- Do ask your client to consider an alternative fee arrangement with the graphics firm (i.e. contingencies, success fees)
- Do work with a firm that is highly recommended
- Do work with a firm that will provide ideas not just pretty pictures
- Do insist that everything be created in PowerPoint
- Do insist that all text subject to potential changes is in modifiable form versus pictures of text that requires the litigation graphic provider's intervention for editing
- Do update your system to the latest version of PowerPoint
- Do provide high quality / high resolution documents whenever possible for the litigation artists to use
- Do prepare an outline for the litigation graphics firm to work from

By following this advice, you will almost certainly get the best results for a relatively small dollar investment.

39. Victory at Any Cost! Using Litigation Consultants to Dominate

by Ken Lopez, Founder & CEO, A2L Consulting

These days, only a very few cases can be said to have an unlimited litigation budget, but some still do. As the amount at stake in toxic tort, technology patent and product liability cases soars into the billions of dollars, we do hear from clients that they must win at all costs. Indeed, at A2L Consulting, it is common for us to work on multi-billion dollar disputes. Thus far in 2012, we have already consulted on cases with over $30 billion at stake.

In this two-part series, we share the menu of options available to a law firm and its client in situations at the opposite ends of the litigation consulting budget spectrum. What is possible when budget is not an issue, and what is possible when budget is severely constrained?

By far the biggest difference between unlimited budget cases and limited budget cases is the amount of time that can be devoted to the discussion and testing of alternative strategies.

There are three key areas of trial and pre-trial work: trial consulting, litigation graphics, and courtroom technology support. A high-budget case can involve several trial consultants, a dozen or more artists, hundreds of demonstrative exhibits, several mock trials, months of work and an overall onsite litigation consulting and trial technology team with between four and 12 people.

Trial Consulting

In trial consulting**,** the goal is to try to reach a successful result in a trial by testing and refining various components of the case to see what works and what does not. The core of this work is usually the mock trial. Most mock trial exercises involve either one or more retired judges or 30 to 40 mock jurors. In an unlimited budget case, we might perform the following services:

- Early case and theme assessment with production of a wall-sized litigation mind map
- Assistance in the development of mock openings and the preparation of mock trial graphics for both sides of the case
- An actual mock trial with “jurors” from the trial venue representative of the jury pool who will hear the evidence and come up with a “verdict”; this can be repeated several times
- A mock voir dire, showing attorneys how to pick the best jury

- A juror questionnaire (if approved by the judge) to test attitudes in the potential jury pool
- Work with expert witnesses to help them with their presentation and evaluate it with video and develop “jury friendly” graphics for complex concepts supporting these expert witness’ testimony (while experts often bring their own visuals, these are not typically suited to a trial environment where lay people are expected to learn from what is presented)
- Background research on selected jury pool to determine potential influences and any ongoing or prior influential commentary occurring through social media
- A shadow jury or shadow judge during the trial itself, providing nightly feedback to help adjust the presentation and guide the development of the case

Litigation Graphics

For litigation graphics**,** in an unlimited budget case, we would obtain ideas for graphic presentations not only from the trial team and from our own resources but also from the feedback of mock jurors or judges. This can take months. Graphics should ideally be tested in front of a mock jury, and when they are, very likely new ideas for graphics will be generated. When winning at all costs is a requirement, the litigation graphics approach should allow for the greatest volume of test graphics:

- With time and budget allowance, litigation graphics can be created by the hundreds and refined down to the most effective possible – a no holds barred approach to creativity leveraging the significant trial experiences of our litigation consultants and litigation graphic artists
- Development of sophisticated printed trial boards – with layered / interactive additions that potentially can be taken into the deliberation room and in the hands of the jury.
- Create physical models that can be handled and manipulated by the jurors

Courtroom Technology Support

For courtroom technology support**,** in a major case it is common to have two or more hot-seat operators working on our team. Before trial, these operators and others will:

- Set up a secure war room for effective operation while on site for trial
- Assure effective equipment set up and configuration (often involving a pretrial site survey well in advance of trial)
- Help witnesses work through their direct testimony
- Build the trial database so that one of a million documents, video clips and accompanying transcripts can be displayed on a moment's notice
- Cut 30-second deposition clips from days long video depositions
- Develop new exhibits for cross and closing statements

Obviously, a level of service like this costs six if not seven figures, and only a few firms in the world are capable of it. It is not appropriate for every case, but when it is appropriate, even these seemingly high levels of expense can be very cost-effective in forestalling a verdict in the nine or even ten figures.

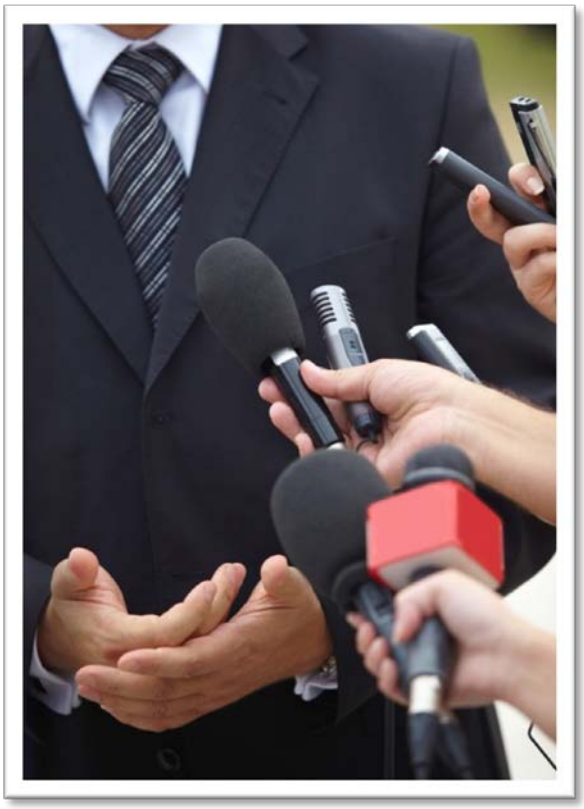
Additional Related A2L Consulting Resources:

- Research Your Judge's Likes & Dislikes Online
- Top 5 Trial Timeline Tips
- 10 Videos Our Jury Consultants Want All Lawyers to See

- Lists of Analogies and Metaphors for Lawyers
- A2L Consulting Contact Information
- Free Subscription to The Litigation Consulting Report

40. Lawyers Often Can (and Should) Say More to Reporters Than "No Comment"

by Jim Grandone, Special Author, Grandone Media Strategies



A lawyer I worked with recently summed up the love-hate relationship between lawyers and the news media as follows, “We spend 50 percent of the time trying to get publicity about our firm and the other 50 percent worrying about what the press is going to write about us.”

It’s true that in some states, there are constraints on what a lawyer can say about a pending case. But in general, a lawyer is allowed to discuss the basics --such as the claim, the offense or defense involved, and (except where prohibited), the identity of the persons involved; any information on the public record; the fact that an investigation is in progress; and the scheduling or result of any step in litigation.

Why then are lawyers so reluctant to speak to reporters? After all, these allowable types of comments – and many states permit lawyers to say even more about their cases – give lawyers considerable leeway to talk to reporters. So you can go ahead and promote whatever your firm is doing that is admirable, successful or high profile.

Reporters already have instant electronic access to what you have filed, so why not emphasize the most important messages? Do not expect the reporter to communicate your key message for you! You can reach your most important audience outside the courtroom by simply reiterating what you have already said in court documents, even if it is only a summary. Develop a message and clearly communicate the key points of the case. The audience for legitimate pretrial and trial publicity of this nature can be a single judge or an entire jury pool. Advocate your client's position while abiding by the rules, and you are doing your job. You can begin to establish yourself and your firm as experts in the minds of the readers, listeners and viewers, which can lead to new business. That doesn’t mean, of course, that you should pollute the jury pool by disseminating information that would be a serious threat to the fairness of the adjudicative process.

Various tools exist for identifying key media messages and getting them into the media in a way that makes them most effective.

Techniques include media training, which can help you become savvy about how different types of media work and how their needs are different; adjusting your message to each medium (very valuable for lawyers who are not accustomed to explaining the law to lay people); and learning how to bridge from a question you’d rather not answer to an answer you’d like to give.

The least you have to gain by talking to reporters is getting your firm's name in the news, promoting something positive about it, or positioning yourself as a strong advocate for your clients.

Of course, winning your cases helps too!

Other articles from A2L Consulting related to advocacy, litigation public relations and jury selection include:

- 15 Things Everyone Should Know About Jury Selection
- Jury Selection: So Few Strikes, So Much at Stake
- Complimentary 174-page e-book for litigators]: Jury Consulting Guidebook & Tips for Litigators
- Storytelling for Litigators E-Book 3rd Ed.
- Hydraulic Fracturing (Fracking): Advocacy and Lobbying Presentations
- Persuasive Graphics: How Pictures Are Increasingly Influencing You
- Free Download: Using Litigation Graphics to Persuade
- Why the President is Better than You at Creating Persuasive Graphics
- 5 Persuasive Graphics Tricks to Watch Out For
- Building Advocacy Presentation Visuals and Persuasive Graphics
- 14 Places Your Colleagues are Using Persuasive Graphics That Maybe You're Not

41. How to Handle a Boring Case

by Laurie Kuslansky, Managing Director, Trial & Jury Consulting, A2L Consulting

I once asked an actuary why he chose that profession, and he replied, “Because I didn’t have enough personality to become an accountant.” The truth is, though, that nearly everything is interesting in some way. It’s the rare case, for example, that’s really dry as dust.

But many cases have aspects that are, at first glance, boring. As an advocate, what do you do when faced with one of them? Here are some suggestions.

1. **Use the boredom to your advantage.** There may be facts that are not advantageous to your side. Don’t emphasize them, and they may not draw attention.

2. **For points that are advantageous create excitement.** Use verbal “drum rolls,” as in “Now THIS is really important.” Or, “If you remember just ONE thing about this case, it should be . . . ”

3. **Create visual distractions.** Your graphics don’t have to be black and white blow-ups of Excel spreadsheets. There are many ways to put forth the same information, but making them interesting takes a professional and an artist/designer, not a paralegal or an associate with no training in information graphics.

Another approach is to create a memorable experience by evoking discomfort. For example, you could simply present a list of airline bankruptcies and say that no one wants to see one more, or you could develop an uncomfortably long scrolling list that presents the same information in a thought-provoking way.

4. **Work with the jury.** Acknowledge that there is information in the case that may be less than interesting, but add that you will do your best to keep it moving. Then keep your word.

5. **If the stakes warrant it, pre-test the case through** mock-jury research, searching for ways to streamline the case so that the trial is neither longer nor more tedious than it needs to be. Learn the themes that emerge, the ways that lay people express the issues in their own terms, what they find confusing, what matters to them, and what aspects of the case, if any, they don't view as boring. Perhaps the most exciting point is damaging to your case. It's better to know in advance.

6. **Bring out the significance of your expert** instead of assuming that the jury knows it already. Here's where name-dropping can be helpful. "Our expert has a doctorate from Harvard and trained at the London School of Economics." Or, "Our expert worked on these issues for the largest accounting firm in America." Make sure that the expert exudes confidence, but not arrogance, looks the part, and speaks in language lay people understand. Bring out the expert's accomplishments graphically and explain them in a way that the jury will understand.

7. **Use graphics to keep things moving.** If you show jurors (and judges) something good to look at, it keeps them interested, reinforces memory, makes you appear more competent and organized, and cuts down on boredom.

8. **Use mixed media.** Don't present everything in a PowerPoint. Mix it up, switching at a comfortable pace between slides on screen to enlarged boards, from static images to animations, etc.

9. **If appropriate, use humor.** Instead of being the egghead with the nerdy information that no one else can relate to or appreciate, bond with jurors by seeing it from their perspective. If you can't do that, add someone to the trial team who can.

10. Now THIS is really important and if you remember just ONE thing, it is that **nothing has to be boring**. It's up to you. The moment you acknowledge that it is, and find a way to link it to other people's experience, especially in ways that are potentially universal, teach people in a way that is painless and aesthetically pleasing, and find a way to tell a story about it, ta da! It isn't boring any more.

Other articles about using litigation graphics, use of humor, being likable and more from A2L Consulting:

- 10 Things Litigation Consultants Do That WOW Litigators
- Like It or Not: Likability Counts for Credibility in the Courtroom
- Could Surprise Be One of Your Best Visual Persuasion Tools?
- Knock, Knock. Misuse of Humor in Litigation and the George Zimmerman Trial
- 16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint
- 12 Astute Tips for Meaningful Mock Trials
- 10 Things Every Mock Jury Ever Has Said
- Want to watch a FREE webinar or download a FREE litigation e-book? Click here to browse.

42. Numbers in Litigation Graphics Do Not Lie, People Do

by Ken Lopez, Founder & CEO, A2L Consulting

I spotted an interesting blog post over the weekend that criticized a *New York Times* article about the Israeli-Arab conflict for using charts and data in a misleading way. I've written about cheating with charts before in several articles, but my 2012 article, 5 Demonstrative Evidence Tricks and Cheats to Watch Out For, in particular, offers some good lessons and has been read by thousands of people.

Although it is taken from a very different context than courtroom litigation, the blog post about the Middle East and the *Times* contains good lessons for both offense and defense when it comes to creating or refuting litigation graphics.

The authors levy five key complaints against the *New York Times* article and its use of graphics to support a narrative.

First, they discuss misleading with proximity, saying that the *Times* placed two charts next to each other to suggest causation when there was only a correlation -- or at least an incomplete story. This is pretty common in the world of charts, and there are entire web sites that poke fun at supposed causation in charts. This site by a Harvard Law student makes fun of fallacious causation by showing a purported connection between such topics as people who drown in swimming pools in a particular year and the number of Nicolas Cage films that year.

The second and third charges made by the blog authors involve omitting and obfuscating. Inconvenient data that does not support the thesis can be omitted, and when it is not omitted, it can be obfuscated, for example by lumping it together with other, unrelated data. The fourth charge is related to the first three – manufacturing a pattern by the repeated use of misleading graphics. The fifth charge involves an old-fashioned method of deception – using loaded language to accompany a chart, or language that involves assumptions that have not been proved.

As the blog authors wrote – and this applies equally well to trial persuasion as to journalism: "**Design is just as much an editorial tool as it is a tool of aesthetics, usability and user experience. Use your power as a designer wisely.** A common misconception about data journalism is that it's somehow less biased than traditional print journalism. Use of data lends an air of objectivity and legitimacy to a piece of journalism, and that goes double when it's beautifully visualized."

I find particularly relevant the bloggers' critique of the juxtaposition of two charts and how that technique can lead someone to a conclusion just because the charts were placed next

to each other. I find this thought especially useful either in a courtroom setting or when litigation graphics are placed in a brief or expert report.

Here is an example of a chart that is duplicated below (click on the chart to see the original). As the authors point out, you might think the rockets caused the deaths due to the chart placement. However, the reality is that very few deaths were actually caused by rockets.

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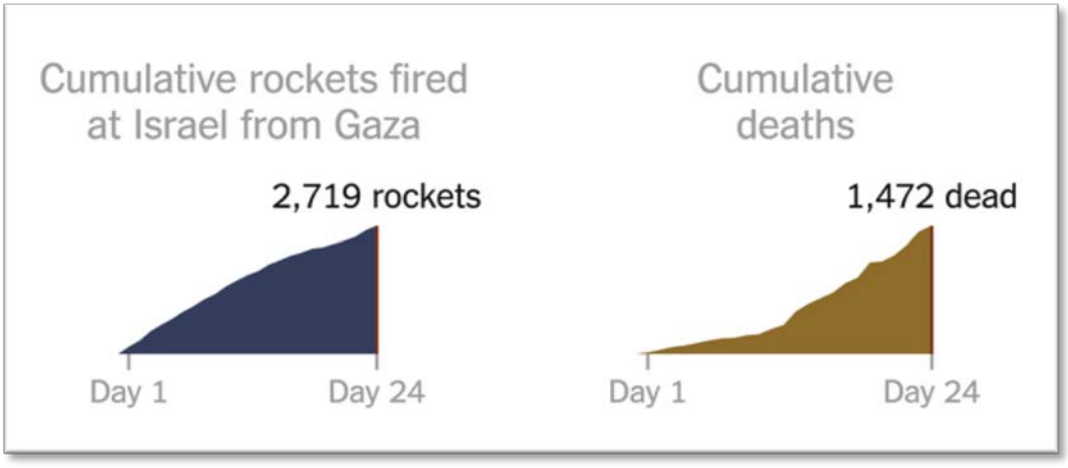


Our job as trial consultants is not to trick or deceive the jury but to persuade effectively and ethically using the available tools. Here I don't think that an ethical line is being crossed, and I do think this is a fair form of persuasion. However, I might object to it nonetheless if I were on the other side.

Other articles and resources discussing litigation graphics, cheating with graphics, chart tricks and more from A2L Consulting:

- 5 Demonstrative Evidence Tricks and Cheats to Watch Out For
- Font Matters - A Trial Graphics Consultant's Trick to Overcome Bias
- Persuasive Graphics: How Pictures Are Increasingly Influencing You
- Free Download: Using Litigation Graphics to Persuade
- Why the President is Better than You at Creating Persuasive Graphics
- 15 Awesome Infographics for Lawyers
- What is a Litigation Consultant Infographic
- How to Portray Your Client as Hero Infographic
- Building Advocacy Presentation Visuals and Persuasive Graphics
- 14 Places Your Colleagues are Using Persuasive Graphics That Maybe You're Not
- How to Make PowerPoint Trial Timelines Feel More Like a Long Document
- 12 Ways to Eliminate "But I Need Everything On That PowerPoint Slide"
- Good-Looking Graphic Design ≠ Good-Working Visual Persuasion

43. How to Pick a Litigation Consulting Firm (Jury, Graphics or Tech)

by Nina Doherty, A2L Consulting

A2L has been around since 1995 and can work on hundreds or even thousands of cases in a given year. With that experience, we have seen a great many law firms and in-house departments go through the process of finding a litigation for litigation services such as trial consulting, litigation graphics, and trial technician support.

Here is our suggested approach to an effective vetting process for a law firm considering litigation-consulting services. As you will see, we think the process works best when it is structured and when each potential vendor is asked to provide the same information. Always make sure that you cover the following questions in interviewing the potential provider:

Experience and Process. How long has the firm been in the litigation consulting business – specifically, how long has it been doing litigation graphics, trial technology and jury research? Does the firm have a project management process? Will the law firm need to deal with multiple support groups, or will there be a single point of contact for the project? Does the firm have lawyers and Ph.D. consultants on staff, or is it one that focuses mostly on art or courtroom technology?

Capabilities and Work Product. What are some good examples of the firm's litigation graphics work, its ability to create a hyperlinked e-brief, and its juror survey and jury consulting approach? Has the firm supported cases of a similar size to the one that is now before you? Has the firm received any industry awards or won similar accolades for its work? Can the firm provide on-site graphics support, in addition to trial technology?

Systems and Infrastructure. Does the firm require that you use their proprietary trial presentation software or are they able to work with Trial Director and Sanction? Do they have enough people to get the job done in a timely and effective manner? On average, how many cases do their trial technicians support at any given time? What method does the firm use to create demonstrative deliverables: Can the lawyers modify the text created by the vendor in the PowerPoint slides? Can the firm produce large boards and in what time frame? Can they make their e-briefs iPad accessible? What processes do they support for file delivery and exchange – email only, web-based, or ftp transfer?

Pricing Options. Does the firm have flexible pricing arrangements? Will it consider a fixed fee? How does the firm work to manage or avoid cost overruns? Can the firm estimate expenses in advance to develop a budget, and stick to that budget?

A law firm that consistently uses this approach is likely to find a litigation-consulting firm that it will be pleased with. We sincerely wish you the best in your search!

Some other resources you may find helpful on our site:

- Download our E-Brochure for Later Reference
- 20 Things You Must Know Before Hiring a Hot Seat Operator
- The Effective Use of Demonstrative Evidence & Hiring Demonstrative Evidence Consultants

44. Why Litigation Graphics at Mock Trials Make Sense

by Laurie Kuslansky, Managing Director, Trial & Jury Consulting, A2L Consulting

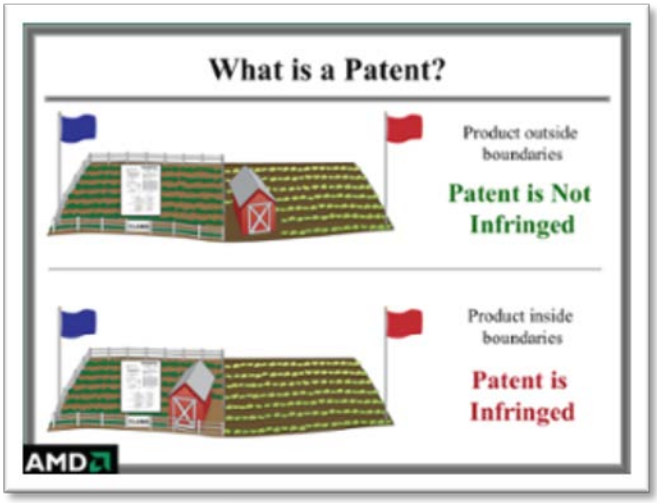
Do movie trailers include the most boring part of a movie?

Of course not. They include something to grab your attention quickly and show what the movie is about and why you should be interested in it in a few words and images. In that brief window, many viewers decide if it is worth seeing or not.

An opening statement is similar. A common mistake is to assume that more equals more. It does not. A great presenter brings forth a winning story, including why the audience (jury) should care, and thematically gets and keeps their attention without excess words. The idea is to assemble the information into eye-catching visuals that do the work for the jury, take the guesswork out of their conclusions and aren't just a list of words in a PowerPoint being read aloud. There is no better way to summarize, simplify, organize, condense, and contextualize information than with good litigation graphics.

That holds true at mock trials as well. A mock trial requires condensing presentation material to fit within strict time limits. Mock jurors are burdened with receiving, understanding and remembering a lot of information in a little time. Graphics help them do so, so that their interaction with the facts is not random – based on limited information, cognitive overload and an overtaxed memory – but based more closely on the key facts, issues, legal questions and the law that the sponsor of the mock trial is hoping to test.

Winning a rigged contest isn't worth it.



A key consideration for conducting a worthwhile mock trial is to ensure balanced presentations for both sides or risk distorting the outcome because the deck was stacked in your favor. An unearned "win" is a false positive. It is better to do no jury research than to do bad jury research. Part of what is required to perform good mock jury research includes presenting good litigation graphics, for both sides, by as good a presenter for the opposing side as yours, taking equal presentation time for both sides, and showing unlikable evidence as a minimum starting point to pressure test your case.

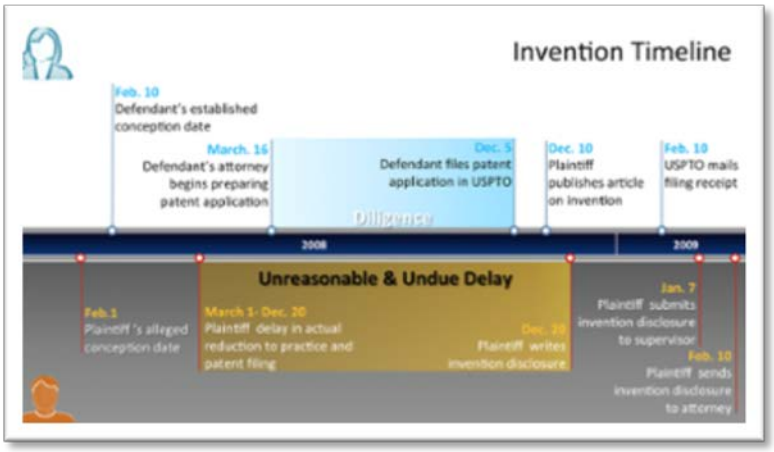
Being penny-wise, but pound-foolish isn't worth it, either.

Anyone who rejects litigation graphics at a mock trial for budgetary or other reasons is probably litigation amateur. Top-tier litigators wouldn't dream of doing it that way at a mock trial. If money is the barrier, there are many ways to accomplish the goal cost-effectively, including a hybrid of in-house and outside professional support, re-allocating resources in a more productive manner, or providing the consultant with the total budget that can be apportioned for the mock trial and asking for their advice on how best to achieve the goals of the trial team and client within budget.

Don't get caught empty-handed.

The absence of litigation graphics at a mock trial creates easily avoidable problems. It is foolhardy to believe that no one will notice and it can wait “till the real trial.” On the contrary: typically during mock deliberations, foreseeable questions arise that would have been so easy to remedy with basic graphics that were missing. “When did that happen? Who did that first? Who was he? What was the name of that agreement? What did it say?”

A lot of time is often wasted trying to figure out a simple fact that was missed because it was said, not shown -- and thus, not remembered or unclear. Counsel ends up looking foolish for omitting them. As a result, the expense “saved” in not providing graphics for the mock trial is eclipsed by the unfavorable distortions that result. Their absence and the "savings" are not applauded in the end. Better to provide them from the beginning.



Other free articles and free resources about mock trials, opening statements and litigation graphics from A2L Consulting:

- 16 Powerpoint Litigation Graphics You Won't Believe Are Powerpoint
- How I Used Litigation Graphics As A Litigator And How You Could Too
- 6 Studies That Support Litigation Graphics In Courtroom Presentations
- Free Download: Storytelling For Litigators E-Book 3rd Ed.
- 25 Things In-House Counsel Should Insist Outside Litigation Counsel Do
- Podcast: 5 Ways To Maximize Persuasion During Opening Statements
- Podcast: 12 Things Every Mock Juror Ever Has Said
- Webinar: 12 Things Every Mock Juror Ever Has Said
- 5 Ways That A Mock Trial Informs And Shapes Voir Dire Questions
- 7 Ways To Draft A Better Opening Statement
- Why A Litigator Is Your Best Litigation Graphics Consultant
- 6 Reasons The Opening Statement Is The Most Important Part Of A Case
- How To Structure Your Next Speech, Opening Statement Or Presentation
- 10 Things Every Mock Jury Ever Has Said
- 11 Problems With Mock Trials And How To Avoid Them
- Contact A2L With A Question About A Mock Trial
- 12 Tips For Getting The Most Out Of Your Mock Trial
- Here Are 6 Good Reasons To Conduct A Mock Trial

- A2L Voted Best Jury Consultants By Readers Of Legaltimes
- 5 Things Every Jury Needs From You
- Is Hiring A Jury Consultant Really Worth It?
- 12 Insider Tips For Choosing A Jury Consultant

45. The Effective Use of PowerPoint Presentation During Opening Statement

by Lorraine M. Kestle, Graphic Designer, A2L Consulting

The age-old adage that there are two sides (at least) to every story is clearly evident in litigation. Both parties believe that the applicable law, when applied to the facts, supports their position, or they likely would not be going to court. The parties and the lawyers are familiar with the facts and the law. Everyone fully understands the nuances of their position.

Everyone, that is, but the judge and jury who are hearing the case for the first time. It is these "novices to the case" who will ultimately decide which version of the facts or story is most persuasive.

For one day, I was a "novice to the case" in the courtroom as I helped our trial technician set up for a PowerPoint presentation in court. I observed both sides' opening statements as well as the direct and cross-examinations.

Although I have been in the courtroom on numerous occasions, I had no prior knowledge of the substance of this matter and did not work on this presentation. Our client, the plaintiff in this case, delivered an opening statement that was enhanced with a PowerPoint presentation, while opposing counsel relied on typed or handwritten notes and an easel with a large paper tablet. After observing both approaches, I came away with what I think are interesting conclusions about the effect that the PowerPoint presentation had on my understanding of the case, the attorney's arguments, and my initial impression of liability.

1. An Increased Perception of Preparation, Competence And Persuasion

As a former paralegal, I know that preparation is one of the keys to success in litigation. And while I believe both sides were equally prepared, this was not the impression created in the courtroom by defendant's counsel. What set the opening statements apart was the PowerPoint presentation used by our client. It served as a baseline of comparison for what followed.

The PowerPoint presentation not only emphasized key components of the opening statement, but it also added an air of competency and depth to the arguments being made. There was a clear, logical, and concise flow of information that was easy to follow. The visual presentation and callouts of relevant portions of emails and the employment contract clearly substantiated the verbal argument. This ultimately increased the impact of and the persuasive value of the opening statement. I have a clear visual picture of those emails and the contract that were the cornerstone evidence in the plaintiff's case, even if I cannot recall the exact wording.

When defendant's counsel did not use any visual or graphic presentations to support the opening statement, my first thought was, "Why is that?" My focus was not where it should have been; it was not on what he was saying. In fact, I was distracted by the numerous sheets of paper defense counsel brought to the podium and the yellow Post-it notes that were on it. It gave me the impression that they were less prepared than the plaintiff, which may or may not be the case. Nonetheless, this was my initial impression and I think ultimately influenced my view of their argument.

2. Increased Retention of Evidence Presented

For me, the evidence presented had greater weight when I could actually see the email communications that were made and the contract that was signed by the defendant. The document exhibit callouts, in particular, which supported the plaintiff's arguments, became visually imprinted on my mind. And I received no other visual images from the defendant to compare or contrast them with. When I look back on that day, it is the callouts that I recall. This is what I remember, more than three days later.

3. Increased Attention to Arguments

When you are sitting behind the bar in the courtroom, you have a limited view of the exhibits and evidence being presented. However, when the PowerPoint slides were tied into the court's monitors, it was much easier to see the evidence being offered. I found that I paid closer attention to the arguments being made; I was actively engaged in "looking" at the evidence to see if I agreed with what the lawyer was saying. I could see that everyone, including the judge, was looking at the courtroom monitors.

On the other hand, when the defendant's counsel was creating a live, hand-drawn organizational chart during cross-examination, not only could I not see it due to its orientation in the courtroom, I felt that it was too far away from the individual who was testifying and the judge. It was more difficult to follow the argument being made.

In conclusion, when I left court that day, I felt that the opening statement set the tone for everything that followed. The effective use of a PowerPoint presentation during the trial enhanced the arguments being made and, at the end of the day, our client prevailed. I can't say I'm surprised at the outcome. They had me during opening statements.

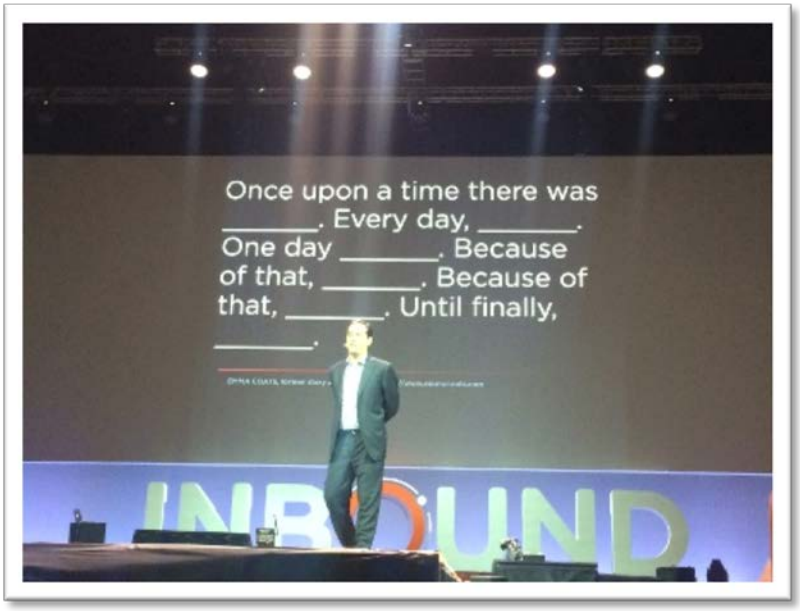
Other A2L Consulting articles and resources related to persuading with graphics, opening statements and using words and pictures in a complimentary way:

- 5 Ways to Maximize Persuasion During Opening Statements - Part 1
- 12 Ways to SUCCESSFULLY Combine Oral and Visual Presentations
- 12 Reasons Bullet Points Are Bad (in Trial Graphics or Anywhere)
- Why Reading Your Litigation PowerPoint Slides Hurts Jurors
- 6 Studies That Support Litigation Graphics in Courtroom Presentations
- Why Reading Bullet Points in Litigation Graphics Hurts You
- The 12 Worst PowerPoint Mistakes Litigators Make
- 16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint
- 16 Litigation Graphics Lessons for Mid-Sized Law Firms
- 6 Trial Presentation Errors Lawyers Can Easily Avoid
- 21 Reasons a Litigator Is Your Best Litigation Graphics Consultant
- 5 Problems with Trial Graphics
- 10 Reasons The Litigation Graphics You DO NOT Use Are Important
- 5 Demonstrative Evidence Tricks and Cheats to Watch Out For
- 6 Trial Presentation Errors Lawyers Can Easily Avoid
- The 14 Most Preventable Trial Preparation Mistakes

- Trial Timelines and the Psychology of Demonstrative Evidence
- How Long Before Trial Should I Begin Preparing My Trial Graphics?
- Free Download: Storytelling for Litigators
- Free Watch: Using PowerPoint Litigation Graphics to Win Your Case

46. Dan Pink, Pixar, and Storytelling for the Courtroom

by Ken Lopez, Founder & CEO, A2L Consulting



We talk a lot about storytelling in our A2L blog articles. Our books, webinars, and articles that are focused on storytelling -- like Storytelling for Litigators 3rd Ed., Storytelling as a Persuasion Tool, and 5 Elements of Storytelling and Persuasion -- are among our most popular.

We believe that effective storytelling is central to winning cases, and we've talked about the kind of results you can get when storytelling is used well in $300 Million of Litigation Consulting and Storytelling Validation and Patent Litigation Graphics + Storytelling Proven Effective: The Apple v. Samsung Jury Speaks.

We've also written several times about how to structure a good story or opening statement for trial in articles like How to Structure Your Next Speech, Opening Statement or Presentation, Portray Your Client As a Hero in 17 Easy Storytelling Steps, The Top 14 TED Talks for Lawyers and Litigators 2014, and 5 Keys to Telling a Compelling Story in the Courtroom. However, there are many ways to put together an effective story, and the format matters a great deal.

I had the pleasure of seeing the popular speaker, author, and friend of A2L, Dan Pink, present recently at a marketing conference. Dan has written extensively on the social science behind the sales process, the real nature of human motivation, and the future of American business. Part of the talk that I heard at the conference was about storytelling. More specifically, Dan focused on the oft-discussed, highly successful Pixar storytelling format.

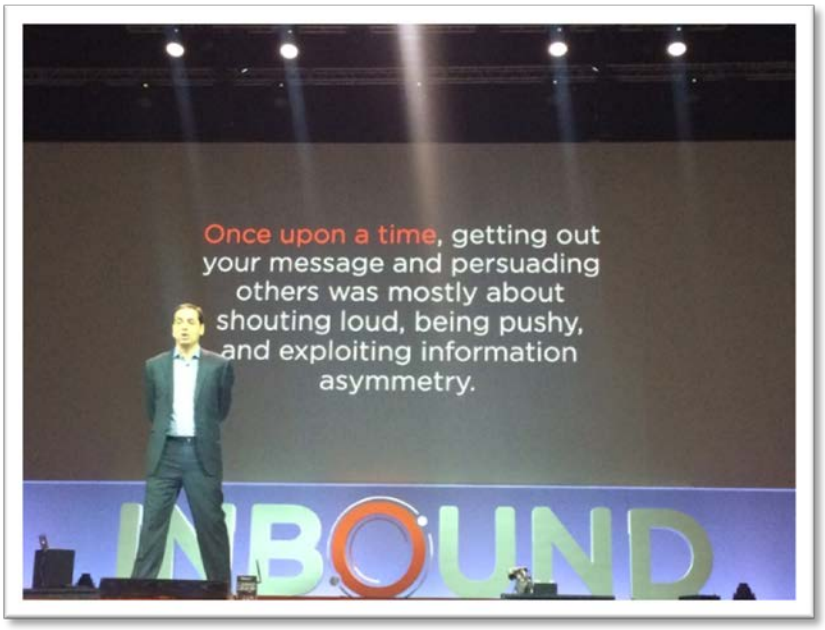
If you have not heard about this format before, it's worth learning. After all Pixar is just about the only movie studio that can make us care deeply about an animated character, whether a fish, a robot, or a kids' toy. And we certainly want our fact finders to care about our clients the way we all cared about Andy saying goodbye to his toys or what happens when Wall-E is reset and is brought back by his robot girlfriend. But how does this work -- especially when our clients are multi-billion dollar companies, hardly the most sympathetic creatures?

As Dan pointed out, Pixar follows a relatively simple storytelling format, and it is one you can use in your next trial to achieve fantastic storytelling for the courtroom results. The format appears in the first image in this article.

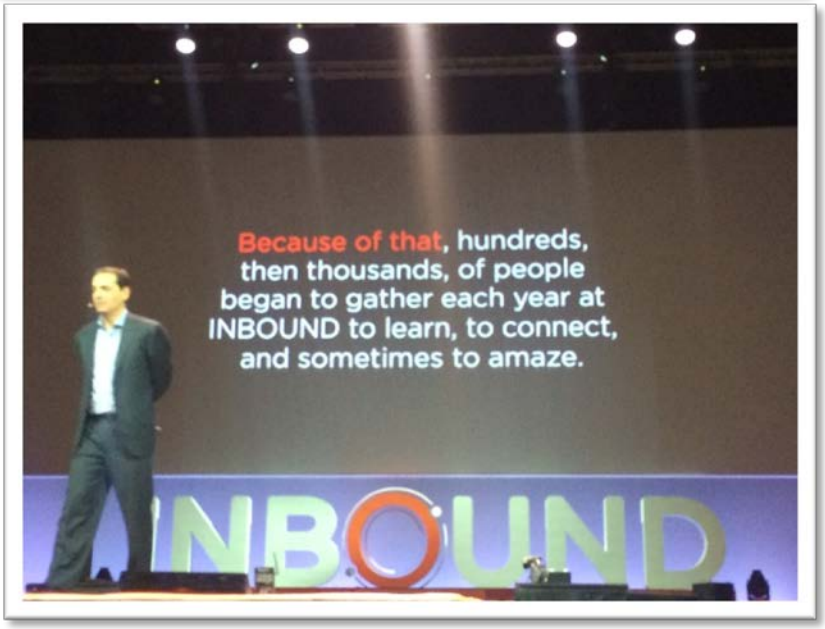
It's pretty simple. Every Pixar film follows this format, and there is hardly anything simple about those plot lines - especially how they make us feel. In case you're reading this in a text-only format, it is:

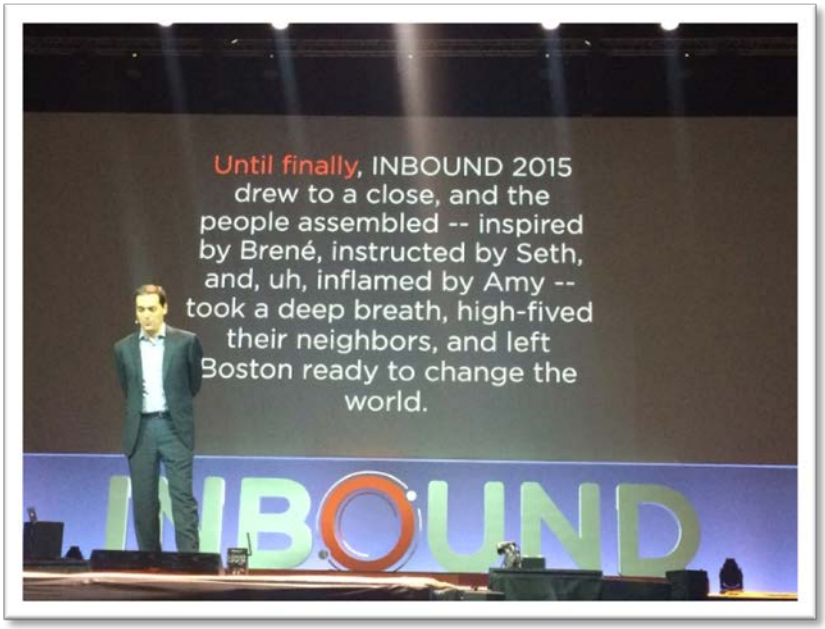
Once upon a time there was _____. Every day, _____. One day _____. Because of that, _____. Because of that, _____. Until finally _____.

It's a format that could be used for any opening statement, minus the “once upon a time” part, of course. Here's how Dan put together a series of slides to illustrate this point about blogging at the conference I attended.




One day, a few pioneers
decided to change the game.
INBOUND


Because of that, hundreds,
then thousands, of people
began to gather each year at
INBOUND to learn, to connect,
and sometimes to amaze.
INBOUND


Until finally, INBOUND 2015
drew to a close, and the
people assembled -- inspired
by Brené, instructed by Seth,
and, uh, inflamed by Amy --
took a deep breath, high-fived
their neighbors, and left
Boston ready to change the
world.
INBOUND

47. Lawyer Delivers Excellent PowerPoint Presentation

by Ken Lopez, Founder & CEO, A2L Consulting

The title of this article shouldn't sound like a breaking news headline, but let's be honest, it does. Most PowerPoint presentations are bullet-point-riddled text-heavy electronic projections of a speaker's notes. Most lawyer-delivered PowerPoint presentations are the same — just with even more text and smaller fonts.

As a result, a significant majority of speakers (and lawyers) using PowerPoint presentations are hard to understand and dramatically less persuasive than they could be. There are exceptions of course.

The kinds of litigators and others who become clients of A2L Consulting's litigation graphics division are the first exceptions. They typically learn the rules of effective presentation and high-level visual persuasion based on well-established neuroscience principles and rigorous psychological studies.

The second exception is Lawrence Lessig, a Harvard law professor.

I had the pleasure of seeing him deliver a presentation at TEDx MidAtlantic recently. Whether or not one agrees with his message, almost everyone can learn a lot from his presentation style and the methods he used to achieve visual persuasion. Here is a video of that presentation:

Professor Lessig did so many things correctly in this presentation that it is worthy of study by litigators and presenters alike. I'm not going to suggest that this is a perfect presentation for a courtroom environment, but it is a very good model for a situation where you want to persuade an audience to act or see things your way. Still, there are important lessons for the courtroom here.

Understand that when I say this is "a very good model" that I'm not simply giving my opinion (even if it is based on 20+ years of helping litigators win cases using visual persuasion techniques). Rather, this assertion is based on the latest science about what persuades people.

In contrast to my articles pointing out what can go wrong like The 12 Worst PowerPoint Mistakes Litigators Make, The 14 Most Preventable Trial Preparation Mistakes, and 6 Trial Presentation Errors Lawyers Can Easily Avoid, here is a time-coded list of seventeen things I see that Professor Lessig did exceptionally well.

1. **00:22: Attention Grabbing Words:** His first few sentences use words designed to get you interested. When we hear "protest," "Hong Kong," and "China," most people are going to take notice given the historical inconsistency between these terms.

2. **00:32: Use of Video:** Showing moving pictures is more captivating than a still image, and starting off with video serves to draw the audience in emotionally from the very beginning. The fact that this is a protest by children further serves to drawn in the audience emotionally.

3. **00:55: Text Highlighting.** It is generally a bad idea to read what is on screen. Notice how you don't really understand what he is reading while you're looking at it. That's because of the split attention effect. When he takes away the unnecessary words, you see exactly what he wants you to remember. That is a good method of highlighting your key message.

4. **1:05: Pace Change:** He begins his presentation slowly to draw in the audience in the first 30 seconds and now changes his pace to start to make his case. Changing the pace of one's speech is excellent for keeping interest. You'll notice he slows down at the end as well. In fact, he slows down whenever he wants to make an emotional point and make it stick

5. **1:07: Clear and Easy-to-Understand Persuasive Graphics:** The imagery is simple and supports a simple point. There are two steps, and a small group stands in the middle to act as a filter. He uses a nice clear graphic to describe gerrymandering at 13:51 as well. Litigation graphics do not have to be complex to be effective. See Litigation Graphics: It's Not a Beauty Contest, and 16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint.

6. **1:20: Proper Font Size:** Except here for making a point, Professor Lessig rarely gets below 28-point font size. See 12 Ways to Eliminate "But I Need Everything On That PowerPoint Slide".

7. **1:28: Use of Information Design Principles:** I wrote about the use of dots to represent small numbers in Securities Litigation Graphics and Juror Communication, and it is a useful technique, especially when combined with a more literal explanation and an oral explanation.

8. **2:35: Appropriate Use of Humor:** He works in a *House of Cards* reference without ever saying a thing and draws a big laugh. Humor certainly does not always work in the courtroom, but in this environment, it is entirely appropriate.

9. **4:09: Analogy:** Notice how Professor Lessig connects the concepts of China, Tweeds, Whites, Funders and more using the same text graphic and changing one word to carry through an analogy. He does this again at 7:50 when flipping between the America and China slides. See Courtroom Exhibits: Analogies and Metaphors as Persuasion Devices and Lists of Analogies, Metaphors and Idioms for Lawyers.

10. **6:42: Nod to Steve Jobs:** From the background used to the font size to the black mock turtleneck to the style of presentation generally, Professor Lessig is clearly a student of the extremely effective Steve Jobs-style presentation technique. See the 4th video in my article 12 Reasons Bullet Points Are Bad (in Trial Graphics or Anywhere), and you'll see exactly what I mean.

11. **8:15: Immersive Graphics Presentation Style:** We've written about the Broda-Bahm study demonstrating that the use of an immersive style (frequently changing and persistently used) of presentation has been shown to have the most persuasive effect on jurors. Professor Lessig uses this technique better than just about every lawyer that I've seen present.

12. **11:42 and Throughout: Repetition:** His use of visual repetition of charts and oral repetition is excellent. Count how many times he mentions "inequality" here. We wrote about how important repetition is for persuasion recently in A Surprising New Reason to Repeat Yourself at Trial.

13. **17:00 Repetition and Rule of Three:** Following in the footsteps of MLK, Winston Churchill, and others, Professor Lessig uses a classic rhetorical technique called Anaphora when he repeats his "you want - we will not get" phrase three times over.

14. **17:33: Hard to Read Fonts:** If you want to get your audience to pay attention, give them something hard to read. He uses that approach here with his "most important problem" slide. We wrote about this technique being used to overcome confirmation bias in Font Matters - A Trial Graphics Consultant's Trick to Overcome Bias.

15. **18:31: Return the Focus to the Speaker:** Watch as he decelerates the volume of slides to return the focus to the speaker. This is intentional and signals he is done with the presentation of evidence and moving on to his closing.

16. **19:25: Closing:** He contrasts reality with a dream of equality and makes his emotional plea. He contrasts between potential and reality or as Nancy Duarte described it, what is vs. what could be.

17. **Throughout: Surprise:** From font changes to the incorporation of video to the use of humor to his constantly varying slide style, Professor Lessig uses surprise to keep the audience engaged. It may be the most important persuasion technique used throughout the presentation, and we have written about it in Could Surprise Be One of Your Best Visual Persuasion Tools? and 5 Ways to Apply Active Teaching Methods for Better Persuasion.

There is a lot more Professor Lessig did right in this presentation, but these are some of the highlights. If you have been a reader of this blog for some time, these techniques

should sound familiar. They are techniques employed by the world's best persuaders, they are the techniques we incorporate into our litigation graphics work, and every one of them can be used at trial to persuade more effectively.

Other A2L Consulting articles and resources related to PowerPoint presentations, visual presentation and rhetorical techniques:

- 12 Reasons Litigation Graphics are More Complicated Than You Think
- The Top 10 TED Talks for Lawyers, Litigators and Litigation Support
- 5 Ways to Maximize Persuasion During Opening Statements - Part 1
- Free Webinar: PowerPoint Litigation Graphics - Winning by Design™
- Free Webinar - Watch Anytime - Patent Litigation Visual Persuasion Techniques
- Using & Creating Litigation Graphics to Persuade - An E-Book for Litigators and Litigation Support Professionals
- A Surprising New Reason to Repeat Yourself at Trial
- Litigation Graphics, Psychology and Color Meaning
- 6 Studies That Support Litigation Graphics in Courtroom Presentations
- Litigation Graphics: Timelines Can Persuade Judges and Juries
- Why Expensive-Looking Litigation Graphics Are Better
- Could Surprise Be One of Your Best Visual Persuasion Tools?
- 5 Settlement Scenarios Where Litigation Graphics Create Leverage
- Winning BEFORE Trial - Part 4 - Don't Overlook Visual Persuasion
- 10 Reasons The Litigation Graphics You DO NOT Use Are Important
- Litigation Graphics: It's Not a Beauty Contest
- 5 Problems with Trial Graphics

48. Why We Blog (and Maybe Your Firm Should Too)

by Ken Lopez, Founder & CEO, A2L Consulting

A new friend of mine had been the head of litigation at a Fortune 500 firm known for frequently being involved in litigation. He said something interesting to me earlier this week: “You guys put the best information out there. You synthesize litigation information better than anyone else. But does it translate into business for you?”

He said that last part with a bit of skepticism in his voice. That was an “aha” moment for me. I realized that I really haven’t talked much about how helpful our blogging has been to our business (and might be for yours), so I want to share some of the amazing facts about it.

A month ago, we celebrated our 7,500th subscriber who signed up to be notified of new articles in this *Litigation Consulting Report Blog*. In just four and a half years, we have gone from zero subscribers to 7,500. We have progressed from 800 visitors to our website each month to about 20,000. We've gone from a small handful of downloads from our website each month to about 2,000 per month. We've gone from a couple dozen published articles to more than 500. Even the American Bar Association has called our blog one of the very best. That is amazing, and I've shared most of that information in some form before.

Here's the most important piece I've never shared, and it's what I shared with my new litigation friend: Just about every business day, sometimes many times per day, someone asks about working with us as a result of reading something on our blog.

Five years ago, I thought a blog would be a neat way for us to show some thought leadership in the industry, but I didn't really think it would be a big business generator. I was wrong. The blog generates most of our business now, and I am more surprised about that fact than anyone.

Five years ago, we pulled in most of our jury consulting, litigation graphics and trial technology/courtroom hot-seat consulting work by calling prospects on the phone (repeatedly). Most of our competitors still do this. I just never believed that annoying people into buying from us was a good long-term strategy, and I think history has proven us right.

Our blog generates exactly the kind of business that we are great at. If someone reads our blog and enjoys it, it means they tend to think as we do as an organization. It means they are serious about winning and willing to do what it takes to win. They probably also have an understanding of the proven persuasive power of storytelling, of litigation graphics, of the rhetorical techniques we share with our clients and of the value of outsourcing some of these elements of trial preparation to experts. It self-selects the very best litigators who typically go on to win cases.

So, I can't say that we blog for the money, but it is a very pleasant side effect. We blog because we love the work that we do. We live in the courtroom every day, and there are not many people like us. We love to share our message and hopefully to elevate the entire industry in the process.

A blog is the most classic and best example of inbound marketing – the type of marketing that is considered the best and most successful type in the Internet age. Inbound marketing focuses on creating high-quality content that pulls people toward one's company and one's services. By aligning the content that we publish with our customers' interests -- through the blog, the articles that we write and other means -- we naturally attract inbound traffic that, over time, becomes our best source of new customers.

49. 20 New Litigation Realities (to Celebrate Our 20th)

by Ken Lopez, Founder & CEO, A2L Consulting

Today is the 20th anniversary of the founding of A2L. We literally started in a closet not long after I finished law school. First, we were Animators at Law. Then almost five years ago, we became A2L Consulting to reflect the fact that litigation graphics were now less than half of our business. Jury consulting, trial technology support and litigation advisory services are now a bigger part of what we do.

Twenty years later, we're a national litigation consulting firm and arguably, the very top litigation-consulting firm in the country. That's not mere puffery. We're consistently voted #1 in local and national legal industry surveys.

To celebrate our 20th, here are 20 new realities that litigators, in-house counsel and litigation support professionals should consider.

1. **The New CLE**: It is a rare CLE seminar that does not put us all to sleep. I think that modern formats of continued learning like our Litigation Consulting Report blog and other litigation blogs, including those recognized by the American Bar Association, are the best places to go for continued learning. It's time for the legal establishment to agree.

2. **The power of storytelling**: The science behind the effectiveness of storytelling as a persuasion device is just now coming into view. It is critical for litigators to study this field and to understand the insights it has developed. See, Storytelling for Litigators E-Book 3rd Ed.

3. **Big firm litigators rarely try cases:** As a result of this new reality, litigators must get a new kind of help - help from trial tested litigation consultants. These courtroom experts may participate in 50-100 trials per year. It just stands to reason that they can help a litigator who is in court far less frequently. See With So Few Trials, Where Do You Find Trial Experience Now?

4. **Using PowerPoint incorrectly does more harm than good.** Most lawyers will actually design slides for themselves that will reduce overall persuasion - but they don't have to. See How Much Text on a PowerPoint Slide is Too Much?

5. **Juror expectations are on the rise:** Jurors expect litigators to wow them a bit with graphics and to keep them interested. They know what can be done in the form of graphics

and at a lower price than ever before. See Will Being Folksy and Low-Tech Help You Win a Case?

6. **The ability to test is on the rise:** The often-high price of mock trials scares off many, but almost every case deserves some form of testing. To make this possible, our firm and others have developed a wide range of testing methodologies that can fit every budget. See Introducing a New Litigation Consulting Service: the Micro-Mock™

7. **Persuasive visuals are everywhere.** From White House press releases, to the courtroom, to advocacy organizations, the world is waking up to the power of persuasive graphics. See Persuasive Graphics: How Pictures Are Increasingly Influencing You

8. **All filings use visuals now.** It used to be incredibly rare to see persuasive litigation graphics used in court filings, but now it is commonplace. See 14 Places Your Colleagues Are Using Persuasive Graphics (That Maybe You're Not)

9. **Law firms will become even more like businesses:** Law firm marketing, business development and PR were unheard of 20 years ago. Law firm pricing strategies are a new and emerging field. Yet all of these areas are normal functions of even small businesses. Increasingly, law firms will look more like businesses going forward, embracing more transparency and developing sales teams. See 24 Things to Know About The "New Normal" of The Legal Economy

10. **Courtrooms are more electronic, but there are not all there yet.** We still bring equipment into most trials. There are many things you need to check with the court. And a great deal still depends on the predilections of the judge. See Trial Technicians, Hot-Seat Operators and Trial Technology

11. **The science of persuasion is real science.** Neurological research has shown that particular regions of the brain are activated when a person is persuaded by an argument. New findings are constantly emerging. See 8 Videos and 7 Articles About the Science of Courtroom Persuasion

12. **For a small trial, you can use an iPad and TrialDirector (for free)**. It's not something you want to try in a document intensive case, but for a case with a handful of documents and just a few video depositions, this is now a reasonable strategy to consider. See 5 Tips for Using TrialDirector and Trial Technicians Effectively

13. **Mock hearings are routine.** From mock Markman hearings, to mock Federal Circuit appeals, trial consultants can and do provide mock sessions that hone litigators' skills and show them what to expect. See 11 Surprising Areas Where We Are Using Mock Exercises and Testing

14. **Graphics in depositions**. We are increasingly being called upon to create demonstrative evidence to be used during depositions. See these deposition articles generally.

15. **Animation is used selectively.** Once, animation was the be-all-end-all of the demonstrative evidence industry. 3D animation at least is now only used in big-ticket cases involving complicated mechanisms that must be seen from multiple angles or anytime we want a jury to experience "seeing is believing." See What Does Litigation Animation Cost? (Includes Animation Examples)

16. **Animation is more PowerPoint than Pixar**. These days, we create a lot of animation, but almost all of it is done in PowerPoint. Now, don't be fooled, you can do some pretty

sophisticated work in PowerPoint now. Have a look: 16 PowerPoint Litigation Graphics You Won't Believe Are PowerPoint

17. ***Voir dire* testing is real science not gut instinct.** There was a time when jury consultants were a lot of flash, bravado and gut instinct. Those days are now gone. Now, the great jury consultants let data based on testing speak about how best to conduct jury selection. See 12 Insider Tips for Choosing a Jury Consultant

18. **Judge expectations.** Just as juror expectations have risen so have the expectations of most judges. They are not looking for CSI. Rather, they are looking for a much more efficient presentation of the evidence through the use of well thought through litigation graphics and even the design of iPad-compatible hyperlinked briefs. See Hyperlinking Briefs: Be More Persuasive Using The iPad

19. **The use of litigation consultants as coaches is on the rise.** I know I'm biased, but if I were in-house, I would insist that my outside litigators worked with a firm like ours. With so much at stake and so few trials occurring, getting a third-party view of a case has enormous ROI in a big-ticket case. See 25 Things In-House Counsel Should Insist Outside Litigation Counsel Do

20. **Great litigation consulting firms endure, adapt and grow.** Our firm was founded as an animation for lawyer's firm, then it became a graphics for lawyers firm, then a litigation consulting firm (as far as I know we coined the use of that term in 1998), then a trial technology and litigation graphics firm, then a jury consulting and litigation graphics firm, and now our work advising in-house counsel about how to get great results from outside litigation counsel is taking A2L into new areas still. We'll keep adapting and growing, and I hope you'll join us in that effort.

50. Explaining the Value of Litigation Consulting to In-House Counsel

by Nina Doherty, A2L Consulting

In an era in which clients are scrutinizing their legal bills and negotiating discounts and alternative fee arrangements with their law firms, it is no surprise that they are also looking closely at the bottom line when it comes to litigation support costs. Of course, that includes the costs of litigation graphics, trial technology, and the other litigation consulting services that we provide. In the typical piece of litigation, most of those costs are incurred in the months and weeks just before trial – and they can seem expensive to a client who is not accustomed to dealing with these services.

At A2L, our invoice pales in comparison with that of the law firm(s) that we work with. (We usually estimate that it will run between half of 1 percent of the legal fees at the low end, and 5 percent at the high end.) Still, the litigator who is the client's chief contact in the law firm must often justify the value of litigation consulting services to a client who may not be familiar with the requirements of modern litigation.

Here are some points that a trial lawyer can make to a client in a high-stakes case that shows the value of our work.

Litigation Graphics: For our litigation graphics services, it is well documented that 60 percent of human beings, and thus 60 percent of jurors, are visual learners. A compelling and clear visual presentation can help ensure that the client's case is easily conveyed and understood. In order to create such a presentation, a litigation-consulting firm requires a specialized graphic artist's skills. This is not a matter of "dumbing down" the presentation; quite the contrary, it is difficult and challenging to convey complex ideas to jurors.

In addition, when we use a mix of mediums such as presentation boards, PowerPoint, 3-D scale models, document call-outs, and highlighting, we minimize jurors' boredom and keep them interested in the client's case. Finally, when we create graphics for mock jury exercises, we are testing case themes and helping the client decide which ones will be presented at trial.

Trial Technology/Hot-Seaters: For our trial technology services, it's important to note that in an age of "CSI" and "Law and Order," jurors expect a seamless performance by the legal team. The use of a "hot seat operator" permits the client's lawyers to focus on their presentation, not on the technology supporting it. The jurors like to think that the lawyers respect their time by making presentations that go off perfectly, without glitches. And since the other side's lawyers will probably be using similar technology, it is important to keep up with them or even to surpass them in skill.

Trial & Jury Consulting: Jury research and witness preparation can easily be seen as having direct and immediate effects on the client's litigation success. A mock jury or focus group can

provide crucial information about whether the trial plan is the best one possible and can further determine whether a trial is a good idea in the first place. Preparing witnesses is vital to ensuring that their testimony will have the desired effect. And the use of jury experts during jury selection can help the client obtain the best pool of fact finders for winning the case.

Ebriefs: For electronic brief production**,** the filing of briefs in electronic format is becoming a preferred mode or even a requirement in some courts. Electronic hyperlinking of citations in a brief makes it easier for judges and their clerks to access the client's briefs anywhere and at any time – even on their iPads.

5 Tips for Working Well As a Joint Defense Team

The 5 Biggest Issues in Patent Law Right Now

12 Insider Tips for Choosing a Jury Consultant

7 Things Expert Witnesses Should Never Say

10 Things Litigators Can Learn From Newscasters

11 Traits of Great Courtroom Trial Technicians

Top 5 Trial Timeline Tips

Trial Graphics, Color Choice and Culture

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Are You Smarter Than a Soap Opera Writer?

Don't Be Just Another Timeline Trial Lawyer

7 Things You Never Want to Say in Court

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Jury Consulting
Trial Technology
Visual Persuasion