

Business Development for Attorneys: Using Trial Consultants with End Clients

BY SUANN INGLE AND NANCY GEENEN

Suann Ingle, M.S., has been helping attorneys and executives deliver great presentations since the days before PowerPoint. Working with trial teams from pitch to verdict, Suann integrates the principles of graphic design, jury research and analysis, simple and purposeful communication techniques, and interactive presentation technology to achieve consistent messaging and effective representation for her clients.

Nancy Geenen, M.A. Ed. and J.D., has over 24 years of law firm experience as a trial attorney, trying commercial and intellectual property cases in the United States and for the United Nations in Geneva, Switzerland. Nancy works with trial teams on mock exercises, trial themes and strategies. Nancy develops law firm training programs to train attorneys to communicate effectively and persuasively in both formal and informal settings.

After years of client work, we have developed specific ideas for enhancing the unique triad of lead counsel, trial consultant, and end client in order to benefit all concerned and to proffer the best advocacy and trial practice possible. We describe the processes we use during phases of trial preparation, trial and post-trial events to assist trial counsel and trial teams. This article explores often-overlooked opportunities to solidify the bond between litigation counsel and end client, especially the in-house counsel.

There are numerous relationship-enhancing moments that play out between litigators and the trial consulting team while on the path to trial. Perhaps surprisingly, these moments may have little to do with mock jury research, demonstrative charts, presentation technology, statistical data or strategic recommendations. Such moments may well serve the attorney's relationship with the client.



Clockwise from upper left: mock trial report excerpt, expert demonstrative development, trial presentation software, testimony highlights

Two days before a scheduled opening in a trade secret theft trial, the trial judge continued the trial for six months because one of the four defendants decided to testify against the other three. The plaintiff had completed mock jury research, prepared themes and strategies based on the results, and conducted extensive witness-preparation sessions. The legal team and the trial consultants reacted quickly and turned a disappointing delay into an opportunity to show the end client that: a) the opening statement was ready, b) the matter was on budget to date, c) some pretrial tasks would necessarily be redone if and when trial started, and finally, d) the delay presented opportunities to evaluate the trial strategy and settlement position.

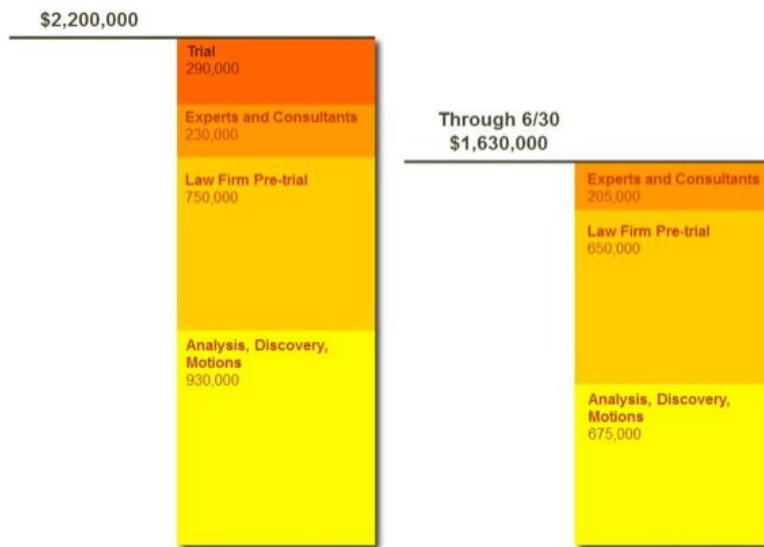
The trial consultant recommended that lead trial counsel quickly set up a meeting with the law firm relationship partner, in-house counsel, the CFO and the COO at company headquarters. Without charge to the client, lead trial counsel and consultant flew across country and presented highlights of the opening statement, the current case status and budget, and strategic options for next steps. After just 20 minutes of presentation, the CFO called the Chairman of the Board to attend as well. The 60 minute presentation evolved into a half day working session with all attendees participating. The visuals that accompanied lead counsel's presentation served to help substantiate the enormous amount of work done by the law firm preparing for a trial that now might not go forward and for which the company was about to be billed.

The relationship partner's presence bolstered the law firm's commitment to the C-Suite executives and helped in-house counsel look good in front of her superiors. Lead trial counsel was afforded the opportunity to lay out the trial strategies and possible options for resolution of the matter. Feeling confident in the trial team and with the information necessary to make informed decisions, the C-Suite executives debated the scenarios and strategies in real time and decided together to forge ahead to trial.

This example is admittedly one of unique opportunity, but illustrates how a nimble response to inevitable surprises can inspire renewed trust and confidence in a legal team.

As corporations become more trial savvy and cost conscious, law firms are best advised to prepare for unique presentation scenarios for which the attorney might want to use trial consultants. In this article, we discuss opportunities at the initial beauty contest, in pre-trial research, at trial, and after trial has concluded.

TRIAL BUDGET



Excerpt from presentation to in-house counsel, CFO and Chairman

The Beauty Contest

The first opportunity is the initial beauty contest or pitch presentation for a new case. Attorneys headed to trial have long been advised to bring in trial consultants early in a case. Seasoned trial consultants have access to similar, past examples of cases that add a secret weapon to a legal team's arsenal and help to perfect an on-point pitch presentation that may even include a sample of an opening statement. Whether in the context of a long standing law firm client with a case that needs to go to trial, or because a new opportunity has arisen, litigators will benefit from tapping the resources a trial consulting firm has to offer. Often trial consultants are eager to partner (many times with gratis services) with legal teams as early as possible because it helps improve the consultant's ability to serve the trial attorneys effectively. The opportunity to "test drive" a consulting team with little obligation and cost is very appealing to the trial attorney and the end client.



Excerpts from law firm pitch presentation for trial work, all of which were publicly available and prepared by the trial consultant for the pitch team

Pre-Trial Research

Once an exercise has been scheduled, the opportunities to seal relationships and boost confidence in a legal team continue. Inviting in-house counsel to rehearsals (for both the "good" and opposing side) is often a very good way to let law firm clients peek through the keyhole and watch the legal team at work. Many, many lawyers overlook this opportunity because they either do not like to rehearse or do not take the time to rehearse. Often, too little time is spent on the "adversary" side of a mock trial. Trial consultants will help prepare the adversary case. The process of doing so yields case strengths and weaknesses even before the client case strategy is tested and the data analyzed. Hearing a trial consultant supply substantive input on attorney presentations and watching lawyers implement them is reassuring to the end client.

Trial consultants also help manage expectations by educating the end-client representative on the value of "losing" a mock trial. This instills further faith in the legal and consulting teams as they prepare a best case scenario for trial. Trial consultants provide valuable reassurance to client representatives during mock trial preparation and during the exercise, when mock trial counsel need "space"



View from client observation room (from left:) mock plaintiff presentation, mock defendant presentation, mock deliberation group

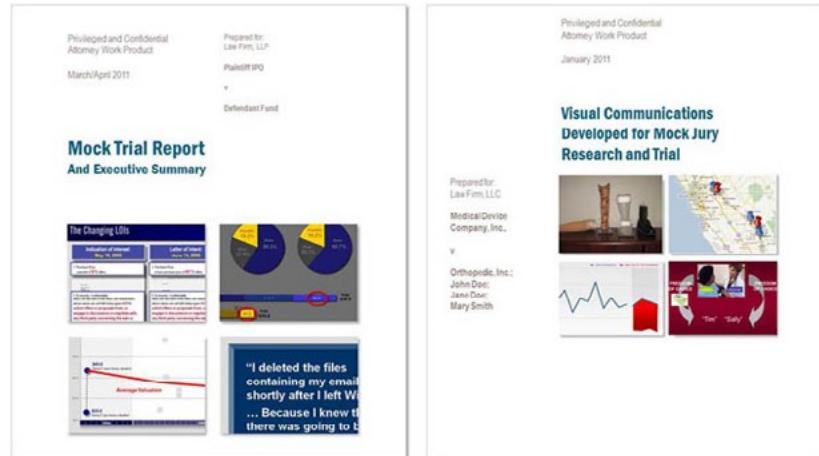
from well-meaning clients. The trial consultant is in the unique position to affirm in-house counsel's choice of legal team by highlighting the performance as favorable (when appropriate) in the context of the many legal teams to which they have been exposed. Well placed comments such as "he's got presence" or "she connects well with the jurors on this point," or "he's done his homework," go a long way with end-clients watching an exercise for the first time.

A serendipitous benefit to any pre-trial research exercise is, of course, attorney training. A November 19, 2011 New York Times article entitled, "[What They Don't Teach Law Students: Lawyering](#)" cites a growing need for law firms to address practical skills among new attorneys. As a result, many firms are dedicating time and budgets to attorney training, and yet, end clients are sensitive to paying for such training. As social scientists and psychologists, many jury consultants are natural teachers. Participating in a mock trial provides associates exposure to consultants who likely have more experience in preparing for trial and who may provide tips and tools for trial preparation and strategy. The trial consultant can alleviate some of the training pressure felt by the lead trial attorney while preparing the case for trial. Together with the lead attorney, the trial consultant provides invaluable, timely direction to the less experienced team members that will ultimately benefit the way the case is tried in court.

Once jury research exercises are completed and the data analyzed, the trial consultant generates and delivers a complex report. The report is thumbed through upon arrival and often filed away until the trial attorney makes time to pore through it with focus and attention. Seasoned trial consultants offer, and in some cases, insist upon an in-person meeting with the trial team to review the report, the research exercise data's implications, and the recommended strategies. This post-report meeting not only provides another opportunity for the end-client to be present and participate, but allows for substantive questions that arise after reflection on the data and consulting team's recommendations. What results is yet another opportunity for the trial consulting team to align with the trial team and end client on mission and purpose as trial strategy comes together.

The entire process of developing and conducting mock exercises marks a certain milestone in case preparation. Memorializing these events by distributing post-exercise booklets prepared by the visual communications team (sent separately from the report) that include the mock presentations developed serves a number of purposes. It puts an additional "deliverable" in front of the trial team and end client. Clients are often surprised at how much effort it takes to put on both sides of a case for a mock exercise, but seeing hard copies of the presentation helps substantiate the costs. The exercise booklet is a tangible starting place to develop further presentation ideas with easy reference. Finally, the trial team has its own record of the effort and experience, regardless of whether the trial goes forward.

The end client may then combine the report and recommendation with other critical information to update the senior management, general counsel, and board members. As described in the introduction to this article, the trial consultant can help trial and in-house counsel provide meaningful status descriptions that arm the C-Suite executives with information to approve “go-forward” strategy decisions. Inclusion of the in-house counsel both instills confidence in and reflects the competencies of the trial team.

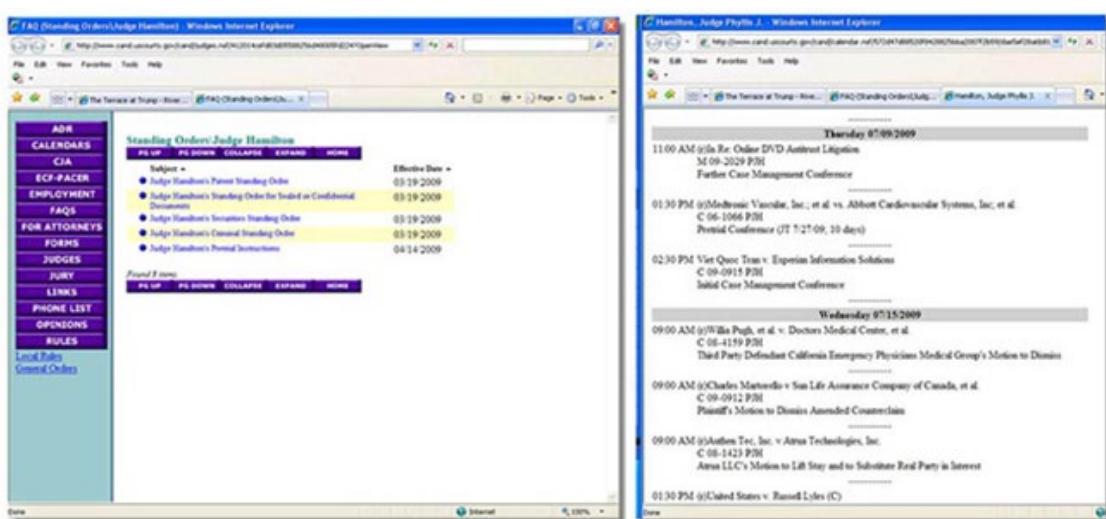


Cover of mock trial report, cover of commemorative booklet containing the graphics work

Trial

As the trial date nears, witness preparation sessions provide in-house counsel (who are likely juggling a number of other unrelated responsibilities aside from managing the litigation) with practical input that boosts confidence in the legal team yet again. Jury consultants and presentation consultants are often present during these witness preparation sessions and know what works in front of juries based on mock jury feedback and hundreds of hours in court. If the client is also a witness, there are calming, confidence-enhancing things a trial consultant may do or say to keep trial preparation moving in the right direction. The relationship between end client and consultant continues right into other pretrial activities, jury selection, and opening statements.

During trial, the end client may not have a working understanding of impact of many early trial activities in the courtroom. Trial consultants are often asked to become interpreters and filters for the end client during in limine motions or argument over jury instructions. Consultants are often in a position to watch the press and provide updates to legal team (to disseminate as they wish) in the context of pre-trial research or past similar matters as they either observe trial or monitor the daily transcript.



Screen grabs from online information available about judges and courtroom calendar

Post-Trial Events

It behooves an attorney to stay in touch with the trial consultant (and vice versa) after a trial is completed. Win or lose, the trial consultant provides another avenue for the trial team to maintain and foster end client relationships. If, for instance, the team has secured a victory, custom designing a tombstone or Lucite block enclosing the verdict form (or other creative keepsake that would look good on a desk) is a great way to keep the law firm name and trial consulting team name in front of the client.

Most trial consultants move quickly to the next trial, often working with ten or more trial teams and end-clients in a calendar year. Mock jury research and presentation development projects are intense situations where the team spends a good deal of time together. It is not uncommon for a trial consultant to get an inquiry, "you know a good attorney who....?". And, it is certainly not uncommon for attorneys to ask around, "You know a good jury consultant or graphics person for my case?" Recommendations and referrals are best when the reference source has first-person experience with a particular lawyer or consultant. Unless there is consistent, top of mind communication from the trial consultant, attorneys who truly admired the work from the year before may not have the trial consultant reference information handy. In-house counsel often make the final decision on whether the trial consultant is a valuable member of the trial team. Trial attorneys who stay in touch with the work of the favored trial consultant will have an easier time persuading the end client to make this investment in the case.

Applying the steps outlined in this article creates a "value add" contribution that engenders a desire to reunite the team for future work. The unique, three-way relationship between jury consultants, legal counsel and corporate representatives, played right, will turn a single engagement into a win-win-win scenario for all.



Sample of a winning verdict form embedded in Lucite