

Litigation Technology and Persuasion: A Guide for Commercial Trial Attorneys

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Commercial disputes are decided by people. Jurors and judges follow predictable patterns of attention, memory, and decision-making that behavioral science has studied for decades. At the same time, the volume and complexity of commercial disputes, from multi-year damages models, technical intellectual property, and layered contractual relationships, have grown faster than any fact-finder's capacity to absorb them through narrative alone.

We will examine how litigation technology, including visual advocacy tools, jury research tools, and generative artificial intelligence, can help bridge that gap. Technology adds value when it helps make a complex story easier to follow. It should support sound legal judgment, not replace it, and simplify rather than complicate.

As Commercial Cases Grow, Persuasion Gets Harder

Commercial cases rarely turn on a single dramatic fact. More often, they depend on a judge or jury's ability to connect a long chain of events, documents, and financial data and then decide which story makes the most sense. That has always been hard, and three trends are making it harder:

- **Case records are larger than ever,** as electronic discovery, expert damages analyses, and multiparty corporate transactions generate large amounts of information
- **Expectations around communication have changed,** and jurors who consume information through visual, digital media expect clarity and structure that verbal-only presentations often fail to provide

- **Corporate legal departments face ongoing pressure to reduce risk,** so they want evidence that a strategy will work, rather than relying on assumptions or experience alone

The solution is not more slides or more technology. Effective persuasion comes from using the right tools with purpose, guided by a well-defined case theory and an understanding of how people absorb, process, and weigh information.

What the Science Says About How Decision-Makers Decide

Decades of jury research point to three consistent findings that should shape how commercial trial attorneys build and present a case.

1) The Story Model: Jurors Decide by Narrative



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Jurors do not evaluate evidence by tallying points for each side. They develop a story from the facts presented, then decide which version of events best fits the evidence and the instructions they receive. Research on juror cognition (notably the "story model" developed by Pennington and Hastie[1]) suggests that jurors make sense of a case by organizing evidence into a coherent narrative. The side that presents the most complete and believable story, with a clear sequence of events and understandable motivations, often gains an advantage that goes beyond the strength of any single piece of evidence.

For trial attorneys, that makes the case organization much more than an administrative task. It is a core part of persuasion. When evidence aligns with the story of the case, rather than the order it surfaced during discovery, decision-makers are more likely to follow it, understand it, and accept it.

2) Dual Coding: Words and Visuals Work Together

Cognitive psychology's dual coding theory suggests that people understand and remember information better when they receive it through both verbal and visual channels rather than either channel alone.[2] Working memory is also limited, and most adults can hold only a small amount of new information at once. A dense, text-heavy explanation of a multi-year licensing dispute or a complex breach-of-contract timeline can quickly exceed that capacity. Jurors may then fall back on simplified, and sometimes inaccurate, mental shortcuts.

Well-designed demonstratives, such as timelines, relationship maps, and damages waterfalls, do more than decorate a presentation. They provide a shared reference point that reduces the burden on working memory and helps jurors organize and retain critical information. That is one reason demonstratives improve comprehension and recall in mock trial testing.

3) Anchoring, Primacy, and Recency: Order Shapes Judgment

Numbers and impressions introduced early tend to anchor later judgments, even when a fact-finder consciously tries to disregard them. Jurors also disproportionately remember what they hear first (primacy) and last (recency) in any given presentation. This affects how trial attorneys should sequence a damages number, structure an opening, and close each witness examination. It also shows the strategic value of testing that sequence in advance rather than guessing

Jury Research: Testing the Case Theory Before Trial

The most reliable way to determine whether a case theory, theme, or damages number will resonate is to test it before trial through focus groups, mock trials, and structured venue research. This is where litigation technology and behavioral science intersect most directly.

Modern mock trial platforms let a case team present competing themes to a representative panel, capture reactions in real time, and analyze how specific arguments, witnesses, or exhibits influenced individual jurors. That analysis can surface findings that intuition alone would miss, such as:

- **A theme** that seems compelling to the trial team but falls flat with lay jurors
- **A damages** figure that anchors jurors in the wrong direction
- **A witness** whose credibility reads differently on video than in a conference room

Juror Reactions in Real Time

Interactive response technology shows counsel how jurors are thinking during a mock trial exercise. Jurors use electronic response pads to record their reactions after each presentation of evidence. Software such as The Advantage®, IMS's proprietary juror insights application, can aggregate results in real time and show counsel how particular arguments, themes, or evidence are being received.

Comparing Witnesses with Their Peers

Analytical technology can also strengthen witness evaluation. Mock juror reactions to a witness can be captured and compared with reactions to similar witnesses from past jury exercises. Supervisors, HR representatives, executives, inventors, and expert witnesses can be measured against their peers. These comparisons can help the case team decide how to prepare or position a witness and, where appropriate, whether to call the witness at all.



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Visual Advocacy: Turning Complex Evidence into a Clear Story

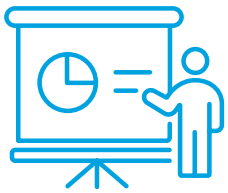
Visual advocacy is the deliberate use of graphics, animations, interactive timelines, and courtroom presentation technology to make a case easier to follow and more convincing.

What Strong Demonstratives Accomplish

Well-crafted visuals do several things a purely verbal presentation cannot do as effectively:

- **Organize time:** A multi-year course of dealing, a chain of custody, or a sequence of corporate approvals can be shown as a single visual timeline that a fact-finder can scan in seconds and refer back to throughout trial
- **Make relationships visible:** Corporate structure charts, contract chains, and data-flow diagrams let jurors see how entities and obligations connect rather than reconstructing that structure from testimony alone
- **Tie the story to the record:** A graphic tied directly to admitted exhibits, rather than just an advocate's characterization of them, reinforces that the story being told is what the documents actually support
- **Illustrate events, devices, and scientific principles:** Each listener pictures an event differently, and computer animation lets everyone see the same picture, bringing to life complicated devices and scientific principles that words or a technical diagram cannot explain alone

An important consideration for trial attorneys is restraint. A demonstrative should simplify the story being told, and it should hold up line by line against the record, because opposing counsel will test exactly that. Visual noise, unnecessary animation, or unsupported inference does more harm than a plain exhibit board because it invites an attack on the presentation itself, not just its content.



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A Practical Checklist for Demonstrative Design

Before a demonstrative goes before a judge, jury, or arbitrator, test it against a few practical questions. The checklist below covers what attorneys should confirm about each graphic and why it matters to decision-makers, so every visual supports the case theory and holds up under scrutiny.

Question	Why It Matters to Decision-Makers
Does this graphic map to a single element of the case theory (liability, causation, or damages)?	Multi-purpose graphics dilute the point and are easier for opposing counsel to attack piecemeal.
Can every figure or date be traced to an admitted exhibit?	Demonstratives that outrun the record undermine the advocate's credibility if challenged.
Would a decision-maker understand it correctly in under ten seconds, unaided?	Working-memory limits mean anything that requires explanation defeats its own purpose.
Has it been tested with a mock audience unfamiliar with the case?	Case teams are too close to the facts to judge comprehension objectively.
Do the judge's courtroom technology and local rules support it?	A demonstrative that cannot be displayed cleanly at trial has little persuasive value.

Checking the Technology Before Trial

Before planning an electronic presentation, trial counsel should confirm what audiovisual technology the venue provides. Arbitration and mediation facilities may offer built-in presentation systems. Sometimes these are adequate, but supplemental monitors or other equipment may be needed depending on the room layout and the decision-makers' needs. An existing display is not useful if the arbitrators cannot read it easily from their seats.

The same caution applies in court. Many courtrooms have dedicated monitors for the judge, witness, jurors, and counsel, but the connections and display setup should be tested before they are needed. Courtroom systems do not always work as expected, so additional equipment or a backup presentation may be required.

Using Trial Presentation Software

Trial presentation software lets attorneys show demonstrative evidence, scanned documents, video deposition excerpts, and other electronic evidence to decision-makers in an organized way. Even the largest matters can be loaded into the software, such as the platform offered by OnCue Technology, and the evidence can be organized by event, by witness, or both. In court, the software gives the team on-the-fly control over what appears on screen in court.

Many legal teams in major cases hire a technology consultant, sometimes called a trial technician or hot seat operator, to run the presentation software in court. A seasoned operator working alongside the legal team helps ensure the right evidence comes up quickly and reliably.

They review witness outlines ahead of time and confirm that all evidence is ready. Professional courtroom presentations help the trial attorney persuade, while a poorly run one can be a major distraction.

Generative AI: An Accelerator, Not a Substitute



Generative AI has quickly become a routine tool in litigation practice, and commercial trial attorneys are right to ask how to use it responsibly. A useful framing is that AI works best as an accelerator of expert judgment, not a replacement for it.

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Where AI Adds Value

- **Review and categorize large document sets** in a quick first pass, freeing attorney time for judgment calls on the documents that matter most
- **Draft chronologies, deposition outlines, and demonstratives** for a human to verify against the record
- **Spot patterns across large damages models** or transaction histories that would be impractical to review manually within a litigation budget
- **Synthesize jury research data** across multiple mock panels to identify which themes moved opinion most consistently

Where Human Judgment Is Irreplaceable

AI systems can process volume. They cannot exercise courtroom judgment, look jurors in the eye, read the room, sense when a point is landing poorly, or decide when a technically accurate argument will nonetheless sound evasive. Knowing which fact will move a jury, how a specific judge is likely to read an argument, and how to adjust in real time requires trial experience that current AI tools lack. AI outputs can also be confidently wrong, including fabricated citations or mischaracterized source documents, which makes independent verification a professional obligation rather than an optional best practice. Bar associations in multiple jurisdictions have already issued guidance treating the duty of competence and candor to the tribunal as extending explicitly to AI-assisted work product.[3]

That does not mean AI has no place in the trial attorney's toolkit. Used carefully, it can help counsel move quickly from an abstract theme to a concrete visual concept. In a securities case, for example, if the argument is that a company was "walking a tightrope of procedures," and trial counsel decides late in the process to add that idea to an opening statement, an AI image tool could generate a simple first-pass visual analogy in seconds. That kind of speed can be useful, but the final decision about whether the visual is accurate, tasteful, admissible, and persuasive still belongs to the trial team. Keep in mind that changing an AI-created image is not always simple or quick.

The practical rule for a legal team is straightforward: use AI to expand what the team can review and draft, and then rely on experienced counsel and consultants to decide what actually goes in front of a fact-finder.

Building a Technology-Enabled Persuasion Strategy: A Framework

Bringing the preceding sections together, commercial trial attorneys can apply a simple five-step framework when deciding how to use technology in a given case.

1. **Diagnose the comprehension problem:** Identify the specific place in the case where the fact-finder is most likely to lose the thread; technology should target that point rather than the case as a whole
2. **Ground the theme in tested behavioral evidence, not assumption:** Where the stakes justify it, test competing themes, sequencing, and damages framing with a representative panel before committing to them at trial
3. **Choose the simplest technology that solves the diagnosed problem:** A one-page visual timeline that a jury can hold in mind is often more persuasive than an elaborate interactive exhibit that requires explanation
4. **Verify everything against the record:** Experienced counsel should check every AI-assisted draft and every demonstrative against the underlying evidence before it is used with a fact-finder or filed with the court
5. **Confirm the presentation setup:** Make sure the audio/visual technology is working, and that you have a reliable hot seat operator running the show

Technology Supports Persuasion; Strategy Wins Cases

Commercial disputes are not won through technology alone, but through clear, credible, and well-supported narratives. However, when used thoughtfully and tested carefully, technology can help connect a strong case theory with a fact-finder's ability to understand and accept it. Rather than adopting each new tool that comes to market, apply the same discipline as with every aspect of trial prep: evaluate their value, test their effectiveness, and confirm their reliability. Ultimately, better litigation outcomes are driven by cohesive teams that combine sound judgment, thorough preparation, and persuasive storytelling, with technology serving as a powerful supporting role.



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IMS helps trial attorneys turn complex matters into stories that decision-makers can follow. Our trial graphics and presentation technology teams prepare demonstratives that stay tied to the record, while our jury consultants test themes, witnesses, and damages framing before trial. With our interactive technology, The Advantage®, you can see how arguments are received in real time during jury research. **Contact us today to discuss how we can support your cases.**

References

[1] Nancy Pennington and Reid Hastie, "A Cognitive Theory of Juror Decision Making: The Story Model," *Cardozo Law Review* 13, no. 2–3 (1991): 519, https://larc.cardozo.yu.edu/clr/vol13/iss2/17.

[2] Paivio, Allan. *Mental Representations: A Dual Coding Approach.* New York: Oxford University Press, 1986.

[3] American Bar Association Standing Committee on Ethics and Professional Responsibility. *Generative Artificial Intelligence Tools.* Formal Opinion 512. July 29, 2024. https://www.lawnext.com/wp-content/uploads/2024/07/aba-formal-opinion-512.pdf.

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