

SUBSCRIBE via [RSS](#)
 SUBSCRIBE via [Email](#)



The Jury EXPERT

The Art and Science of Litigation Advocacy

A BiMonthly E-Journal

Volume 20, Issue 4, November 2008

Discover the Power of Conceptual Persuasion

Learn the differences between reiterative and conceptual graphics and see how to maximize your legal graphics ability to have an impact on the trier of fact.

Page 1

Why Women Reject Successful Women

What happens when women jurors see successful women attorneys, plaintiffs or defendants and how you can mitigate the often negative judgment against successful women. Trial consultants respond.

Page 8

What Generation Means to Trial Consultants

New data that allows examination of damage awards, attitudes, and values as they differ (and are similar) across the most common generations seen in the jury box.

Page 16

Moral Emotions and Juror Decisions

Liberals and conservatives focus on different themes and values in your case narrative. How to be 'heard' by the jurors on your panel. Trial consultants respond.

Page 19

Cross-Exam and the Narcissistic Witness

A reader-requested follow-up to last months' feature on preparation of narcissistic witnesses. Recommendations on how to cross-examine this sort of witness.

Page 30

The American Jury: A Book Review

A review of the book all about the American Jury.

Page 33

The Belief in a Just World

A research review. You've heard of the "just world" belief. What is it? How does it have impact on jurors? What can you do to use this belief in support of your particular case?

Page 35

Discover the Power of *Conceptual Persuasion*SM By Karyn J. Taylor

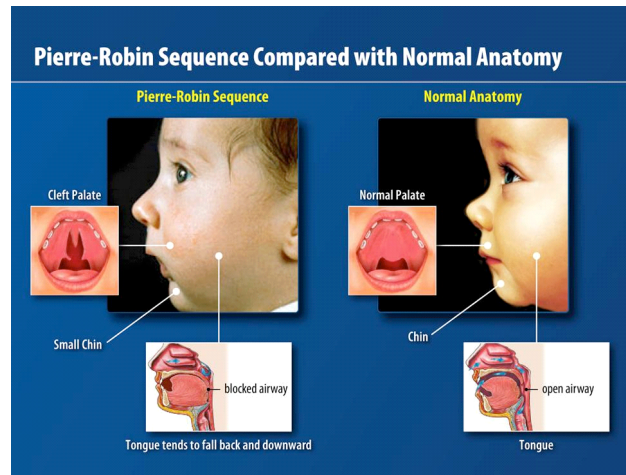
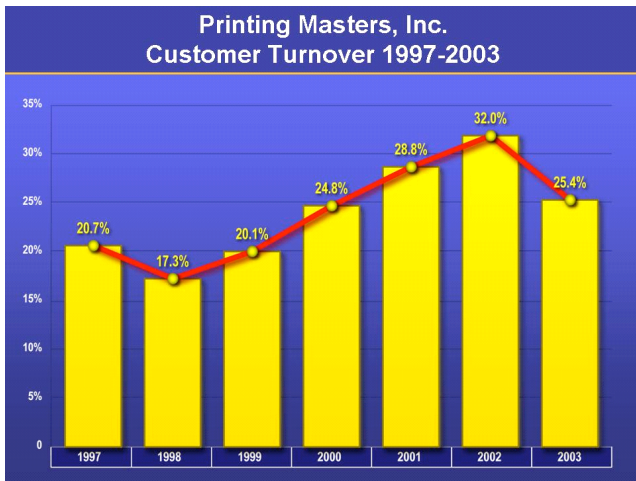
There is only one true measure of a good legal graphic: does it persuade the trier of fact to “buy in” to your client’s point of view? That, after all, is the point of *any* courtroom presentation, and it makes no sense to spend your time (or your client’s money) creating graphics that won’t have a positive impact on the judge’s opinion or the jury’s vote.

Even with the best of intentions, however, many graphics fail to deliver. They simply have not been designed to change hearts and minds. To discover where the problem lies, let’s look at the panoply of legal graphics.

The most commonly produced type of courtroom graphic is the reiterative graphic. As its name implies, it reiterates key case information.

Reiterative graphics are great for:

- Presenting statistics or tracking trends,
- Providing tutorials on virtually any subject, or
- Condensing case facts and information into one simple image that jurors can easily absorb and remember.



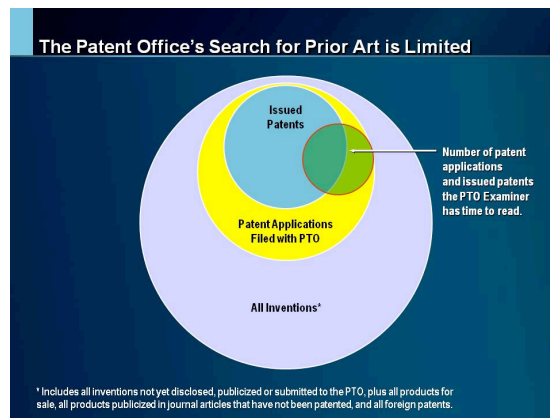
But reiterative graphics rarely convince judges or juries to see the case through your client’s eyes. The reason is simple: reiterative graphics typically appeal only to the intellect.

To have an impact on the verdict, you must forge an *emotional* bond between fact finders and your client. That’s the job that conceptual graphics are designed to do.

Conceptual graphics...

- Deliver your key case themes & messages
- Reinforce your case story
- Translate your case story into indelible images, and ideally...
- Provoke an *emotional* response

A graphic that delivers your key case themes or reinforces your case story is of obvious value. So, too, is a graphic that turns words or concepts into memorable images.



But why is provoking an emotional response so critical? Because decades of research have shown that people are ruled by their emotions, not their intellect.

In fact, virtually *every* decision we make is dictated by one subconscious but universal need: to feel good about ourselves. Whether we're making major life decisions (what career to pursue; which house to buy; whom to marry), or are simply making everyday choices (which suit shall I wear?), we are subconsciously satisfying our need to be able to look ourselves in the mirror and feel good about who we see.

Of course, we *think* we're basing our decisions on rational thought and clear-eyed intellectual evaluation. We often tout product benefits and features as proof. But psychologists -- and advertisers -- know better. Madison Avenue regularly exploits our emotional needs in order to seduce us into buying all kinds of things we don't physically need, perhaps can't afford, but just *have* to have.

In court, judges and jurors are ruled by emotion too. No matter how objective they vow to be -- and no matter how high the "mountain of evidence" you build -- in the end, a judge will rule, and jurors will vote, not with their heads, but with their hearts. Both may quote the law, cite the facts, or tout the evidence as justification, but they will find for your client only when they can feel good about *themselves* in doing so. The process is largely subconscious, but self-interest trumps intellect every time.

Conceptual graphics are designed to capitalize on that viewer self-interest. They do so by strategically exploiting the viewer's worldview.

A worldview is the sum of all the beliefs, prejudices, and attitudes a person has accumulated over a lifetime. It is the prism of preconceived notions through which a person perceives reality -- the mindset with which he/she travels through life.

While each person's worldview is a function of his/her cultural, socio-economic, educational, religious, and racial background, his/her psychological make-up, and his/her life experiences, there are many widely held beliefs that people share.

COMMONLY HELD BELIEFS

- **Punishment should fit the crime.**
- **A promise made should be a promise kept.**
- **An apple doesn't fall far from the tree.**

When your case story and your graphics reinforce, confirm, or validate what fact finders already believe, your odds of winning increase dramatically. The trick is in knowing exactly *what* fact finders believe relevant to the specific issues in your case.

If you're facing a bench trial, you must research prior rulings (or discreetly poll court personnel), to gain insight into the judge's point of view on your type of case. If you're facing a jury trial, formal jury research is the best way to determine jurors' worldviews. Research is indispensable in complex civil litigation, but is advisable in simpler cases too. Many a litigator has lost a case assuming that jurors' beliefs mirrored their own.

Whether you do formal research, or rely on your instinct and experience instead, winning hinges on your ability to identify *which* commonly held belief "trumps" another in fact finders' minds.

For example, in a criminal defense case, jurors who believe that “Murder is morally wrong” might still acquit because they more strongly believe that “Accidents happen,” “Love makes us do foolish things,” or that “Insane people can’t be held accountable for their actions.”

Once you’ve determined your fact finders’ beliefs, conceptual graphics can capitalize on and reinforce those beliefs.

In a patent infringement case, for example, the verdict might hinge on jurors’ ability to comprehend the Doctrine of Equivalents. If you take the reiterative approach and merely state the doctrine, certainly *some* of the jurors will get the message.

The Doctrine of Equivalents

A product infringes a patented invention if it...

- Performs substantially the same **function**
- In substantially the same **way**
- And yields substantially the same **result** as the patented invention.






This is called the “**Function, Way, Result**” test for infringement.

The Reiterative Approach

Translate those words into an image that exploits a commonly held belief, however, and jurors will not only “get” the message, they will more likely adopt it as their own.

The Doctrine of Equivalents

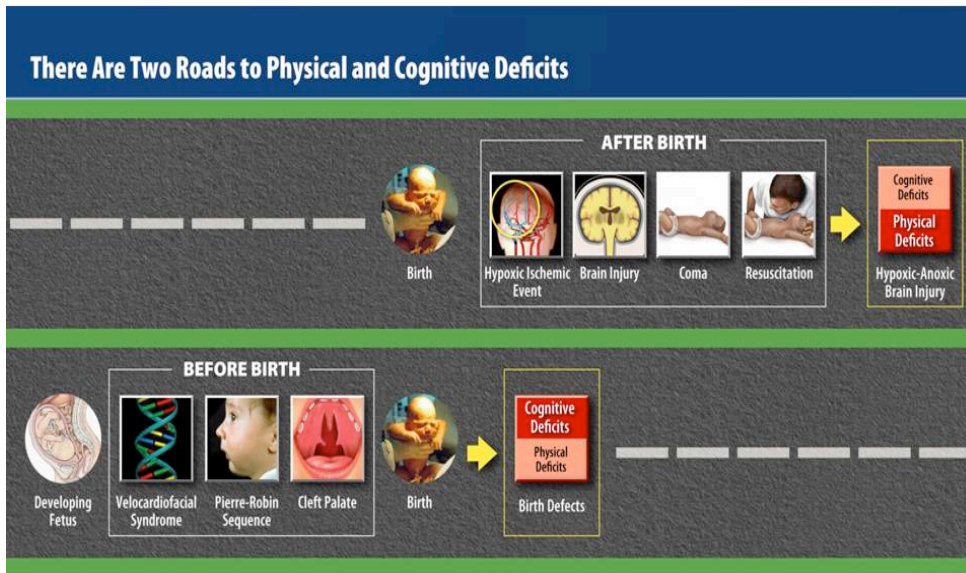
In other words...

- if it looks like a 
- walks like a 
- quacks like a 
- it's not a  it's a 

The Conceptual Approach

Conceptual graphics need not always be so explicit to be effective. They can be just as powerful when their underlying themes are not stated, merely implied.

In a medical malpractice case, for example, it was imperative that jurors realize that a baby’s cognitive and physical deficits may not have been caused by doctors’ mistakes. The graphic below reinforced the commonly held belief that there is usually more than one way that something can occur (“Many roads lead to Rome”), and opened jurors’ minds to the possibility that Mother Nature, not the doctor, was at fault.



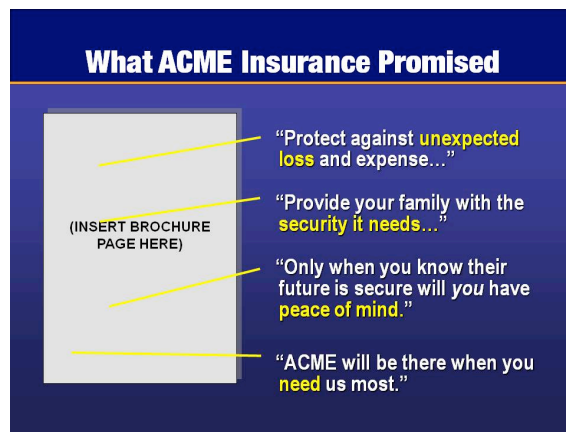
While conceptual graphics typically use strong visuals to evoke a visceral response, words alone can be used to trigger emotions.

For example, in representing the Plaintiff in an insurance bad faith case, you might explain the purpose of health insurance in generic terms during Opening Statement...

Why Do People Purchase Insurance?

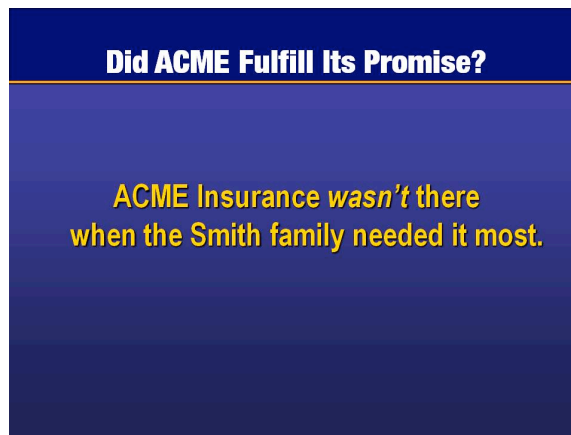
- To provide a financial **“safety net”** in times of need
- To protect against **unexpected loss**
- To provide **security** for their loved ones
- For **peace of mind**

Reiterative graphic designed for Opening Statement



Documentary evidence presented in a reiterative graphic for Case-in-Chief

...use Case-in-Chief to establish (through witness testimony and documentary evidence) that the Defendant’s sales brochures made similar promises...



Conceptual graphic designed for Closing Argument

...then pull out the stops in Closing Argument by using a conceptual graphic that delivers your key case theme with an emotional kicker.

What you have done, strategically, is to...

- (1) Use Opening Statement to exploit commonly held beliefs and trigger juror self-interest; (“*Yes, that’s why I buy insurance.*”)
- (2) Introduce documentary evidence within that (now *personalized*) context; and...
- (3) “Seal the deal” in Closing Argument by unleashing jurors’ visceral fears of betrayal and abandonment. (“*How would I feel if my insurer did that to my family?*”)

You have not only framed the key issue to your client’s advantage, but you’ve raised the stakes for jurors, forcing them to “put some skin in the game.” Jurors will now be more likely to *care* about the outcome of the case, and will be much more likely to identify with your client’s plight.

When used in tandem with conceptual graphics, “reiterative” graphics can thus function in a conceptual way, both triggering the visceral response *and* providing the intellectual rationale fact finders need to justify their emotionally-

based decisions. The Opening Statement “reiterative” graphic in the sample above has done exactly that. It is a conceptual graphic masquerading in reiterative form.

Would judges or jurors be as ready to “buy in” to the Plaintiff’s point of view if *only* reiterative graphics were used? Not likely. Information alone rarely prompts a change of heart. Conceptual graphics exploit a point of view – the *viewer’s* worldview – providing the emotional “hook” that compels fact finders to vote in your favor and feel good about doing so. They have found validation because you have confirmed what they already “know” or believe.

The strategic use of reiterative and conceptual graphics is at the heart of *Conceptual Persuasion*.SM Use it to change minds *and* hearts, and you’ll maximize your odds of winning every case, every time.

Karyn J. Taylor (thestrategicimage@ca.rr.com) is a trial consultant and visual storyteller based in Los Angeles. A former broadcast journalist (*60 Minutes*, *20/20*, *Frontline*) trained to make the complex compellingly simple, she helps clients maximize the persuasive power of testimony, argument, and evidence. To learn more about Karyn and her approach to maximizing your odds of winning, visit www.thestrategicimage.com. To use the copyrighted graphics in this article for your trial, mediation, or arbitration, please contact the author.

Citation for this article: *The Jury Expert*, 20(4), 1-7.

**Why share?
Get your own
copy--it’s the best
way to read TJE!**

**Subscribe [here](#)
and we’ll email
you when we
publish again!**

**TJE-->Always
free....**



November's issue of *The Jury Expert* is filled with practical tools to use in a changing world. Whether you want tips on engaging liberals, conservatives, women, varying generations or using the just world belief system to your advantage--it's all here. Plus strategies for cross-examination of narcissistic witnesses and learning about reiterative and conceptual graphics....what more could you want? Something to read? Check out our book review.

The Jury Expert is a trial skills journal. Our goal is to be a resource for information on the latest in social sciences research and how those findings can aid your litigation advocacy efforts as well as a place to see what trial consultants are doing, thinking, and considering.

Tell us what you would like to see in future issues to build your arsenal of tools. Make your requests known via an email and we'll get right on it! What do you want to see in upcoming issues? What topics? More of what? Less of what? Do tell..

Here's a sampling of what we have coming up in future issues: race in juries, confidentiality issues in pre-trial research, a Snyder/Batson update, how disgust figures into decision-making, authoritarianism and litigation, many kinds of bias and how to work around it. And much more. Thanks for being a part of *The Jury Expert* and if you like us, tell your friends and colleagues.

Rita R. Handrich, PhD



The Jury Expert [ISSN: 1943-2208] is published
bimonthly by the:

American Society of Trial Consultants

1941 Greenspring Drive
Timonium, MD 21093
Phone: (410) 560-7949
Fax: (410) 560-2563
<http://www.astcweb.org/>

The Jury Expert logo was designed in 2008 by:
Vince Plunkett of *Persuasium Consulting*
<http://www.persuasium.com/>

Editors

Rita R. Handrich, PhD — Editor
EditorTJE@astcweb.org

Kevin R. Bouly, PhD — Associate Editor
AssocEditorTJE@astcweb.org

The publisher of *The Jury Expert* is not engaged in rendering legal, accounting, or other professional service. The accuracy of the content of articles included in *The Jury Expert* is the sole responsibility of the authors, not of the publication. The publisher makes no warranty regarding the accuracy, integrity, or continued validity of the facts, allegations or legal authorities contained in any public record documents provided herein.

ASTC 
AMERICAN SOCIETY OF TRIAL CONSULTANTS