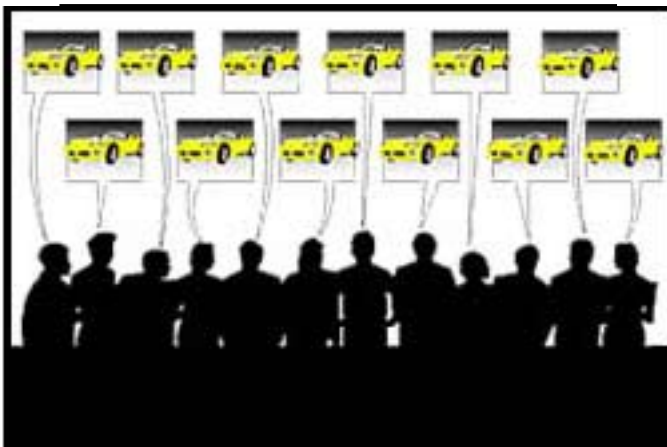
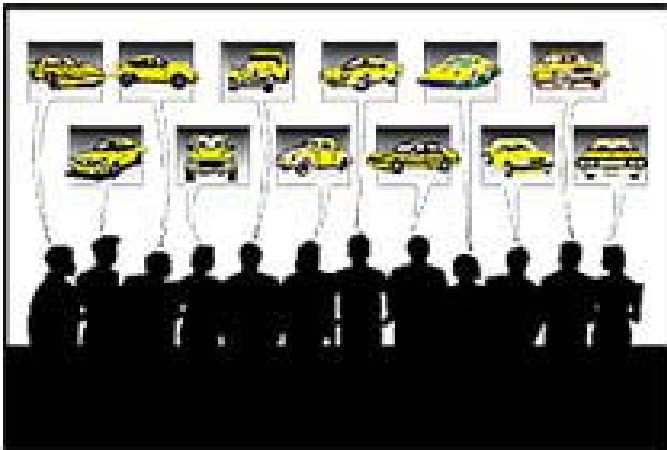


# Effective Communication in the Courtroom

By Donna Siers and Rick Kraemer

Listeners always determine the meaning of communications. Since our thinking includes a visual component, imprecise words encourage jurors to conjure up their own images of the facts—based on what they think they’ve heard.

When pictures or icons are used to illustrate a point, everyone sees the same picture and retains a similar image.



To obtain a verdict, at least nine jurors need to have the same mental image; the goal is for all the jurors to view the case in the same way as the lawyer does.

## COMMUNICATION STATISTICS

Lawyers are fact oriented; juries are perception oriented. Studies reveal that jurors are influenced primarily by what they see and secondarily by what they hear. The right picture, diagram or icon is often the key to influencing a juror’s thinking.

## EFFECTIVE COMMUNICATION

- **Step 1: Know the facts and details of the case.**
- **Step 2: Decide what to focus on.**

Identifying and considering how to work with jury bias is imperative. Jurors enter the courtroom with an anti-plaintiff bias. They have preconceived ideas about how the system works, who should be responsible, and who benefits from trials.

During voir dire, a lawyer must try to eliminate those potential jurors who have obvious biases that will prevent them from clearly seeing the issues. During the trial, a lawyer must work effectively with the biases inherent in the belief structures of the members of the trial panel.

- **Step 3: Decide how to focus the jury on the details by showing them visual images that illustrate your conclusions.**

## Overcoming Jury Bias With Properly Designed Graphics

Good design, layout, and color choices will help “sell” your story to the jury. Properly designed graphics will help you and the jury to stay focused on the right details. Utilizing the appropriate media will influence the jurors’ opinions.

## Story Bias

Trials are stories and jurors want the “story” to make sense to them. If the facts aren’t clear, jurors will make up their own “stories” and create their own visual images based on what they hear. To avoid confusion, to eliminate the tendency for jurors to “fill in the blanks” by creating their own individual stories, and to enhance understanding, introduce a clear picture that illustrates your story.

A photograph may show how or where something happened, but some visuals can work against you if jurors’ biases are triggered.

Jurors seeing the photo (of a dock leveller and a closed gate) may assume the work who fell from the dock had no business being on the wrong side of the gate.



A graphic rendering of the same dock leveller without any extraneous information focuses the jury only on what’s relevant.

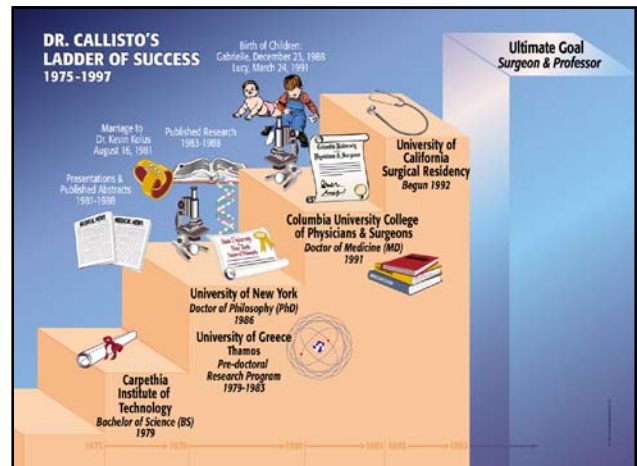
Photographs and maps can help orient the jury to where the case took place and can give jurors a sense of perspective.

Photographs, however, can’t always tell the whole story. Sometimes a simplified rendering of the map or structure is necessary to pull your photographs together and complete the lawyer’s picture of the case.

## Norm Bias

Jurors have expectations about the consequences of actions and behaviors. They tend to compare how

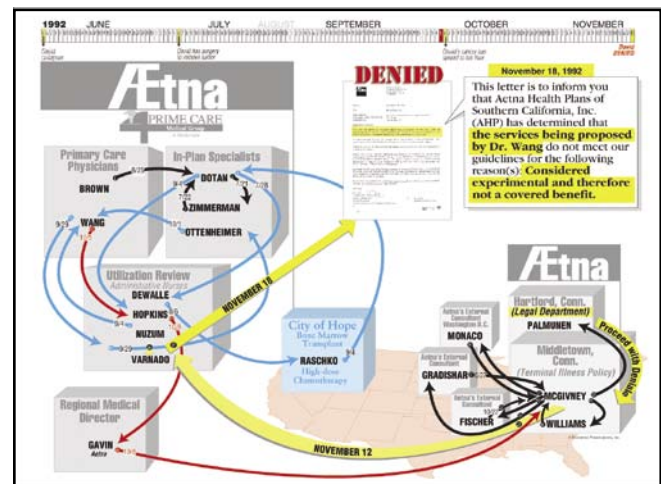
they would act or react to the way the parties in your case have acted. They have the benefit of hindsight in determining what would have/could have changed the outcome.



Looking at the illustration of his “Ladder of Success,” jurors in that case determined that a brain injury had in fact affected the plaintiff. The defendants wanted the jurors to believe that the plaintiff was a malingeringer. The plaintiff was awarded \$3.5 million.

Jurors consider what a reasonable person would do in a given situation and what a reasonable person would expect as a result.

If the jurors can be shown that the defendant’s actions were unreasonable or that if the defendant had acted differently the outcome would have changed, then the jurors will find for the plaintiff.



In an insurance bad faith case against Aetna Insurance, jurors were shown an illustration of Aetna’s actions and treatment of the plaintiff. They found it to be completely unreasonable when compared to what an ordinary person would expect. The jury awarded \$4.5 million in compensatory damages and \$116 million in punitive damages.



Jurors ask themselves, “Who was ultimately responsible for what happened to the plaintiff?” Graphically illustrating who, what, when, where and how shows the jury who made the decision(s) which ultimately caused the plaintiff’s injury, as well as who had the power to do the right thing, correct the problem, and/or prevent the plaintiff’s injury.



Using internal documents and memos, the lawyers showed that GM knew about problems with their 1979 Malibu and chose not to make changes in the product that could have prevented the gas tank explosion that seriously injured the plaintiff. The jury’s verdict: \$4.9 billion.

## SUMMARY

Knowing the facts and details of your case is just the beginning. Creating an effective court room presentation includes deciding on which details to get the jury focused, utilizing jurors’ pre-trial and in-trial biases to your benefit, and designing graphics that clearly show your story so that the jurors all reach the same conclusion.

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*Donna Siers is the President of Integrated Litigation Support (1-800-327-0865), a trial consulting firm.*

*Rick Kraemer is the President and Founder of Executive Presentations.*