# TRUSTED STRATEGISTS

## EXPERIENCED IN RESEARCH AND PERSUASION

PERSUASION STRATEGIES™

[redacted]

# OUR EXTENSIVE CONSULTING EXPERIENCE

The litigation consultants, data analysts, and trial graphics professionals with Persuasion Strategies have regularly studied judges and potential jurors in and around the Los Angeles area over the past 20+ years.

We bring unique experience working on high profile matters, and have worked on matters involving well-known defendants with high dollar claims at stake.

The consultants with Persuasion Strategies have helped attorneys prepare for litigation and dispute resolution using mock trial research, case strategy sessions, mock trials (online and in person), social media research, jury selection, witness preparation, focus group research, voir dire consultation, mock arbitration, venue analysis, and the creation of demonstrative graphics.

# ENVIRONMENTAL CONTAMINATION LITIGATION

The Persuasion Strategies team has significant experience with cases involving environmental contamination going back 30 years. Our work has included contamination of groundwater, air, bodies of water, and land within and outside of the Superfund arena. We have assisted fertilizer companies, waste treatment facilities, nuclear facilities, paper companies, synthetics companies, utilities, transportation companies, railroads, and chemical companies. In addition, we have assisted over 45 oil and gas and mining companies, including the nation's major energy suppliers, in cases involving environmental claims.

Our work has included conducting mock trials and focus group research, case strategy assistance, witness preparation for deposition and trial, demonstrative exhibit consultation, opening statement strategy, and jury selection including venire analysis, drafting of juror questionnaires and voir dire questions, high-risk juror profiling, and trial monitoring. This work has been in Louisiana, Texas, Mississippi, New Mexico, California, Utah, Florida, Kansas, Utah, Pennsylvania, Colorado, Alaska, New Jersey, Oregon, Missouri, Washington, Oklahoma, Nebraska, West Virginia, Georgia, Wyoming, Montana, Arkansas, Illinois, and Idaho.

The Persuasion Strategies team has observed certain patterns of jury decision making in environmental contamination litigation that appear to transcend venues and cases. Among those patterns, a few include:

- The 1960's and 1970's were "eras of ignorance" about many kinds of pollution, groundwater contamination and the effects of chemicals on the human body. Today in environmental contamination litigation, most jurors assume companies employ scientists on staff and that company scientists should know about all possible contamination hazards associated with company operations.
- Jurors typically view environmental contamination through a "values" filter. In that mode, they use terms in evaluating the case according to the parties' "fairness", "rightness", "ethics", and the like. When judging the litigants, they often rely on their own experience with environmental safety.
- In most environmental contamination cases, jurors believe that the bottom line drives the decisions of corporations. In fact, 85 – 90 percent of jurors believe that it is somewhat to very common for companies to harm the environment for the sake of financial gain.
- Jurors perceive government regulations to be minimal standards that companies should not only meet but exceed. Thus, a defendant company arguing that it met applicable regulations is typically not a persuasive argument.
- While almost all jurors seek to relate a case to themselves and their experiences, environmental contamination jurors translate cases into consumer benefit and/or consumer harm. Plaintiffs benefit from demonstrating that a company's conduct will ultimately adversely affect consumers just as defendants benefit from demonstrating consumers are not harmed by the alleged contaminants.

## EXAMPLES OF OUR ENVIRONMENTAL LITIGATION WORK

- Led by Senior Litigation Consultant Dr. Shelley Spiecker, we are the joint defense consultant of choice for the nation's top five oil and gas companies in significant environmental litigation on the East Coast. With more than 150 cases filed that claim damages in the hundreds of billions of dollars, we have conducted a series of focus groups and mock trials, advised on case strategy, and assisted in preparing fact and expert witnesses in this massive environmental docket.
- We assisted a top five American oil and gas company in Nevada's federal court. The Plaintiffs claimed nuisance, trespass, and negligence based on alleged contamination of their ranching property and sought millions in remediation, loss of use, and nuisance damages. We conducted mock trial research, consulted on witness presentation techniques, developed case strategy, theme and opening statement recommendations, suggested voir dire questions to submit to the Court, conducted social media analysis of the venire and assisted with on-site jury selection. After several weeks of trial the jury returned a complete Defense verdict.
- We conducted mock trial research in two different environmental disputes in Louisiana. In each instance, given the publicity of the cases and the nature of the parishes in which the cases were positioned, we 'matched venue' to conduct the research in parishes corresponding to the characteristics of the actual parishes while protecting the confidentiality of the research. In each situation the respective companies used the research results in settlement discussions and were able to resolve the matters in a manner they felt was a success.
- We consulted for a Defendant energy company defending claims that its coal bed methane (CBM) operations polluted a rancher's water supply, leading to the alleged death of some of the rancher's cattle and harming agricultural resources. With time limitations prohibiting the execution of pretrial research, we drew upon our knowledge of obstacles in water rights litigation and our unparalleled expertise in energy litigation and helped the Defense trial team refine case themes, draft an opening statement, create demonstrative exhibits, and assisted with jury selection. During the Defense case-in-chief, the case settled favorably for our CBM producer client.
- In the trial of a case in which the Plaintiff landowner presented a land remediation plan in excess of $75M plus punitive damages, we conducted mock trial research and identified the key criteria jurors wanted to see in the ultimate remediation plan. We assisted expert witnesses on behalf of the Defendant oil and gas company in the messaging of the Defense alternative remediation plan which totaled approximately $1.5M. We created demonstrative exhibits, assisted with the case messaging and trial strategy, opening statement, and jury selection and worked behind the scenes during trial preparing witnesses. After a lengthy trial the jury retired to deliberate and quickly returned a verdict totaling the exact amount of the Defense remediation plan.
- In a case filed in 2008, but which took over seven years to achieve the most successful result, the dispute involved the contamination of a large aquifer over a 50-year time period. We helped coordinate the trial messaging strategies for three corporate Defendants sued regarding the quantity, quality, and safety of the groundwater. We conducted mock trial research and learned that the Defense established a far more persuasive case by addressing the perceived threat, acknowledging (safe) responsibility and by developing messages to reassure fact finders that the contamination issue was under control through remediation. The case was successfully dismissed on summary judgment.

# CLASS ACTION LITIGATION

Persuasion Strategies has significant class action experience going back more than 25 years, including several high-profile cases valued in the billions of dollars. We have provided research and consulting services beginning at the class certification stage on through jury selection and the jury debriefing stages.

We have observed certain patterns of jury decision-making in class action litigation that appear to transcend venues. Among those patterns, a few include:

- Certain jurors are persuaded that the fact of a group of plaintiffs indicates the case must have some merit.
- Jurors' responses to the case differ greatly depending on whether the class formation was initiated by attorneys, by the court, or by the class members. They are far more suspicious of attorney-initiated classes.
- The "face" of the representative plaintiff is key. Jurors scrutinize the sophistication of this person as both indicative of the remainder of the class and as a measure of what plaintiffs could have known to mitigate their own damages in the case.
- With regard to damages, jurors think seriously about the "per capita" award. Given the large magnitude of class action damages, they also tend to focus strongly on the effect of an award on the plaintiffs' lawyers' pocketbook. For both plaintiffs and their attorneys, class action juries often question whether the award will effect change for future problems with the cause or issue.

## EXAMPLES OF OUR CLASS ACTION LITIGATION WORK

- We assisted a large national restaurant chain in an hour and wage class action employment dispute in Missouri, conducting mock trial research and developing trial strategy recommendations. In that matter, jurors' staunch feelings of conservatism tempered their rather unique loyalty to the companies they perceive as being "good" employers not only in the state but nationwide. Our mock trial research informed our case strategy – balancing the story of why the employer "did the right thing" in calculating employees' time and overtime, with the story of why hardworking employees were incorrect in their claims against our retailer client.
- We assisted a Fortune 25 company in defense of an oil and gas royalty dispute involving a class of royalty owners. In that case, we provided mock trial research, trial strategy recommendations, jury selection and oral voir dire strategy, analysis of the jury pool and more. The matter was eventually resolved.
- In a case venued in Colorado federal court we recently assisted a nationwide grocer defend claims turning on whether certain positions were appropriated classed as exempt or nonexempt. We conducted early-stage focus group research which was instrumental in helping defense witnesses articulate case themes in deposition. With discovery approaching, we are in the planning stages of comprehensive mock trial research.

## AVIATION LITIGATION

We have consulted on numerous cases involving aviation injuries and fatalities, including claims of defect and/or improper maintenance of driveshaft and seal assemblies, rotor malfunction, failures of inner and outer couplings, packing seal irregularities, and compression screw errors. We have helped defend claims of negligent technicians, maintenance, testing, and certification. In some of these cases pilot error has been a potential defense, in other cases it has not. Additionally, we have worked with a nationwide airline on several dozen labor and employment cases over the past decade.

In the past four years we have worked on four substantial aviation matters: a Nueces County, Texas matter; a case venued in Lake Charles, Louisiana involving manufacturing and maintenance issues including claims of failure to perform regular audits; the crash of a 'Flight for Life' helicopter for a case in Denver, Colorado; and a case in Houston, Texas in which a pilot presumed to have taken Benadryl crashed in the southwestern United States and we were asked to assess the jury impact of an emotional nearly hour-long 911 call audiotape of the crash lone survivor.

While many of our aviation matters specifically relate to injury or death, we can draw on a wealth of data and insights from our work with environmental contamination matters and our knowledge of the technical intricacies of the aviation industry to inform this case.

## LOS ANGELES EXPERIENCE

Our work in California has taken us to nearly every corner of the state. We understand the diverse demographics of California include subpopulation clusters comprised of various ethnic groups, educational experiences, and political leanings. Though these factors can make the jury research process in California rather complex, our insights and experience can guide your persuasive strategy.

We have advised on more than 50 matters based in jurisdictions in and around Los Angeles since 2012, predominantly advising defense counsel on professional liability matters.

Outside these primary kinds of consultations, we have advised on a wide range of litigation types throughout the Los Angeles area including employment, property damage, product liability, personal injury, insurance, negligence, and wrongful death. Attorneys in and around Los Angeles county have turned to our experience to gain insights during focus groups, mock trials, voir dire, case strategy sessions, and jury selection.

### EXAMPLES OF OUR WORK IN THE CENTRAL DISTRICT OF CALIFORNIA

- We have advised the Los Angeles Unified School District on more than a dozen matters over the past five years, including venue analysis, mock trial and focus group research, witness preparations, jury questionnaires and social media research, and in-court jury selections.
- We have consulted with physicians in professional malpractice defense litigation throughout the Los Angeles area for at least three decades.

# OUR COMPREHENSIVE SERVICES

Our litigation consulting group supports your case with the innovation and experience of a nationally-recognized team of experts. We pride ourselves on the creativity of our team members, our ability to analyze information, and our capacity for making data-driven, well-reasoned recommendations throughout your litigation.

We help you: refine your trial strategy, prepare for your audience (judge, jury, or arbitrator), enhance your discovery message, select your jury, make your case visually, or settle your case. Our hourly rates range from $230 to $640. We are happy to provide recommended estimates and/or flat fees for the following services once we have a better understanding of your matter and needs.

## CASE STRATEGY

In our case strategy development, we include an analysis of case strengths and weaknesses, recommended case theme and structure, effective use of language and analogy, and depending on your case needs, key witness messages and conceptual development of key demonstrative exhibits.

## WITNESS PREPARATION

With the participation of counsel, we help witnesses frame effective, truthful responses on potential topics and work to remedy communication styles that distract from witness credibility. The hallmark approach our Persuasion Strategies consultants use is to be direct but encouraging with the witness. As social scientists, we care deeply about helping witnesses tell the truth as effectively as possible with their own voices. We can assist with witness preparation for depositions, trials, and arbitration.

## SETTLEMENT SERVICES

When resolving matters outside the courtroom, attorneys turn to us for case valuation, arbitration messaging, mediation consulting, visual theme design, mock arbitration, and recommendations for settlement statements or video.

## MOCK TRIALS, FOCUS GROUPS, AND COMMUNITY ATTITUDE SURVEYS

We provide counsel and clients with a detailed opportunity to explore the ways jurors will understand your case broadly, or react to specific aspects of the case such as a single issue, strategic choice, or key witness. We design, execute and analyze community attitude surveys to ascertain a comprehensive assessment of the prevailing experiences and attitudes in a venue and how our case themes and messages are likely to intersect with jurors' predispositions.

## VISUAL PRESENTATION SERVICES

Our award-winning graphic artists can support your case by creating custom charts, timelines, graphs, and other demonstrative graphics to enhance the persuasiveness of your arguments in the courtroom. Our team can shoot photos and videos on location, or create 3D animations and models to visualize complex processes.

## JURY SELECTION

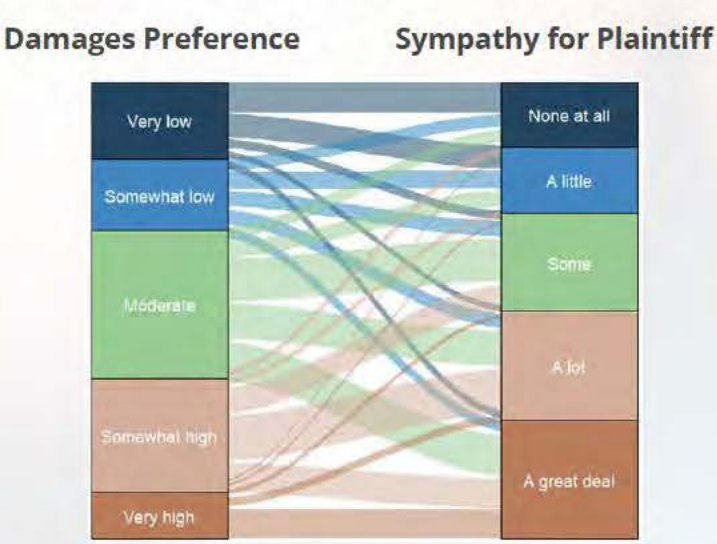
We draw on comprehensive jury research to tailor our jury recommendations to the type of case, the legal and factual issues, and the venue. Our work is efficient and effective because we are never starting a case from scratch. Persuasion Strategies has consolidated data from hundreds of mock trials and focus groups conducted over many years.

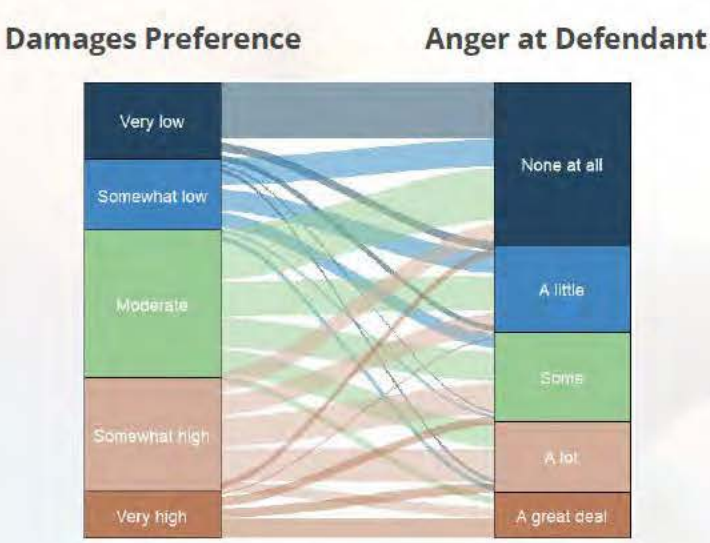
## BIGJURY DATA

Compiling data from over 20 years of focus group and mock trial findings in addition to our annual Nationwide Jury Survey [2004 – 2024] we have created a proprietary database, called BigJury, enabling us to analyze the interaction of things such as jurors' attitudes toward anger and sympathy in relation to their damage decisions. As one example, we used BigJury to examine the relationship between emotion, desire for change, and damages preferences. We analyzed data from 510 mock jurors who heard in-depth case presentations and made individual-level verdict decisions.

Mock jurors rated what magnitude of damages they felt were appropriate for the case, their sympathy for the plaintiff, anger towards the defendant, and their desire for their verdict to impact the parties and the world at large.

We found anger and sympathy are moderately correlated with damages preference. There are small correlations between damages preference and desire to impact the plaintiff, desire to impact the defendant, then desire to impact the world at large.




## PROPOSED RESEARCH QUESTIONS

We would begin research by probing the main case concepts with foundational questions like:

- If admissible, how might information regarding personal injuries impact the class's property damage claims?
- What is the lowest common denominator target for teaching the technical issues of the case and how is this best addressed with trial messaging (includes theme and demonstrative testing)?
- What bearing, if any, does the socioeconomic status of the plaintiffs have and how do we best mitigate negative impact and enhance helpful factors (e.g., home sales prices, lack of environmental impact testing)?
- What are the best ways to allow jurors to independently question the Plaintiff experts' work and conclusions?
- Which fact witnesses are most persuasive (for both sides) and how can we leverage these witnesses to our advantage?
- What case messaging narrative is most effective in helping jurors sit in the pilot's seats understanding their decision making processes at the time?

# REFERENCES FOR RELEVANT WORK

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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# EXAMPLE TWO-DAY RESEARCH SCHEDULE: DAY ONE

| Day One | | |
|---|---|---|
| Time | Minutes | Activity |
| 8:00 a.m. – 8:30 a.m. | 30 | Jurors Check-In, Breakfast, Complete Check-in Questionnaire A |
| 8:30 a.m. – 9:00 a.m. | 30 | Juror Orientation / Statement of the Case |
| **OPENINGS** | | |
| **9:00 a.m. – 10:30 a.m.** | **90** | **Plaintiff's Opening Presentation** |
| 10:30 a.m. – 11:10 a.m. | 40 | Completion of Questionnaire B / Break |
| **11:10 a.m. – 12:40 p.m.** | **90** | **Defense's Opening Presentation** |
| 12:40 p.m. – 1:30 p.m. | 50 | Completion of Questionnaire C / Lunch Break |
| **FACT WITNESSES** | | |
| **1:30 p.m. – 2:00 p.m.** | **30** | **Plaintiff's Fact Witnesses**<br>*(Once a witness list is provided, we can determine the final schedule)* |
| 2:00 p.m. – 2:30 p.m. | 30 | Completion of Questionnaire D |
| **2:30 p.m. – 3:00 p.m.** | 30 | **Defense's Fact Witnesses**<br>*(Once a witness list is provided, we can determine the final schedule)* |
| 3:00 p.m. – 3:35 p.m. | 35 | Completion of Questionnaire E / Break |
| **EXPERT WITNESSES** | | |
| **3:35 p.m. – 4:05 p.m.** | **30** | **Plaintiff's Expert Witnesses**<br>*(Once a witness list is provided, we can determine the final schedule)* |
| 4:05 p.m. – 4:35 p.m. | 30 | Completion of Questionnaire F |
| **4:35 p.m. – 5:05 p.m.** | 30 | **Defense's Expert Witnesses**<br>*(Once a witness list is provided, we can determine the final schedule)* |
| 5:05 p.m. – 5:35 p.m. | 30 | Completion of Questionnaire G |
| 5:35 p.m. – 6:00 p.m. | 25 | Buffer for Live Presentations |
| 6:00 p.m. | | Jurors Dismissed |
| **6:00 – 7:00 p.m.** | | **Client Debrief – Day Two Finalization** |

# EXAMPLE TWO-DAY RESEARCH SCHEDULE: DAY TWO

| Day Two | | |
|---|---|---|
| Time | Minutes | Activity |
| 8:00 a.m. – 8:30 a.m. | 30 | Jurors Check-In, Breakfast, Questionnaire H |
| CLOSINGS | | |
| **8:30 a.m. – 9:30 a.m.** | **60** | **Plaintiff's Closing Presentation** |
| 9:30 a.m. – 10:00 a.m. | 30 | Completion of Questionnaire I / Break |
| **10:00 a.m. – 11:00 a.m.** | **60** | **Defense's Closing Presentation** |
| 11:00 a.m. – 11:30 a.m. | 30 | Completion of Questionnaire J / Break |
| **11:30 a.m. – 11:45 a.m.** | **15** | **Plaintiff's Rebuttal** |
| 11:45 a.m. – 12:05 p.m. | 20 | Jury Instructions |
| 12:05 p.m. – 12:50 p.m. | 45 | Completion of Questionnaire K / Lunch Break |
| **12:50 p.m. – 4:30 p.m.** | **220** | **Jury Deliberations / Built in Breaks** |
| 4:30 p.m. – 6:00 p.m. | 90 | Post Verdict Group Interviews |
| 6:00 p.m. | | Juror Groups Dismissed |
| **6:00 – 6:30 p.m.** | | **Facilitators Provide Initial Findings / Client Debrief / Next Steps** |

# ESTIMATED BUDGET

## TWO DAYS OF RESEARCH

| | 3 Panels |
|---|---|
| **FEES ESTIMATED** | [redacted] |
| **CONSULTANT RESEARCH FEES**<br>Includes design, document review, and on-site consultation from three Ph.D. consultants. | |
| **RESEARCH STAFF SUPPORT**<br>Includes schedule design, preparation management, and support/data display on-site. | |
| **AUDIOVISUAL STAFF SUPPORT**<br>Includes preparation and on-site support for our AV team members to support the attorney presentations, client closed-circuit viewing room and live stream for remote attendees. | |
| **EXPENSES ESTIMATED** | |
| **ROOM RENTAL**<br>Includes the conference rooms and check-in space for the group presentations, deliberation space, client viewing and onsite PS team. | |
| **AV EQUIPMENT & PALLET SHIPPING**<br>Includes projector screens rental and freight shipping of the palleted AV equipment. | |
| **FOOD SERVICE**<br>Includes breakfast, lunch and afternoon snack for participants and onsite client viewers over the two-day project. | |
| **MOCK JUROR FEES**<br>Includes recruitment and incentive pay for 46 in venue, demographically aligned, mock jurors for a robust 3 panel mock trial over two days.<br>**ELECTRONIC DATA COLLECTION**<br>Includes real-time data collection from the mock jurors with a complete data view via iPads for each onsite client and access to those streaming remotely. | |
| **ESTIMATE BEFORE ADD-ONS** | |
| **STRATEGY SESSION**<br>An up to 6-hour debriefing and strategy recommendations meeting via video conference. | |
| | |
| **TOTAL ESTIMATE** *(including strategy session)* | |

***This estimate of the research project cost reflects careful attention to both fees and expenses, including shipping if applicable. [redacted]ses are not included if applicable. Mock trial research dates booked on a Monday or Friday may incur increased audio visual staffing fees to accommodate for weekend setup and travel.*** *Circumstances in which fees and/or expenses exceed the estimate are: 1) additional services provided at your request which are beyond the scope of the original project; 2) significant change by counsel to the research project design; 3) significant delay by counsel in meeting deadlines; and 4) rescheduling by counsel of the research project dates once design is underway. In the event the project cost is less than the estimate, we will bill only for the amount actually accrued.*

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## YOUR CONSULTING TEAM

**SHELLEY C. SPIECKER, PH.D**
Senior Litigation Consultant
P 720.231.1197
sspiecker@persuasionstrategies.com

Dr. Shelley Spiecker has been advising attorneys on case strategy and litigation persuasion for 30 years. She has extensive experience persuading legal fact finders including judges, jurors, and arbitrators. Dr. Spiecker advises litigators on how to strategically present issues and arguments, and she helps transform individuals from nearly any background into credible and effective witnesses. She is a nationally recognized speaker on litigation-related topics.

**Specializations:** Case strategy development, witness preparation, jury selection, mock arbitrations, mock hearings, and mock jury research

**KEN BRODA-BAHM, PH.D**
Senior Litigation Consultant
P 303.295.8294
kbrodabahm@persuasionstrategies.com

Dr. Ken Broda-Bahm has provided research and strategic advice on several hundred cases across the country for more than 20 years, emphasizing the areas of legal persuasion and rhetoric. As a tenured Associate Professor of Communication Studies, Dr. Broda-Bahm has taught courses on legal communication, argumentation, persuasion, and research methods. He has trained and consulted in 19 countries around the world and is a past President of the American Society of Trial Consultants.

**Specializations:** Voir dire, community attitude surveys, opening/closing statement strategy, witness preparation, arbitration and mediation, post-trial juror interviews

**JOSH HABY**
Litigation Consultant
P 303.293.5974
jahaby@persuasionstrategies.com

Litigators look to Josh for real-world insights into jury-eligible Americans from mock trials, focus groups, and individual interviews. Josh plays an active role in designing and executing research to study the motivations and attitudes of individuals across the United States. He is an enthusiastic advocate and brings insights that elevate case arguments and inform case strategy.

**Specializations:** Voir dire, mock hearings, mock jury research, and case preparation and strategy

PERSUASION STRATEGIES®

# TRUSTED STRATEGISTS

## EXPERIENCED PERSUADERS

PREPARED FOR [redacted]

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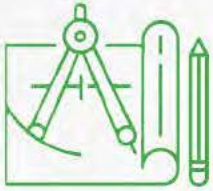

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# OUR MOCK TRIAL RESEARCH METHODOLOGY

Experienced litigators increasingly understand that a case isn't truly ready for trial until its strengths and weaknesses are fully assessed and its message is fine-tuned, using the tool of mock trial research. By viewing the case from the perspective of several independent juries, attorneys are able to use mock trial research to make more informed settlement decisions, more effectively prepare for mediation and trial, and structure the sequence of the arguments and evidence for maximum persuasive effect. Such feedback is invaluable in helping counsel focus its case using jurors' own terms. Persuasion Strategies' mock trial methodology involves:

- Recruitment of a mock jury pool (in a matched venue if necessary) mirroring the characteristics of jurors in the venire sufficient to both compare meaningful differences among individual jurors and create independent juries to analyze the case and return verdicts.
  - Unlike most of our competitors who rely solely on databases to recruit mock jurors, we include randomly recruited mock jurors and online sources to maximize the representativeness of our mock juror participants.
  - While our methodology is slightly more expensive than shortcut recruitment options, feedback from our clients regarding the quality of our mock jurors and our research findings validates our approach.

- We ensure that none of our mock jurors have participated in or had any experience with legal mock trial or focus group research within the past several years. Unlike other recruitment options, our mock jurors are not influenced by their prior research experiences. Post-stimulus presentation, we distribute participants into multiple jury groups to compare meaningful differences among individual jurors and to create independent juries to analyze the case and return verdicts. This typically includes strategic juror placement in independent juries to pit plaintiff- and defense-oriented jurors against each other to maximize the research findings.
- Intermittent administration of carefully designed written questionnaires throughout the presentation of case information to assess jurors' individual current leanings, witness assessments (if desired), and comprehension of key issues before being influenced by fellow jurors.

# OUR MOCK TRIAL RESEARCH METHODOLOGY, CONT'D.

- Attorney argument presentations which present the main narrative and central facts of each side's case, focusing the case on the essential elements. The test should constitute a worst-case analysis by making the opposition case as persuasive as possible.
- We consult with all presenting parties prior to execution of the mock trial research to give our recommendations on arguments and themes to test.
- Inclusion of witness testimony by video (if desired) to assess the influence of witness credibility and characteristics on the case. The mock trial is an ideal opportunity to gather jurors' feedback about key witnesses' credibility and messaging.
- Testing of key exhibits and demonstratives.
- Testing of the jury instructions and verdict form/jury charge.
- Strategic juror placement in different independent juries to pit plaintiff- and defense-oriented jurors against each other to maximize the research findings.
- A period of unmediated deliberation time during which the jury applies simplified instructions while completing a brief verdict form as a group. This enables us to observe which arguments jurors adopt (and/or create on their own) to persuade each other.
- A follow-up post-deliberation interview, led by a Ph.D. trained litigation consultant, focusing on the specific reasons for the jurors' verdicts, their likelihood to be swayed in an opposite direction, and their reactions to issues which may not have been fully vetted in deliberations.
- (If selected), preparation of a post-research Findings and Recommendations Report that not only synthesizes the research results but provides specific suggestions on theme and argument refinement, opening statement organizational structure, Juror Risk Analysis, and overarching trial strategy and language enhancement.

# ABOUT PERSUASION STRATEGIES®

The consultants with Persuasion Strategies have focused on jury research for more than 30 years, consistently surveying jury-eligible aged indiviudals across the United States. Our work with Plaintiff and Defense counsel has taken the team to all 50 states, except South Dakota.

We have two powerful tools that may be leveraged in many matters - our BigJury database of jury research findings and responses from our annual National Juror Survey. During all of our mock trials we ask specific questions to determine juror attitudes towards damages and capture case specific metrics into our proprietary BigJury database. These efforts, along with the National Juror Survey database of responses, allow our team to evaluate hundreds of jurors' demographic and experiential damage characteristics in the context of jurors' decisions in actual cases.

## EXPERIENCE WITH MATTERS INVOLVING:

- Antitrust
- Auto Accidents
- Bankruptcy
- Breach of Contract
- Class Action
- Construction
- Employment Discrimination
- Environment, Energy, and Natural Resources
- Finance and Contract Disputes
- Fraud and Securities
- High Stakes Litigation
- Insurance Coverage
- Labor & Employment
- Mining
- Oil & Gas
- Personal Injury
- Professional/ Commercial Negligence
- Real Estate
- RICO Claims
- Toxic Torts
- White Collar and Criminal Defense
- Workplace Safety

## REFERENCES

[redacted]

Supervising Counsel

[redacted]

[redacted]

Senior Partner

[redacted]

[redacted]

AVP I Complex Claim

[redacted]

# ABOUT ME

## SHELLEY SPIECKER, PH.D.

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View Bio

Dr. Shelley Spiecker has been advising attorneys and developing strategic trial solutions for over three decades.

A nationally sought-after speaker on litigation and trial persuasion strategies, she presents at organizations such as the Defense Research Institute, American Bar Association, and the National Institute for Trial Advocacy. Shelley currently serves on the Board of Directors for the American Society of Trial Consultants.

She is known for her fine-tuned abilities to work with witnesses to enhance credibility and likeability, and she uses her doctoral training in legal communication to help witnesses translate unfamiliar concepts into identifiable issues. With a passion for connecting with people, she instills confidence in hesitant witnesses and helps make experts on esoteric topics relatable to jurors.

Both inside and outside counsel look to Dr. Spiecker to synthesize research findings with creative strategy suggestions. Specializing in complex civil litigation matters, her work includes complex multi-defendant litigation to narrow single-issue disputes to bet-the-company cases.

PERSUASION STRATEGIES®

## PRACTICE SPECIALIZATIONS

Professional Liability

Construction

Commercial Litigation

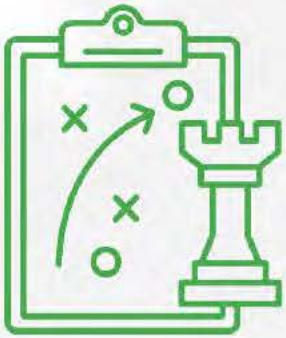
Oil & Gas

## AVAILABLE FOR CLE PRESENTATIONS

- Preparing the Empowered Witness
- Inside the Psychology of Nuclear Verdicts
- How Do "Alt Facts," "Fake News," and Millennial Jurors Affect Litigation Strategy?
- Jury Psychology in a COVID and Post-COVID World: Implications for Defense Counsel

## TRUSTED EXPERIENCE

Dr. Spiecker's clients include several U.S. Fortune 20 Companies who look to her for advice on navigating cases with difficult issues and high-stakes exposure. In addition to speaking to national legal association and industry groups she is frequently asked to present trial persuasion strategies to in-house counsel at these companies and others across the country, who view her as a trusted partner for their most challenging matters.



# ABOUT ME

## KEN BRODA-BAHM, PH.D.

SENIOR LITIGATION CONSULTANT
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View Bio

Dr. Ken Broda-Bahm has provided research and strategic advice on several hundred cases across the country for more than two decades, applying a doctorate in communication emphasizing the areas of legal persuasion and rhetoric.

As a tenured Associate Professor of Communication Studies, Dr. Broda-Bahm has taught courses including legal communication, argumentation, persuasion, and research methods. He has trained and consulted in 19 countries around the world and is a past President of the American Society of Trial Consultants.

Ken is a lover of new ideas, exotic places, innovative gadgets, and good arguments. He is married to the other Dr. Broda-Bahm (wife, Chris), and is the proud dad of his figure-skating and guitar-playing daughter Sadie.

PERSUASION STRATEGIES®

## PRACTICE SPECIALIZATIONS

Employment

Personal Injury

White Collar

Products Liability

Medical Malpractice

## AVAILABLE FOR CLE PRESENTATIONS

- Debiasing Your Jury
- Effective Communication Across Differences in the Age of Polarization and Fake News
- The Mongoose Seminar: Responding to the Reptile
- The COVID-19 Pandemic: How Has it Changed Legal Persuasion?
- What's the Real Difference - Judge, Jury, Arbitrator

## MORE FROM KEN

Ken is the primary author of the award-winning blog, Your Trial Message. He provides fresh insights on legal persuasion along with practical tips with an eye on current events. A must-read for litigators and other devotees of legal persuasion!

# ABOUT ME

## AVA ZWOLINSKI, PH.D.

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View Bio

Litigators look to Dr. Ava Zwolinski for real-world insights into jury-eligible Americans from mock trials, focus groups, and individual interviews.

Ava plays an active role in designing and executing research to study the motivations and attitudes of individuals across the United States. She works as an extension of the trial team, closely supporting litigators through antitrust matters, breach of contract claims, medical malpractice claims, and personal injury.



PERSUASION STRATEGIES®

## AREAS OF RESEARCH SPECIALIZATION

Conspiratorial Thinking

Misinformation

Corporate Communication

Organizational Communication

## AVAILABLE FOR CLE PRESENTATIONS

- Corporate Litigation and the Conspiratorial Juror
- The Mnemonic Consequences Associated with Sharing Personal Photographs on Social Media

## CONNECT WITH US

The Persuasion Strategies group is constantly studying jury-eligible individuals and providing content relevant to clients across the country. Contact us for a customized report for your region/matter, to schedule in-house training for your associates, or to participate in our ongoing research and survey efforts.

# TRUSTED STRATEGISTS

## EXPERIENCED IN RESEARCH AND PERSUASION

PERSUASION STRATEGIES™

# A CUSTOMIZED APPROACH TO CONSTRUCTION DISPUTES

Given the nature of the claims, the subject matter, and the target audience, we are confident that our experience and cost-effective methodology will add unparalleled value early in this process. Whether your company seeks support in defense against construction-related claims, counsel regarding non-jury persuasion, or experienced guidance through visual persuasion, we can help.

Our experience includes construction agreement disputes and breach of contract claims concerning design and delay, condemnation proceedings, insurance disputes, complex multiparty construction litigation and more – including unique experience navigating mold cases. We have consulted with contractors and subcontractors, builders, developers, suppliers and manufacturers.

## CONSTRUCTION LITIGATION

Our involvement early in the process can add unparalleled value for clients facing a range of construction-related disputes. We have worked with counsel representing developers, owners, family foundations, and construction companies on cases across the country. This work has led us to observe patterns of jury decision-making and unique challenges for construction cases. Jurors' meaningful experience and preconceptions about contractors coupled with communicating the technical nature of construction delays can create roadblocks to success, but our research and insights can help.

## ENVIRONMENTAL AND TOXIC TORTS

We have consulted with plaintiffs and defendants in energy litigation involving environmental contamination and toxic torts, as well as advising on numerous asbestos, mold, and maritime cases. Our work has demonstrated the impacts of addressing the adequacy of post and future clean-up efforts and jurors' commonly held views of asbestos.

## ARBITRATION

In addition to facilitating mock arbitration research, our experienced consulting team can support attorneys for arbitration through message review and witness preparation.

Mock arbitration research involves presenting summary arguments, parallel with the arbitration structure, to a panel of mock arbitrators chosen to reflect your actual panel. At various points throughout the process, we ask the panel to provide individual written opinions followed by an oral determination among the three panelists. Once the panel has reached a group decision, the identity of the client is disclosed to the arbitrators. We facilitate a group interview designed to elicit the panel's wisdom for refining the client's approach to the arbitration and thereby improving its chances at prevailing.

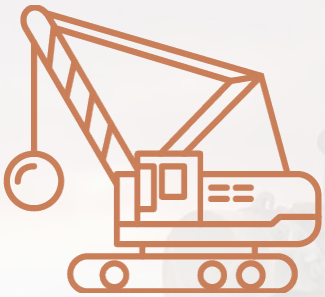
## DECISION-MAKING PATTERNS IN CONSTRUCTION LITIGATION

We have observed certain patterns of decision making in construction litigation that appear to transcend venues.

- Delayed completion and exceeded budgets are expected in construction and thus by themselves, these factors are not typically viewed as negligence. Parties are expected to have anticipated that nothing goes as planned in construction and to have made contingency plans for it.
- While contingency plans are the expected norm, so is routine clear communication. The party that can portray itself as the better communicator receives the benefit of the doubt.
- Fairness is factored into damage awards and in breaking ties on potential liabilities. 'Bread and butter' factors such as unpaid contractors or citizens impacted by construction are often key influences in damage determinations.
- Personal experience with construction, working with contractors, and even television viewing factors into construction case evaluation. As one mock arbitrator stated, "*If we have learned anything watching The Apprentice all these years it is that the buck always stops with the project manager.*"
- Construction cases are particularly susceptible to counterfactual reasoning ("if only" arguments). Examples include: "If only the project manager had not changed personnel mid-project" or "If only the contractor had gotten the permitting on time." The party with the more "if only" arguments applying to it is typically the party with the greater perceived responsibility.

# JURY THEMES IN CONSTRUCTION LITIGATION

Persuasion Strategies has conducted extensive research in cases involving construction litigation nationwide. Construction cases carry some unique challenges given: 1) the technical nature of issues leading to delays and increasing costs; and 2) the fact that jurors are likely to have meaningful experiences and strong preconceptions and biases about general contractors and subcontractors.



- Plaintiff-oriented jurors will want to know that you acted fairly and ethically. Only then will they focus on your follow-through with guidelines and standards.
- We have identified a "desensitization effect" whereby jurors are frequently tougher on plaintiffs who sue large corporations. This effect occurs especially if the problem over which the plaintiff is bringing the suit is known through either the media or local word-of-mouth.
- Jurors seek out external yardsticks with which to evaluate the defendants' conduct. The more choices jurors perceive a defendant has, the greater responsibility they attribute to the defendant.
- Construction litigation jurors scrutinize equally the actions of plaintiffs and defendants in these cases, often focusing on ways in which they would have mitigated their damages had they been in the position of the party.
- A construction professional's reliance on "custom and practice" as a central defense is often viewed with skepticism, given less sophisticated jurors' beliefs that lack of independent recall is a sign of negligence in and of itself.
- While almost all jurors seek to relate the case to themselves and their experiences, jurors in construction related cases translate cases into consumer benefit and/or consumer harm.
- Jurors in construction-related claims approach a case believing that nothing ever goes as planned with a project. They expect all parties to have anticipated this and to have planned for these contingencies.
- Construction jurors factor fairness into damage awards. They routinely consider the implied effect on third parties, such as subcontractors who may not have been paid, or citizens who may have been harmed by a construction delay.
- Jurors are more prone to split the baby of responsibility in construction cases than in other types of litigation.

# OUR RELEVANT EXPERIENCE

Persuasion Strategies brings significant experience in a variety of construction-related disputes including the spectrum of construction litigation types. We have analyzed the similarities and differences in how judges, arbitrators, and jurors make decisions in disputes involving construction delays.

Specifically, we have conducted research with a panel of arbitrators, a federal court judge, and assisted with trial strategy on construction cases involving a total of over 500 construction jurors and have compared and contrasted decision making by the three different types of fact finders, authoring an article on our key findings. We have also surveyed more than 600 arbitrators nationwide and compared their attitudes regarding issues in construction litigation to the attitudes of more than 450 jury-eligible respondents.

Some of our recent construction-related experience includes:

- Assisting the developer of an upscale resort in a Montana resort community that experienced considerable delay and cost overruns on the project adding over $8 million to the total cost. We conducted focus group jury research and provided case strategy assistance on themes that were used in the briefing and were espoused by key witnesses in the case. As a result of counsel's thematic approach to discovery, our client was able to settle prior to trial for close to the $8 million amount it was owed due to the delay and overruns.
- Worked on behalf of the owner of a strip mall in Colorado whose business was impacted due to the prolonged construction of a parking structure by an adjoining business that restricted consumer access to the strip mall. A key challenge in the bench trial was convincing the judge that the reduced customer traffic was due to the parking garage construction and not to the recessed economy that served as the backdrop in the litigation. We created demonstrative exhibits, helped prepare witnesses, and assisted with case strategy recommendations. The judge found in our client's favor, returning the amount of damages requested.
- Assisting a Utah family foundation sued by a developer for $5 million for his claimed role in developing commercial and residential projects causing the family foundation to increase in value by over $100 million. For the arbitration we conducted a two-day mock arbitration test with six mock arbitrators. This research accurately predicted the actual arbitration outcome which was to essentially split the difference between the $0 our client was asserting and the $5 million the developer asserted.
- Consulting for a construction company in Alaska seeking damages for work performed on the roofs of two schools without just compensation for change orders. In this smaller-sized case we provided recommendations on case themes, arguments, and demonstrative exhibits which counsel incorporated into briefing and oral argument. The case settled prior to the bench trial with our client receiving 80 percent of the damages it was seeking.
- Worked with counsel for a client in a construction case who filed suit against a general contractor and a dewatering subcontractor based on damages caused by delays and inadequate planning in dewatering a foundation for a luxury home in Aspen. Provided case strategy and theme, demonstrative exhibit design, and jury selection assistance.
- Worked with counsel for a client in a construction case who filed suit against a general contractor based on damages caused by inadequate moisture control in an indoor pool of a Colorado mountain luxury home. Provided case strategy and theme, demonstrative exhibit design, and witness preparation.

**KEN BRODA-BAHM, PH.D**
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Dr. Broda-Bahm has consulted on construction cases in both arbitration and jury venues in the Western United States, and across the country. His experience ranges from contract disputes to design and delay cases – to personal injury litigation connected and construction defect claims. Dr. Broda-Bahm has consulted with contractors and subcontractors, developers, suppliers, and manufacturers to design and execute mock trials and focus groups, prepare witnesses for deposition and trial, and assist with visualizing the construction case. His litigation support includes fine-tuning case strategy and developing an overarching message for settlement or trial.

**Specializations:** Voir dire, community attitude surveys, opening/closing statement strategy, witness preparation, arbitration and mediation, post-trial juror interviews

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Dr. Spiecker has consulted on construction cases in both arbitration and jury venues in almost every state in the U.S. Her experience ranges from contract disputes to design and delay cases – to personal injury litigation connected and alleged construction defect claims. Dr. Spiecker has consulted with contractors and subcontractors, developers, suppliers, and manufacturers. She and other members of the Persuasion Strategies team have extensive experience advising on construction, construction defects, and construction litigation matters in Alaska, California, Colorado, Idaho, Nevada, New Mexico, New York, Oklahoma, South Carolina, Utah, and Wyoming.

**Specializations:** Case strategy development, witness preparation, jury selection, mock arbitrations, mock hearings, and mock jury research

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Litigators look to Josh for real-world insights into jury-eligible Americans from mock trials, focus groups, and individual interviews. Josh plays an active role in designing and executing research to study the motivations and attitudes of individuals across the United States. He is an enthusiastic advocate and brings insights that elevate case arguments and inform case strategy.

**Specializations:** Voir dire, mock hearings, mock jury research, and case preparation and strategy

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