



AAJ Education's Trying Your Case in Conference Centers, Auditoriums, and Other Alternate Venues: Practicing During the Pandemic Project

AAJ Webinar
October 6, 2020

Faculty Include:
Lloyd N. Bell
Ian S. Birk
Jeffrey D. Boyd
Andrew Caple-Shaw
Bibianne U. Fell
Tobi M. Millrood
Elise R. Sanguinetti
Kimberly White

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(800) 622-1791 or (202) 965-3500, ext. 8612.

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AAJ Webinar
October 6, 2020

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TRYING YOUR CASE IN CONFERENCE CENTERS, AUDITORIUMS, AND OTHER ALTERNATE VENUES: PRACTICING DURING THE PANDEMIC PROJECT

Online | 2:00 – 4:15 pm ET

Tuesday, October 6, 2020

WEBINAR AGENDA

TUESDAY, OCTOBER 6, 2020

2:00 – 2:05 p.m.

WELCOME ANNOUNCEMENTS

Moderator: Elise R. Sanguinetti

*Arias Sanguinetti Wang Torrijos, LLP
Emeryville, CA*

2:05 – 2:10 p.m.

#AAJTOGETHER: PRACTICING DURING THE PANDEMIC PROJECT

- **Task Force on Civil Jury Trials in the Era of COVID-19**
- **The Robert L. Habush Endowment COVID-19 Jury Project**
- **Tracking State and Court Orders**
- **Complimentary Litigation Packets**
- **Live Webinars and Recording Library**

Tobi M. Millrood

*Pogust Millrood, LLC
Philadelphia, PA*

2:10 – 2:40 p.m.

TRANSFORMING YOUR DEMONSTRATIVES TO FIT THE NEW SPACE

Bibianne U. Fell

*Fell Law, PC & Athea Trial Lawyers
San Diego, CA*

2:40 – 3:00 p.m.

ALL THINGS TECH: HOW TO MASTER THE A/V SET-UP

Lloyd N. Bell

*Bell Law Firm
Atlanta, GA*

3:00 – 3:30 p.m.

COMMUNICATION STRATEGIES IN A THEATER-LIKE SETTING

Andrew Caple-Shaw

*ACT of Communication
Nashville, TN*

Kimberly White

*ACT of Communication
Seattle, WA*



3:30 – 4:00 p.m.

STRAIGHT TO THE POINT: TIPS FOR MESSAGING IN THE NEW ENVIRONMENT

Jeffrey D. Boyd
Nelson Boyd, PLLC
Seattle, WA

Ian S. Birk
Keller Rohrback, LLP
Seattle, WA

4:00 – 4:15 p.m.

QUESTION AND ANSWER SESSION

All-Faculty Panel

4:15 p.m.

ADJOURN

WELCOME

Trying Your Case in Conference Centers, Auditoriums, and Other Alternate Venues: Practicing During the Pandemic Project

If you have any technical issues, please call: (800) 622-1791

For more information on AAJ Education programs, please visit www.justice.org/CLE.

COMMUNITY

Practicing During the Pandemic Project

COVID-19 has resulted in unprecedented interruptions in jury trials across the country. The impact on juror attitudes and beliefs on science, accountability, healthcare workers, and more will affect how you prepare and try your clients' cases. And, as business owners, trial lawyers must be prepared for challenges of practicing in a pandemic. AAJ is here to help.

#AAJTogether

www.justice.org/pandemicproject



AAJ Presidential Task Force on Civil Jury Trials in the Era of COVID-19

President Tobi Millrood has appointed a Task Force on Civil Jury Trials in the Era of COVID-19. Led by Past President Ken Suggs, this taskforce is developing a brief on in-person voir dire and best practices guidelines on how to conduct jury trials during the pandemic, as well as tracking court orders issued nationwide on how to resume jury and bench trials.

#AAJTogether

www.justice.org/pandemicproject

FUNDED BY THE ROBERT L. HABUSH ENDOWMENT

COVID-19 Jury Research Project

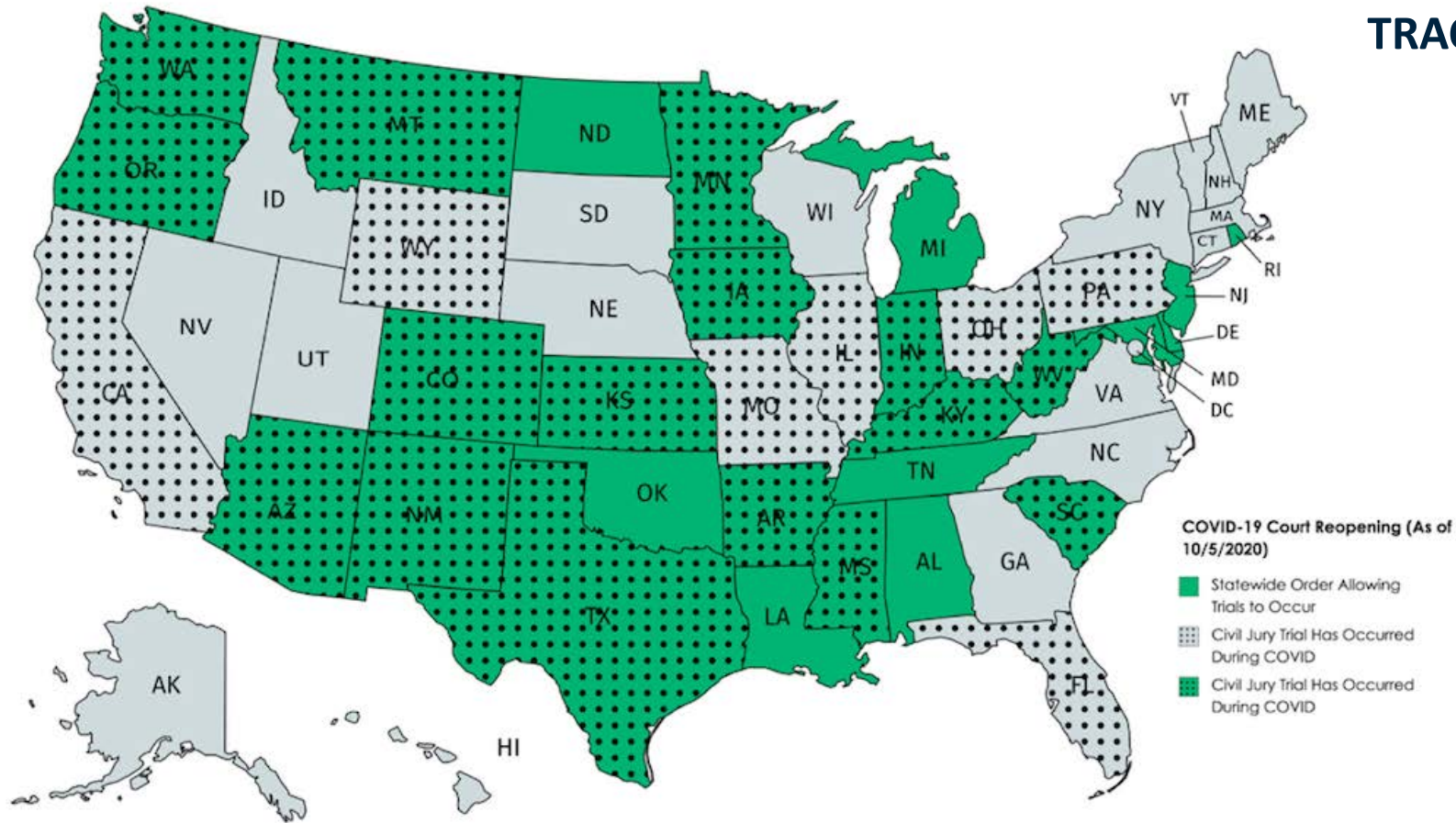
AAJ members Gregory Cusimano and David Wenner are conducting nationwide focus groups and surveys to assess the pandemic's effect on juror beliefs, perceptions, and decision-making. The research results and Task Force findings are being presented through AAJ Education webinars and other online resources.



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TRACKING STATE AND COURT ORDERS



- **26 states have a statewide order allowing trials to occur:**
AL, AZ, AR, CO, DE, IN, IA, KS, KY, LA, MD, MI, MN, MS, MT, NJ, NM, ND, OK, OR, RI, SC, TN, TX, WA, WV
- **22 states have held a civil jury trial during the pandemic:**
AZ, AR, CA, CO, FL, IL, IN, IA, KS, KY, MN, MS, MO, MN, NM, OH, OR, PA, SC, TX, WA, WY

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COMPLIMENTARY LITIGATION PACKETS

Managing Your Office During the COVID-19 Crisis

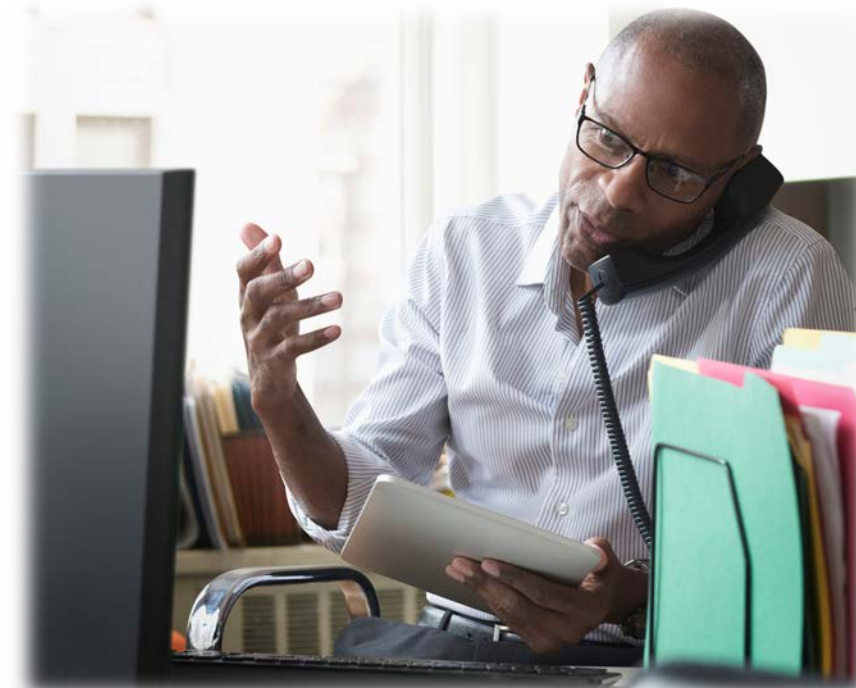
- Available for free download now

Survey of COVID-19 Malpractice Liability Limitations for Health Care Providers

- Coming soon

Best Practices and Other Resources for Conducting Jury Trials During the Pandemic

- Coming soon



#AAJTogether

www.justice.org/pandemicproject

VIRTUAL EDUCATION



Juror Decision-Making in the Wake of COVID-19

Tuesday, October 20, 2020 | 2:00 – 4:00 pm ET

Perfecting Remote Depositions Workshop: Technology Tips and Handling Exhibits

Friday, October 23, 2020 | 12:00 – 4:00 pm ET

Persuasion Techniques for Remote Hearings and Bench Trials

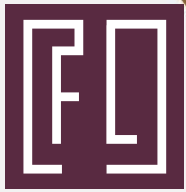
Available now for free download

Mindfulness, Resilience, and Productivity During COVID-19

Available now for free download

#AAJTogether

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FELL LAW

Trying Cases in Alternative Courtrooms

Fell Law, PC

bibi@fellfirm.com

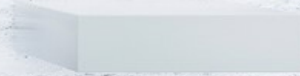
(858) 201-3960

www.fellfirm.com



One Big Experiment







Just be better than them



Finding Connection in a Socially Distant World





For those of you in the
back...



GRACE
PEOPLE

GRACE
PEOPLE







Equipment









<https://fellfirm.com/virtual-arbitration-shopping-list/>



Second Camera



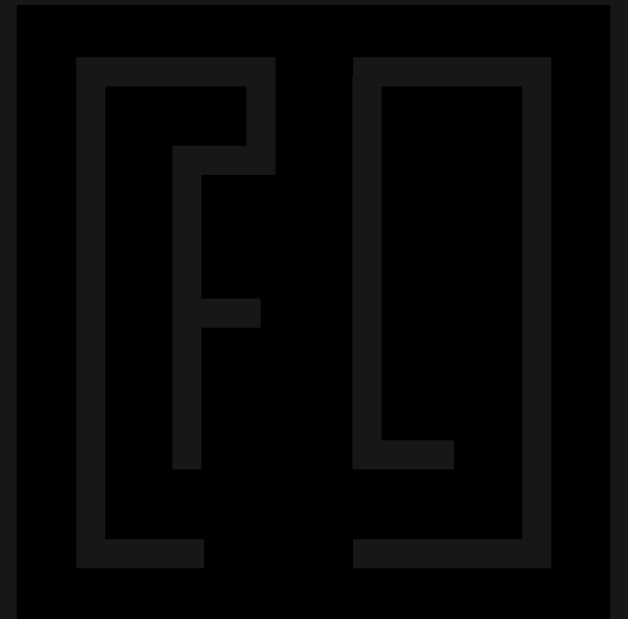


IPEVO



Be Boldly Visual

Timeline



UCSD Dr. Brodsky Kaiser Permanente

2016

Spence Chiropractic Center Dr. Lasker

Dr. Meskin Spine and sport Mancini

Dr. Raiszadeh Synergy MRI

February						
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23		25	26	27
28	29					

March						
		1	2	3		5
6	7	8	9	10	11	12
13		15		17		19
20		22		24	25	26
27		29	30			

April						
					1	2
3		5				9
10		12			15	16
17		19	20	21	22	23
24		26				30

May						
1		3				7
8	9	10		12		14
15		17		19	20	21
22			25	26		28
29	30	31				

June						
					3	4
5	6		8	9		11
12			15	16		18
19		21	22	23	24	25
26	27	28		30		

July						
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3	4	5			8	9
10		12		14	15	16
17		19	20		22	23
24		26		28	29	30
31						

August						
				4		6
7		9		11		13
14			17	18		20
21				25		27
28	29		31			

September						
					2	3
4	5			8	9	10
11	12	13			16	17
18	19	20		22	23	24
25	26	27		29	30	

October						
1	2	3	4		6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

November						
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22		24	25
26	27	28	29			

December						
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

4/14/16 –
First visit with Dr. Meskin

8/22/16 –
First visit with Dr. Raiszadeh

2/24/16 - CRASH

4/7/16 – First visit with Dr. Lasker

5/5/16 – Finished first PT sessions

9/15/16 MRI

8/2/16 – First acupuncture visit

8/24/16 – Finished first round of Chiro

10/31/16 Per Dr. Rasizadeh, surgical
Live with it if you can

4/17/17 – Finished 2nd round of PT

1/23/18 Dr. Meskin cannot help until
underlying conditions controlled

10/2/17 – Last 2017 visit with Dr. Lasker
Continues to fill Rx

11/26/18 - Raiszadeh
MRI to evaluate if a surgical candidate

8/2/19 – Dr. Lasker says candidate for Botox

10/31/19 First Lumbar Epidural (Dr. Kim)

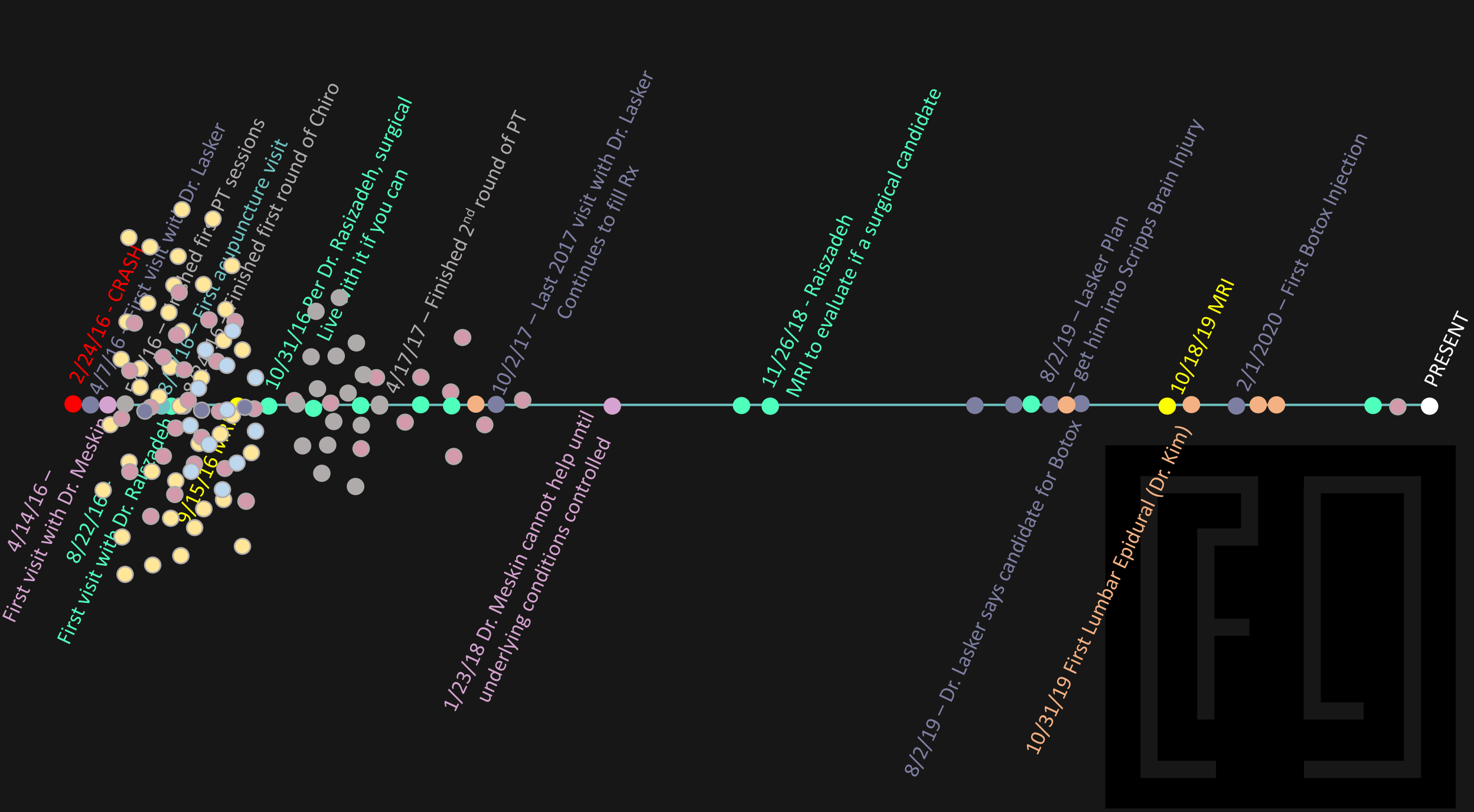
8/2/19 – Lasker Plan
– get him into Scripps Brain Injury

10/18/19 MRI

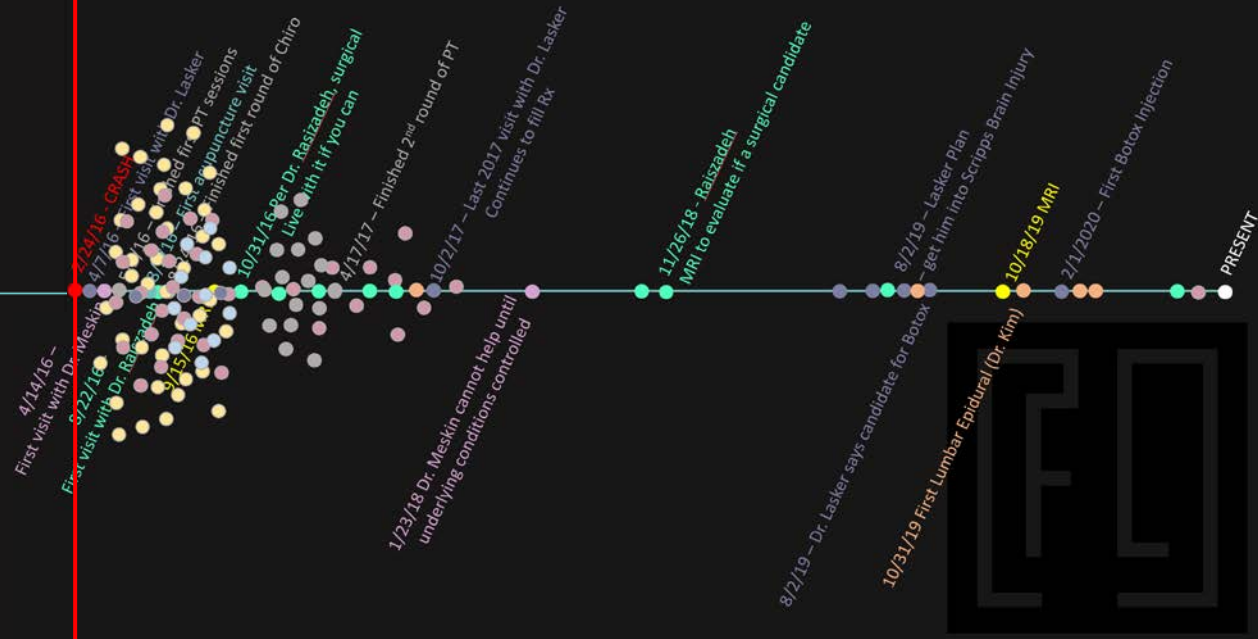
2/1/2020 – First Botox Injection

PRESENT
















8/29/78 Keady Saunders born



May 2013

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2 	3 	4 
5	6	7	8  	9 	10 	11
12	13 	14 	15	16	17	18
19	20	21	22	23	24	25
26		28	29	30	31 	

The background of the slide is a dark, atmospheric photograph of a cloudy sky. The clouds are dense and textured, with varying shades of grey and blue. A bright, ethereal blue light source is visible in the lower-left quadrant, casting a soft glow on the surrounding clouds. The overall mood is mysterious and dramatic.


COINCIDENCE

“COINCIDENCE”

84 years x 52 weeks = 4,368 weeks

0.02% chance





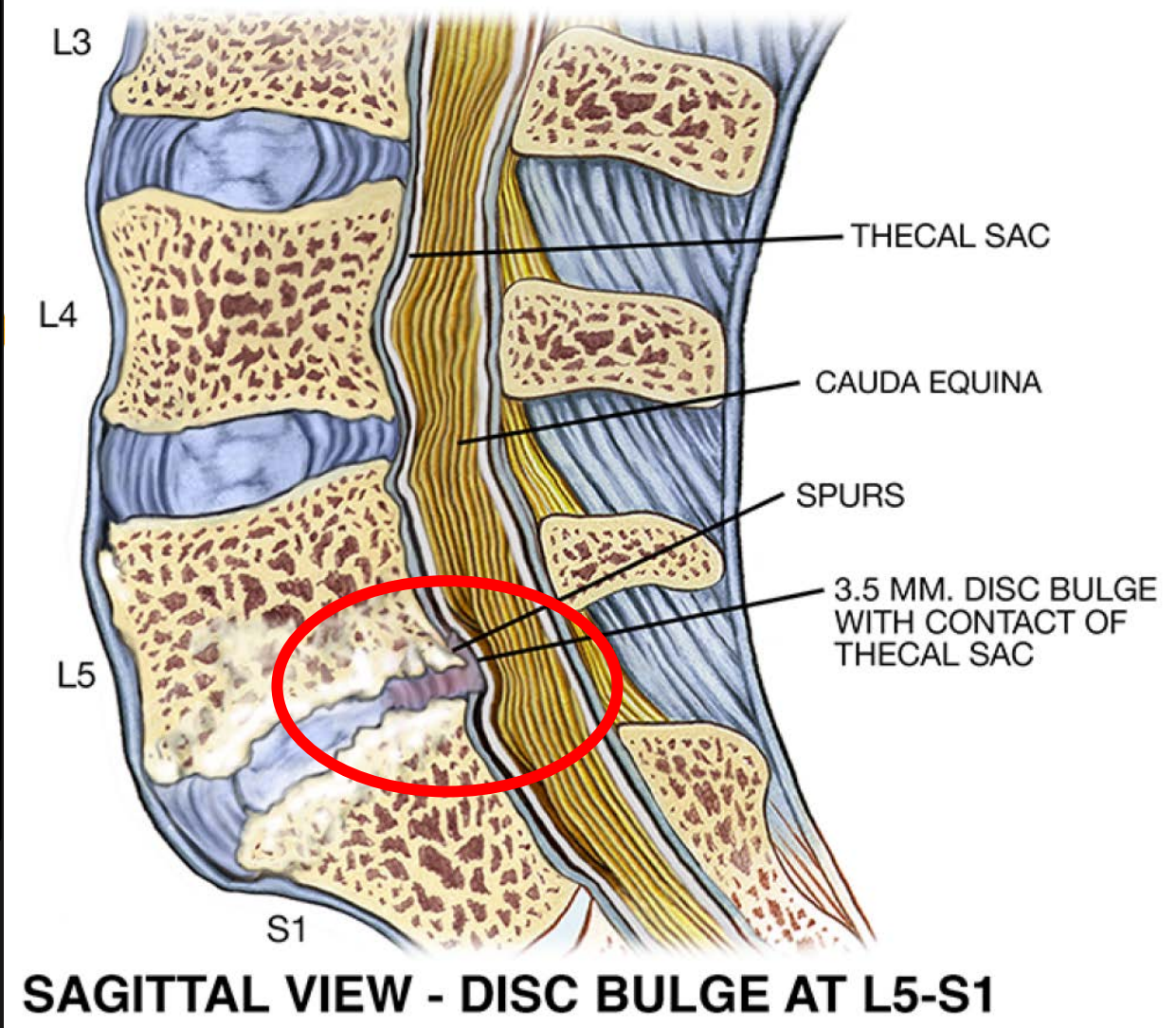
50.1%

More likely true than not.

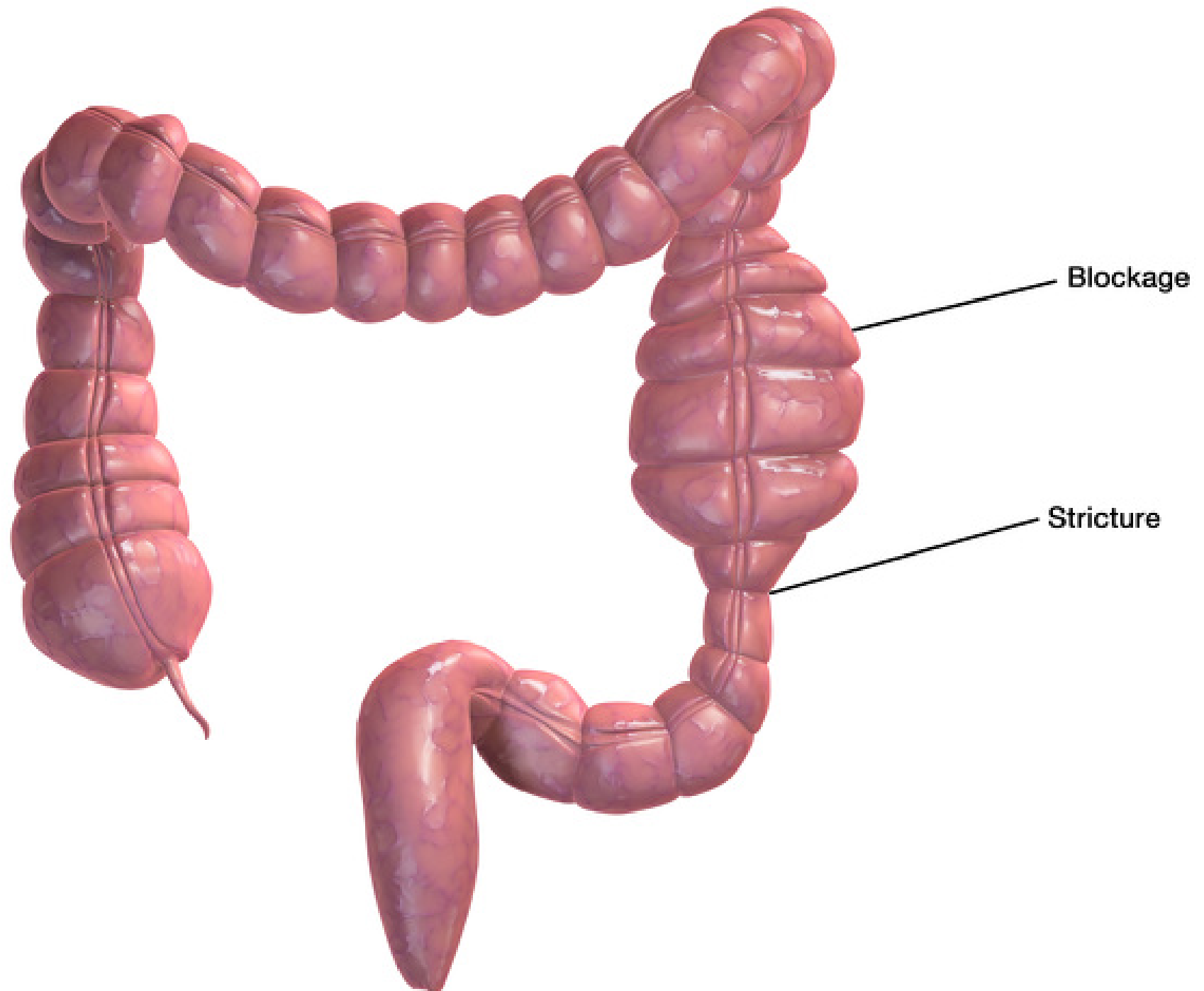
DISC BULGE AT L5-S1, LUMBAR SPINE – KEDDY SAUNDERS



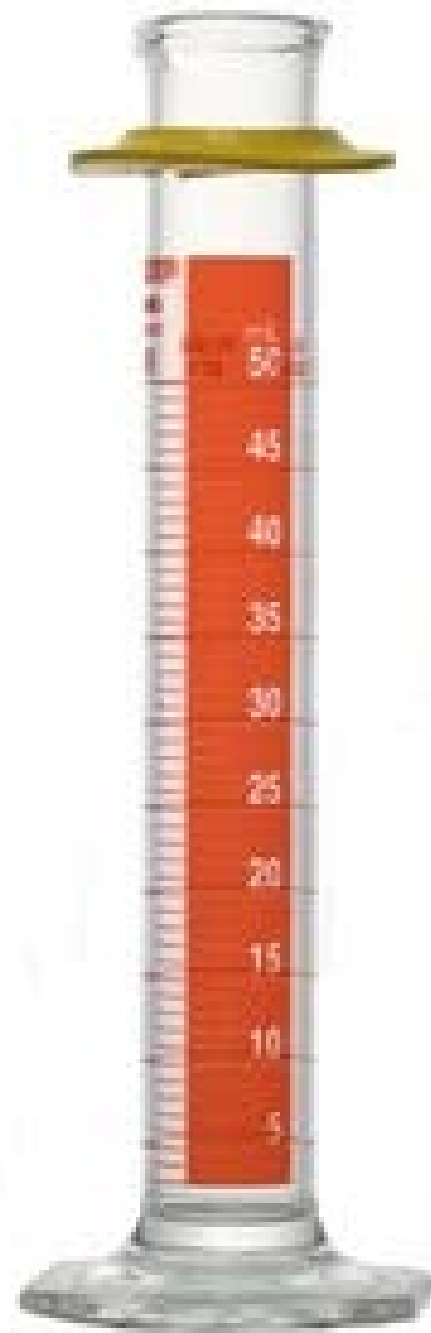
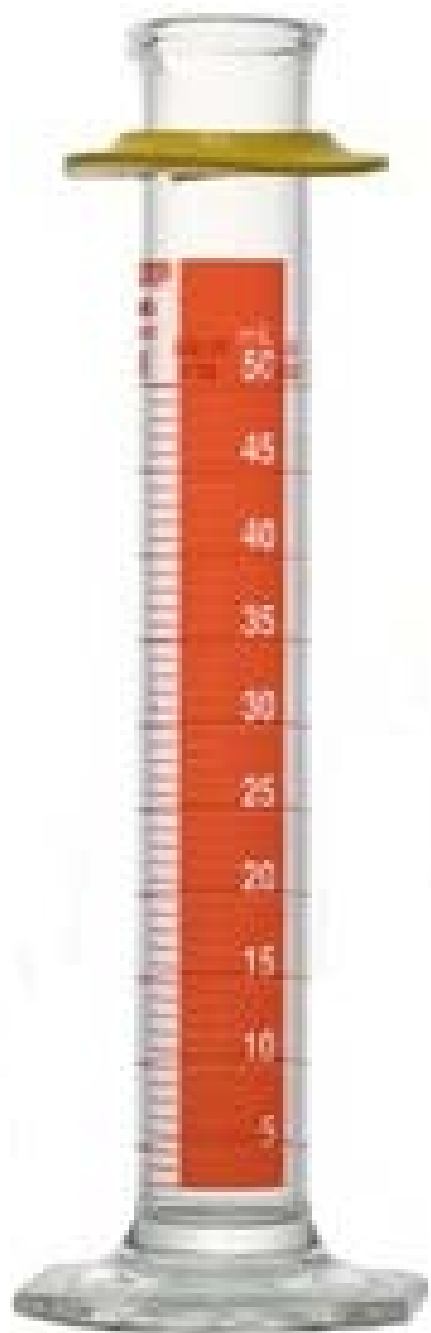
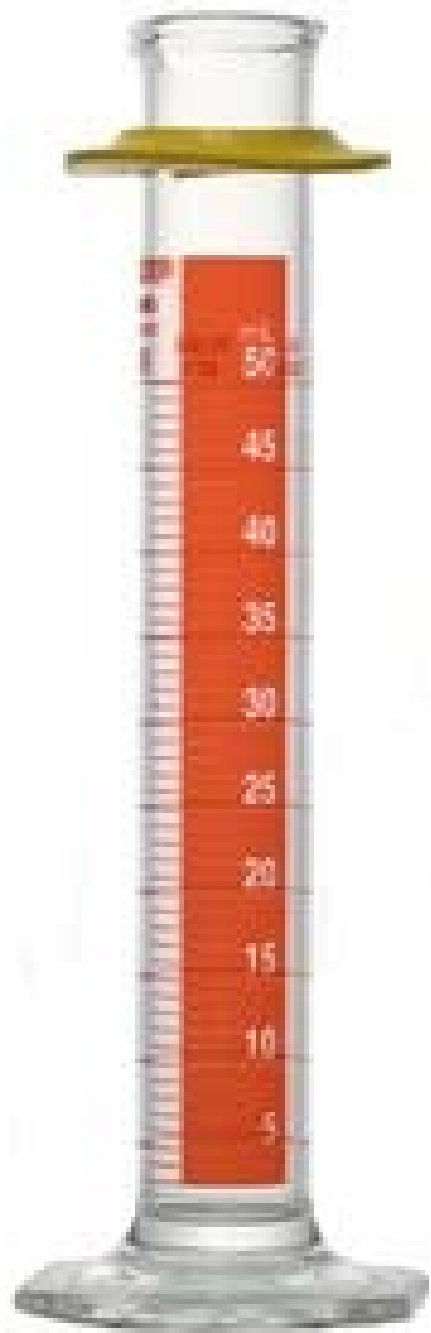
10/18/19 MRI SCAN



SAGITTAL VIEW - DISC BULGE AT L5-S1

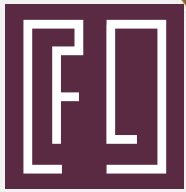








Video – An Immersive Experience



FELL LAW

Trying Cases in Alternative Courtrooms

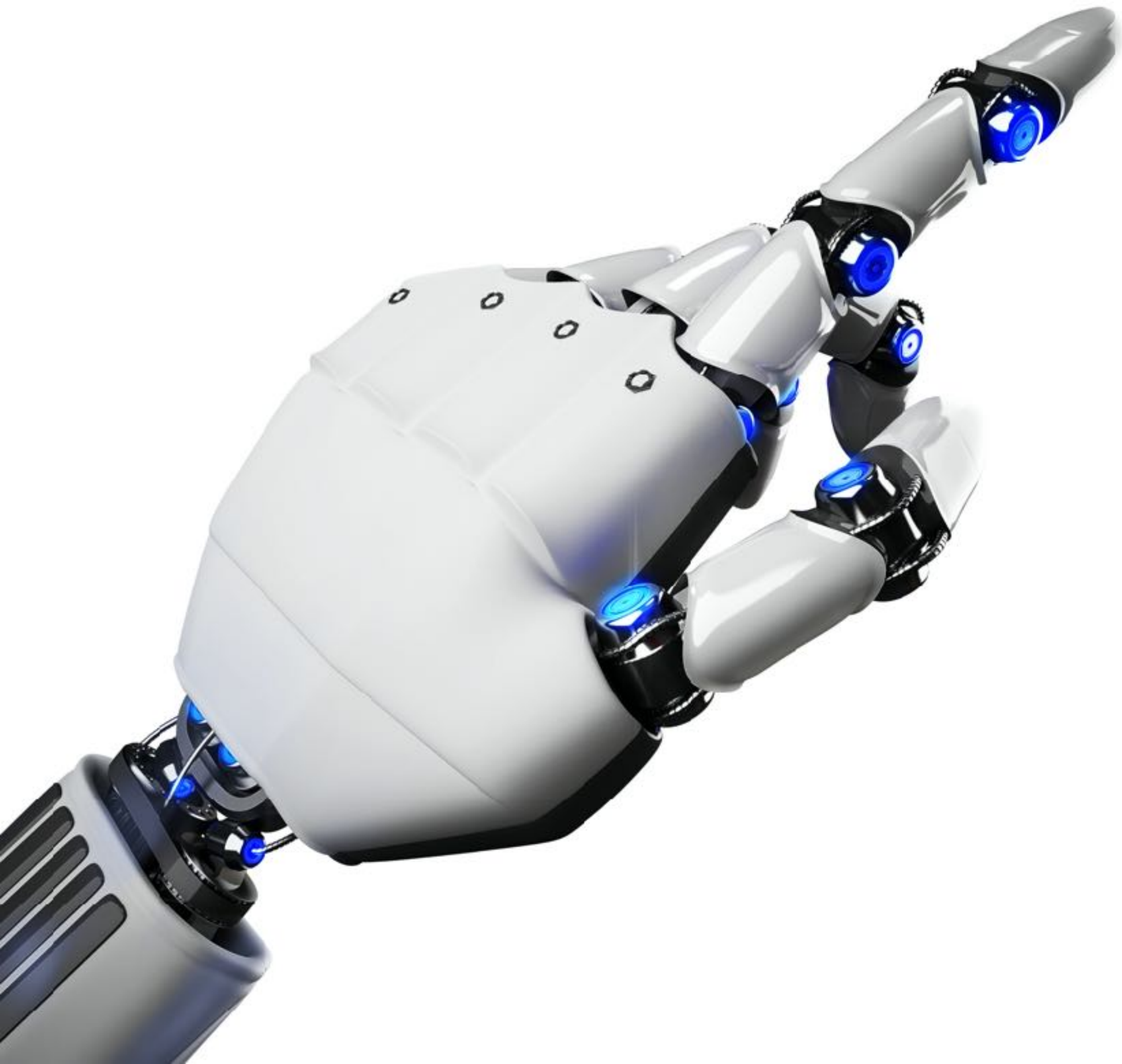
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MASTERING THE AUDIO VISUAL SETUP IN THE AGE OF COVID



**By: Lloyd Bell
Bell Law Firm
bell@BellLawFirm.com**



Setting up for trial

55" 4K T.V.



AIRPORT EXPRESS



APPLE TV

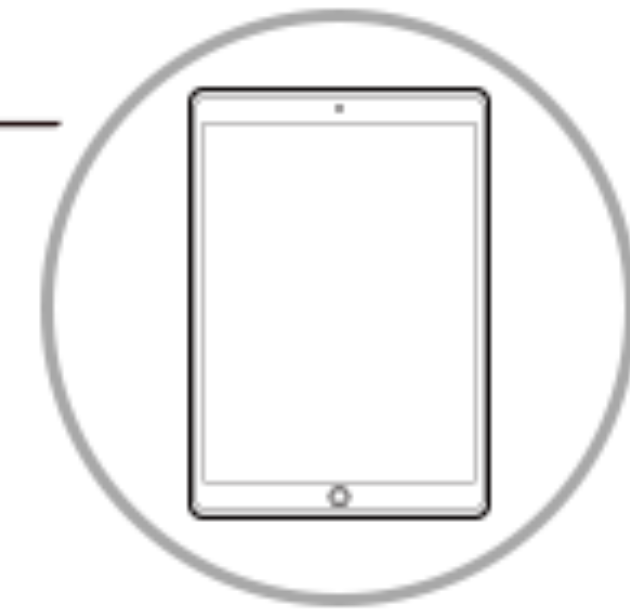


IPEVO



BEATS "PILL"

IPEVO



iPad



HDMI Cables



DONGLES





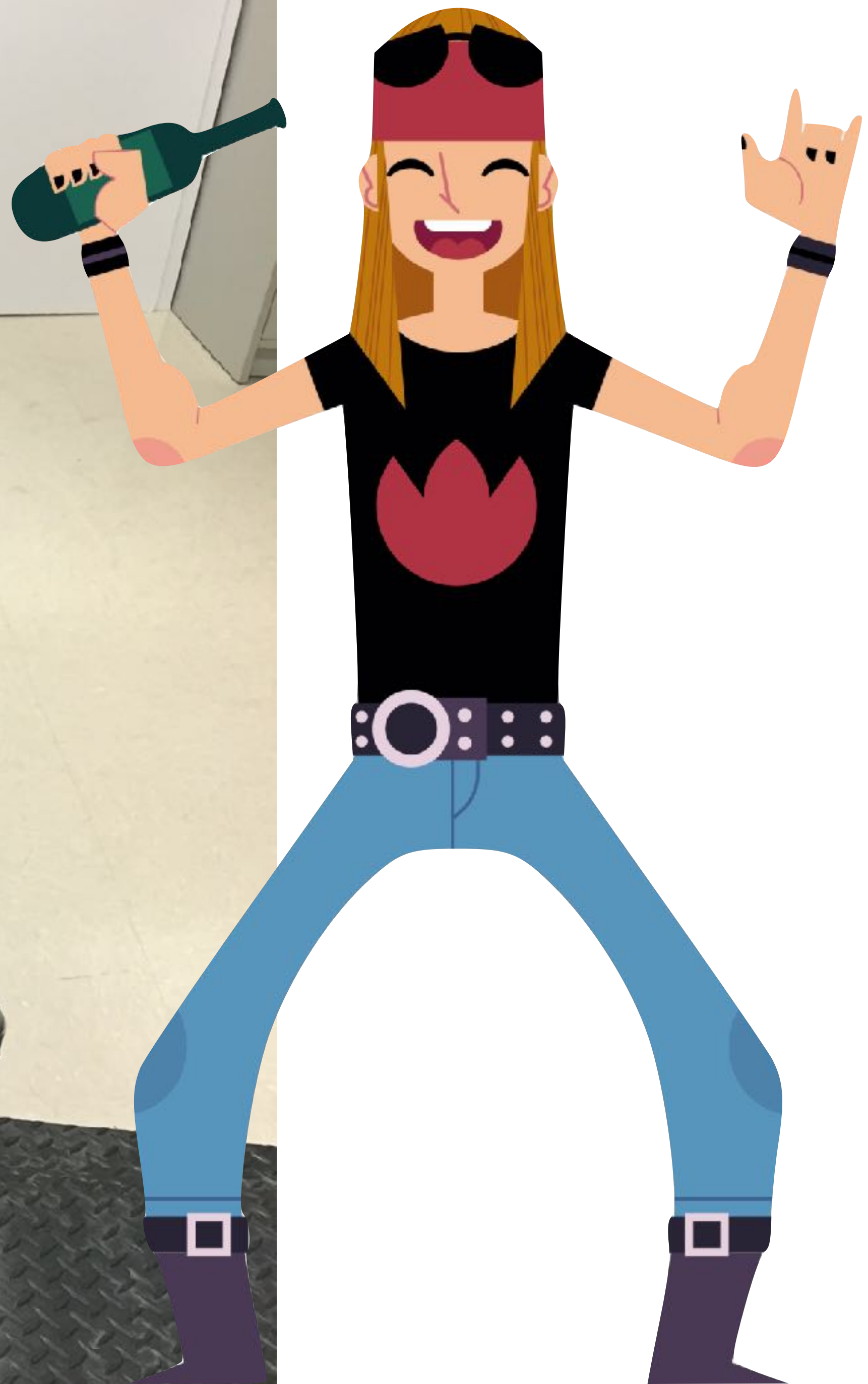
PELICANTM

You break it, we replace it... forever.











DA-LITE 43128



**FINAL
THOUGHTS**



Thank you!

bell@BellLawFirm.com




Courtroom Communication in Alternative Room Configurations

AAJ Webinar

October 2020



Who Cares
What The Room Looks Like?



Can The Jury See and Hear You?
(you, your witnesses, your evidence)

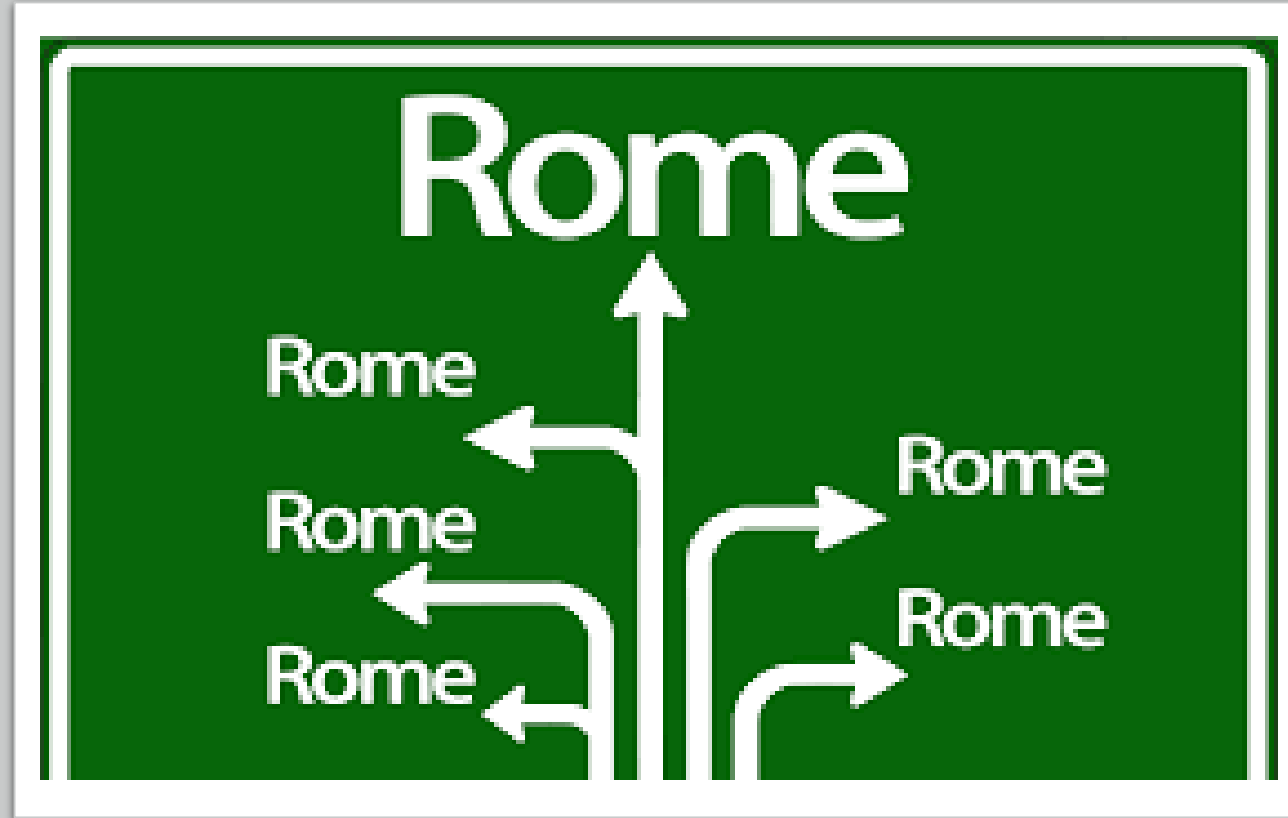
Can You See and Hear The Jury?



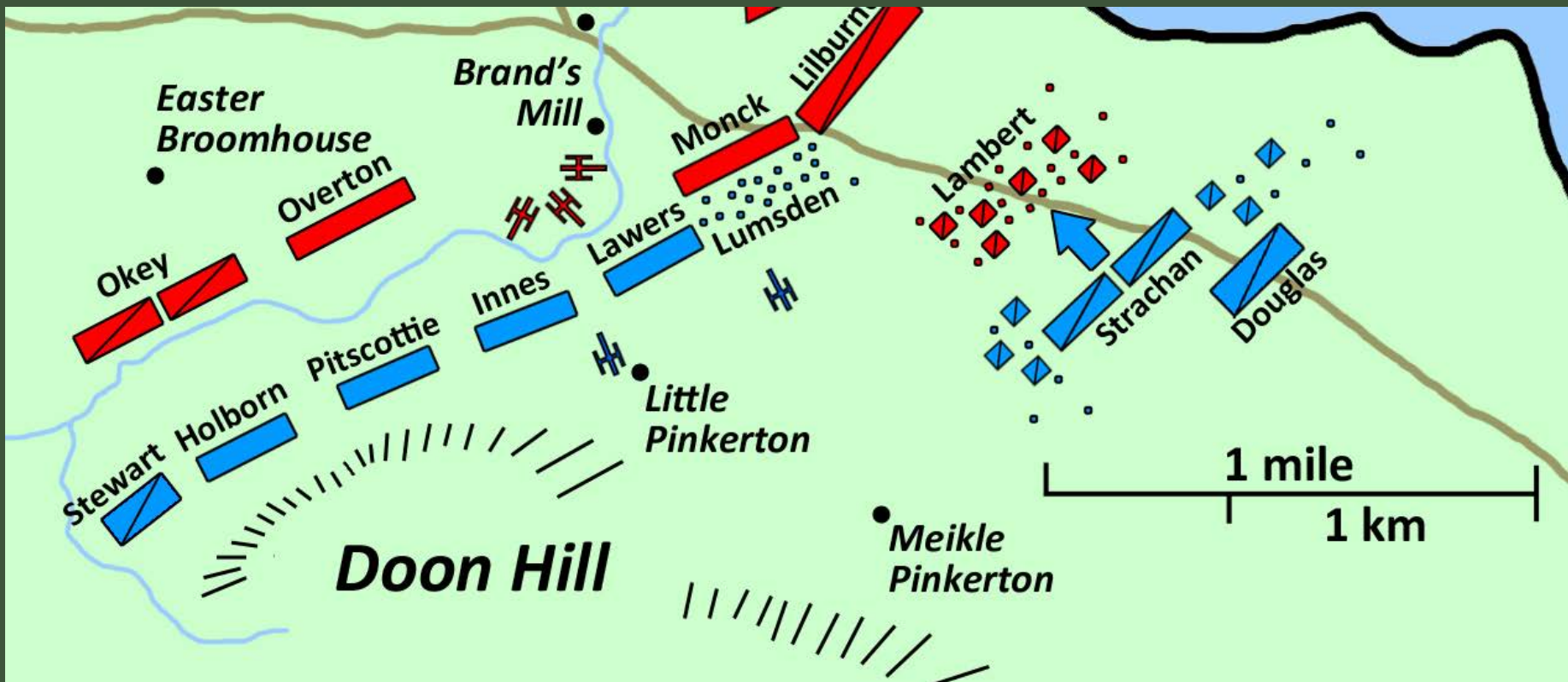
Vocal

Physical Tools & Positioning

Technology



One-on-One Connection!



KNOW YOUR BATTLEFIELD



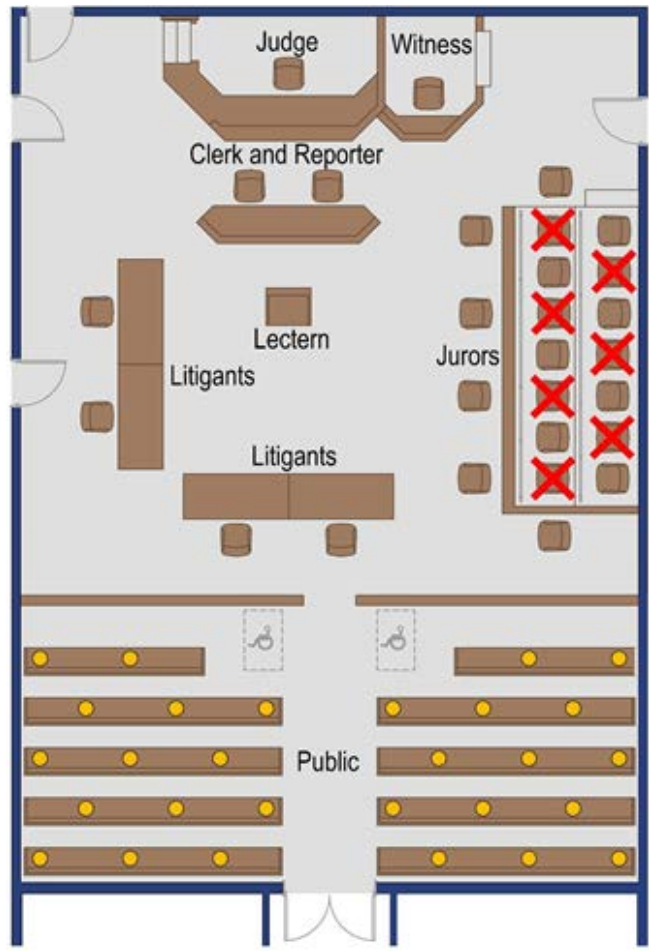


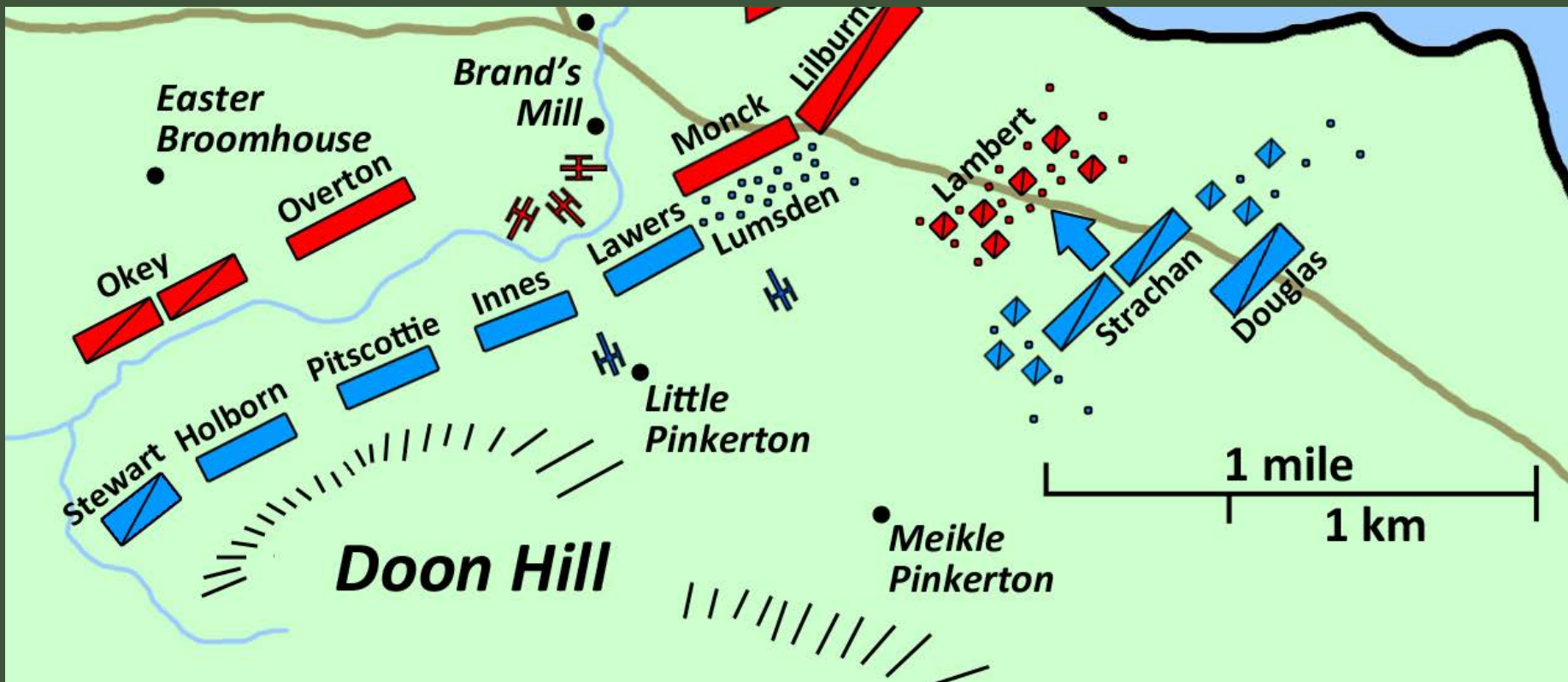
Thank God the virus
can't move sideways.











KNOW YOUR BATTLEFIELD



Didn't you *JUST* Say...
Who Cares
What The Room Looks Like?



All The World's a Stage

It doesn't matter what you're given.

It matters what you do with it.

What you do with it depends on

HOW WELL YOU KNOW IT!



All The World's a Stage

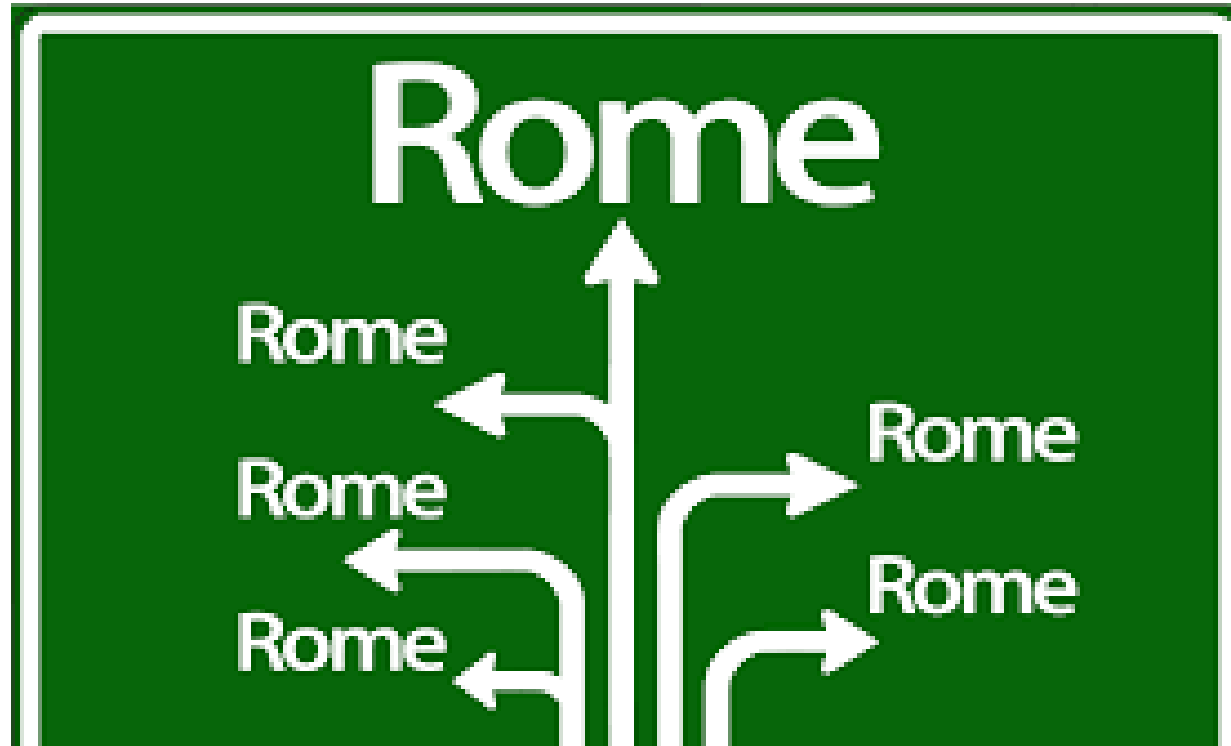
Architects don't make bad houses.
Actors do.

THE SINGLE MOST IMPORTANT SLIDE
OF THIS ENTIRE PRESENTATION



VOICE MOVEMENT TECHNOLOGY





One-on-One Connection!

VOICE

Have You met Kimberly?

VOICE

Know Your Space

1) Familiarize and Make it Yours

Walk around sounding (where is it dead, where is it alive?).

Sit in the jurors seats.

Let your breath take in the space.

2) Bring Your Team to Be Jurors.

Have them sit in the first row of jurors, begin your opening.

Then have 3 of them move to the second row, continue your opening.

Finally have 2 move to the farthest seats in the house....keep speaking.

Do they hear you?

Do they understand you?

Do they care?

Do they feel you are connecting to them...all of them?

3) Do a short warm-up if possible in the space.

VOICE

Do a Warm-Up

A) Physical Awareness

Releasing unnecessary tension: Shake, drop down your spine, go through your body tensing and relaxing, yawn, stretch.

B) Breath Awareness

This is your belly/diaphragm area: Hand on front and back, feel your breath filling the space.

C) Developing natural amplifiers in your body

Humming: Lips, face, skull, chest.

D) Articulators

Move your face around-wake it up! Blow through your lips, stretch your tongue out.

Play with sounds and range: Budugudu, tongue twisters (toy boat, unique New York), amicably hiccuping (get your mouth ready to speak clearly without a lot of effort)

MOVEMENT

Eye Contact

Individual Juror Interaction

Acknowledge Jurors 9 – 12
and check in with them often





**IN CASE OF
EMERGENCY
BREAK GLASS**

MOVEMENT

Gesturing

(Go BIG or go home)

Anchoring without Relocating

Play the Boundary of Allowed Space

MOVEMENT

Play to the judge's limits*.

Don't test the jurors' comfort.

Follow Fundamentals unless/until
things just get silly.

*Don't anger her, just play the
whole field.

Movement Cheat.

...as in the stage positioning term,
not breaking the rules.

TECHNOLOGY

Not the fancy kind.



Average Annual Salary: \$10,000,000
Average Investment Into PPE Testing: \$0







Glass Glare?



Lighting Solution?

Fog Solution?

Mask Size?

Distance from Face?



Plan for CRYING???

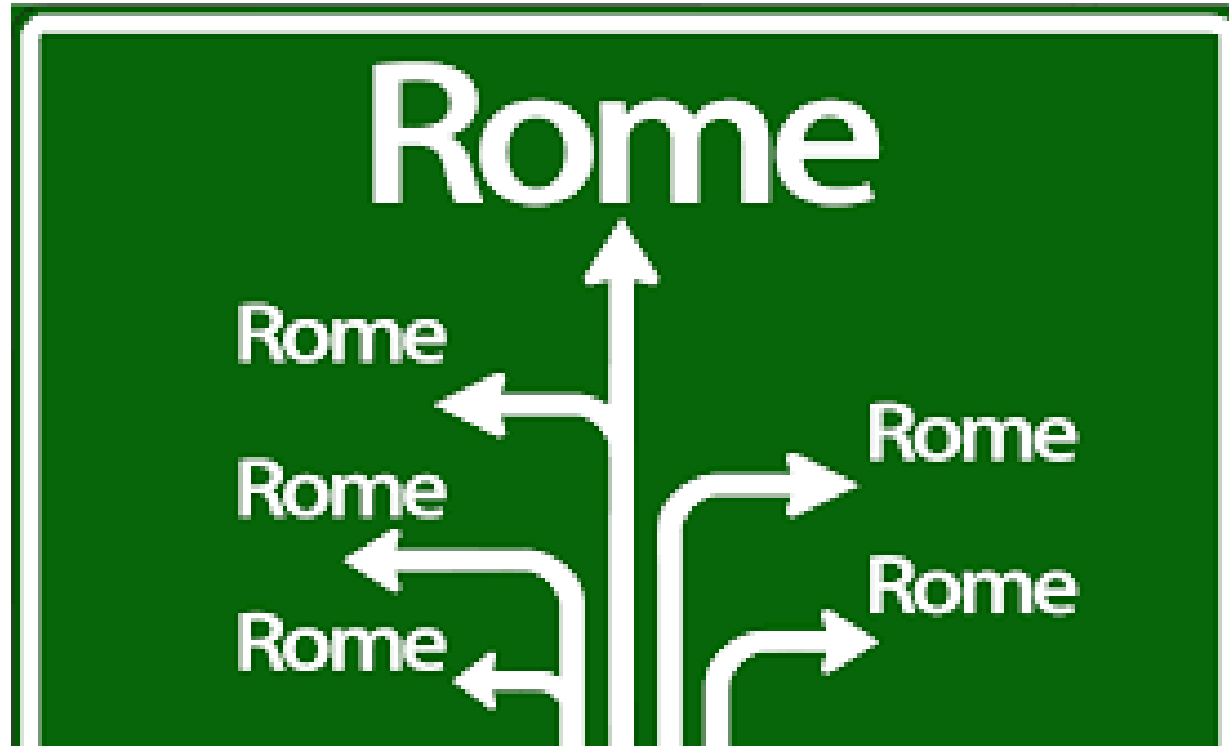


Hand Motion Look Weird?
Can You See This/Me?
Grab Your Attention?





Touch Without Touching



One-on-One Connection!

Questions?

www.actofcommunication.com



Trying Your Case in Alternative Venues: Tips for Messaging

Jury Trials During the Pandemic AAJ
Webinar Series

October 6, 2020

Ian Birk, Esq.

Jeffrey D. Boyd, Esq.

*Keller Rohrback
Nelson Boyd Law Firm
Seattle, Washington*



Our in-person trial at the
Convention Center in Seattle was a
welcome distraction for some
jurors.

Our jurors seemed eager to serve.

Tips for Messaging:

the "Bes"



BE SIMPLE:

Simple = Strong



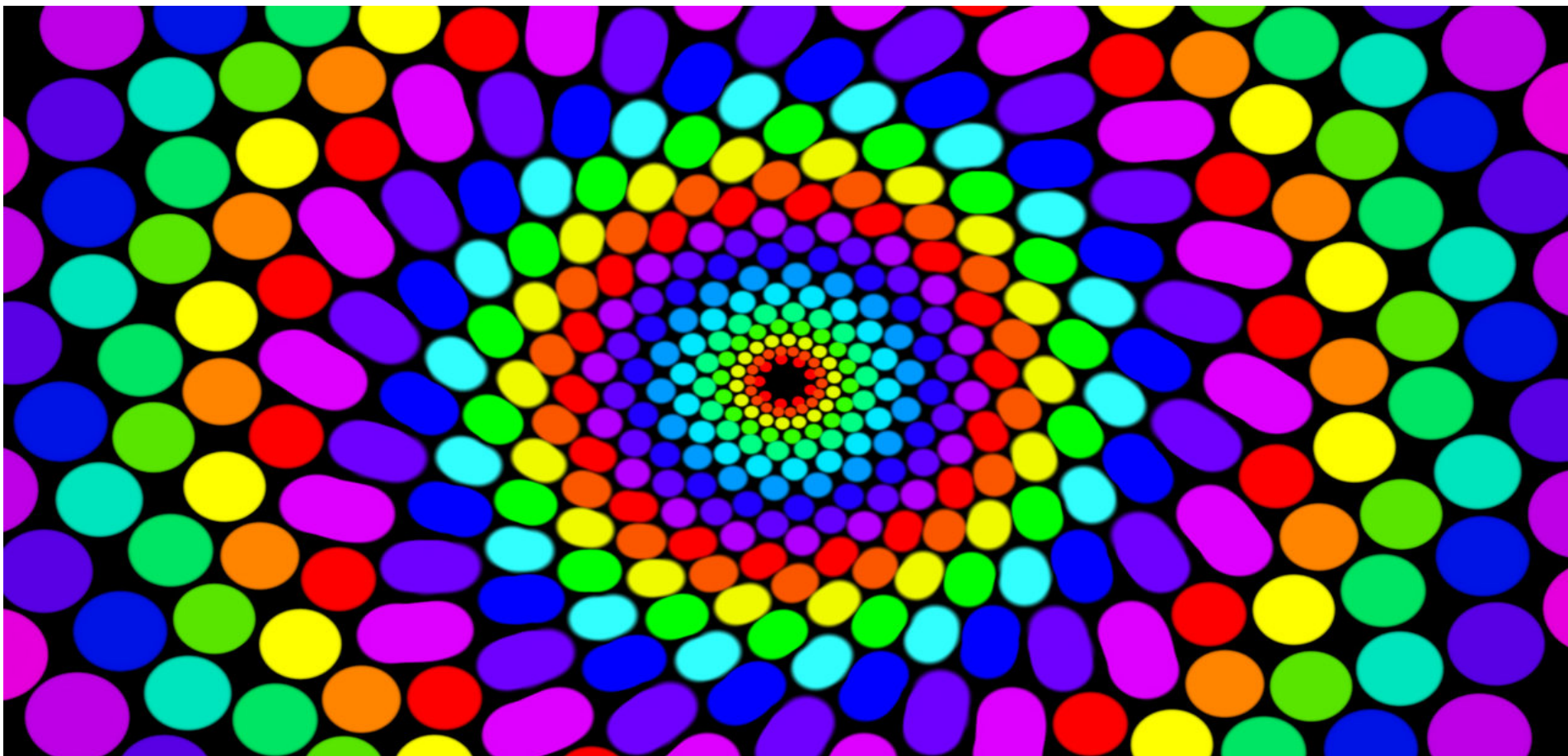
BE BRIEF



BE CLEAR



BE VISUAL



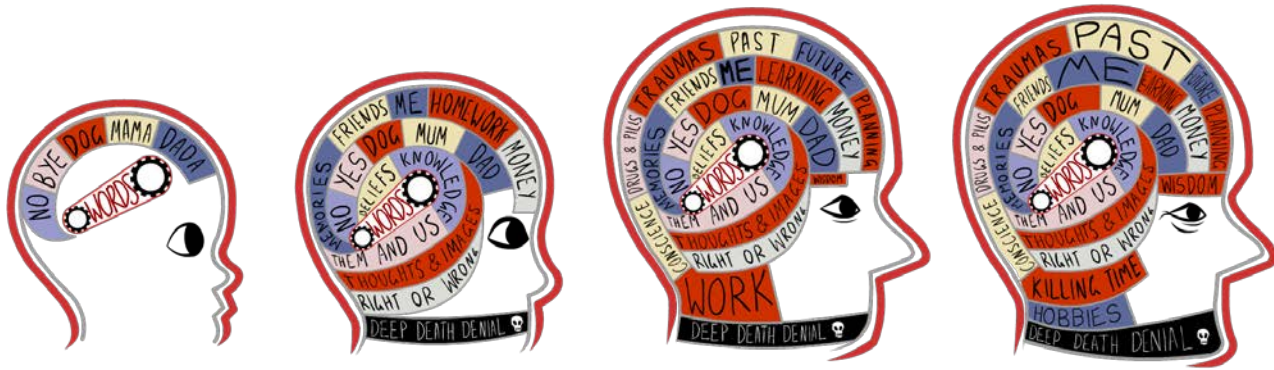
REPEAT



Be Simple:
Simple = Strong



We often over-try our cases.



In any case,
there are only a few
things
that really matter.

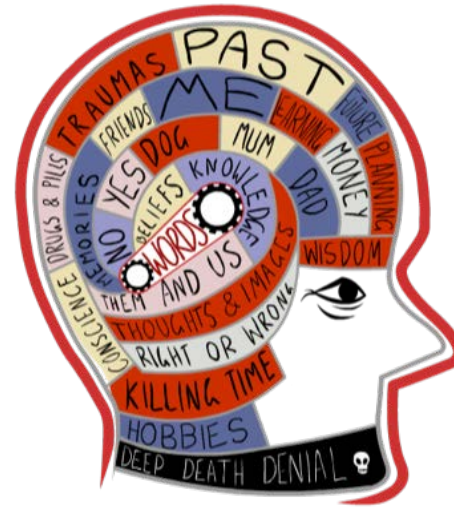
Think of how you “see” a case the first time you hear about it.



But what does it become?



Which is closer to how the jury will see it?



BE BRIEF



**NO ONE is going to pay
attention to ANYTHING for
more than 20 minutes. Period.**

This is especially true given the layout of our setting.

Jurors were sitting alone many feet from anyone else.

It was difficult for any one person in the courtroom to see everyone else, whether juror, judge, lawyer, witness, bailiff, or spectator.

It makes it very easy to drift off into your own train of thought, the one exception being the giant screen.

BE CLEAR



The “Big 4” Questions

The “Big 4” Questions:

1. What did the defendant do wrong?

The “Big 4” Questions:

2. Why is it wrong? Who says it was wrong?

The “Big 4” Questions:

**3. What should the defendant
have done?**

The “Big 4” Questions:

4. What difference did it make?



Where will you stand, and how you will relate to the judge and jury and bailiff and witnesses?

If witnesses are allowed by remote means on the
screen,
that should be given careful thought.

Witnesses can be very compelling this way.

Their faces may be very large and easy
to see,
they may be much easier to hear than
witnesses in person using masks.

Consider in advance what exhibits you
may need to have the witness have for
a smooth presentation.

I did NOT notice jurors questioning the presence or absence of witnesses in court. I would say there seemed a high level of acceptance of video testimony.

I assume it could be different if the witness were the plaintiff: in that case I would expect to need a good reason for remote testimony.

Otherwise, our jurors did not seem to expect any particular reason.

**We are all preoccupied with
disease, a dismal lifestyle, child
and elderly parent care,
horrendous politics, and a bad
economy.**

**Most people's brains are running
at about 60% of capacity for
external things.**

The distance makes direct eye contact more challenging than when talking to a jury box.

It can still be done, but it takes a moment longer in practice to connect.

On the plus side, however, because each juror was so far apart in our case, there was not any doubt in the juror's mind when a statement was given to that juror.

In this way, the larger room can actually seem very inclusive.

The trial lawyer should model correct behavior in the venue.

This means wearing a mask and doing one's part to be safe during the pandemic.

In talking to jurors in voir dire, they were very concerned about being safe once they arrived at the facility,

and particular about court staff and lawyers abiding by masks and social distance requirements.



Self-interest

Will it be better for me if the plaintiff wins this case or will it be better for me if the defendant wins?



Why?

Jurors filter evidence
through:

Their life experiences



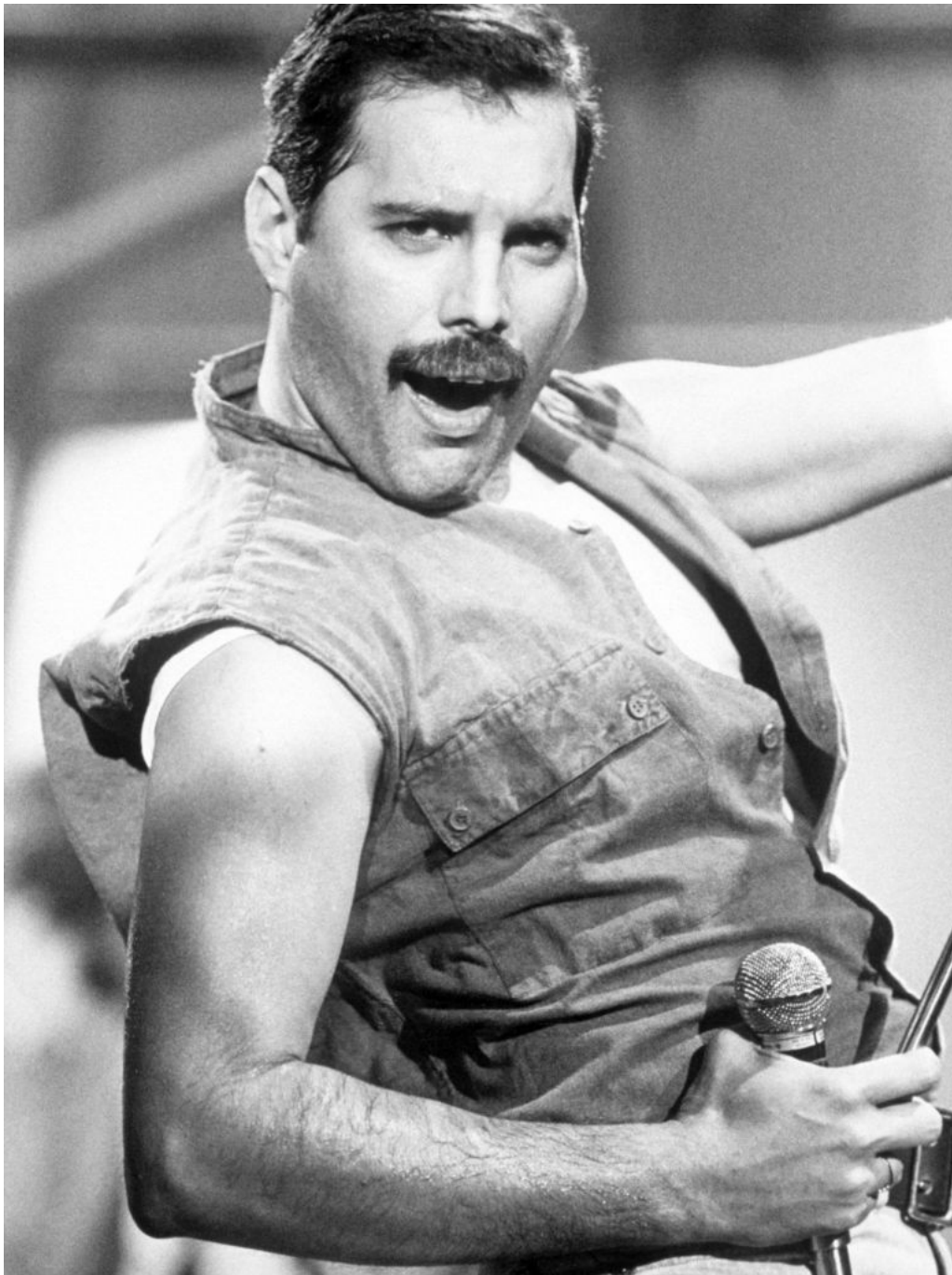
I'll never forget the
neighborhood kids I grew up
with, or the great times we had

Jurors filter evidence through:

**The world they would like to believe they
live in**



A Chorus



Buddy you're a boy
make a big noise

Playin' in the street
gonna be a big
man some day

You got mud on yo'
face

You big disgrace

Kickin' your can all
over the place



This is the new world

Get with it!

Trying Your Case in Alternate Venues

AAJ: Jury Trials During The Pandemic Webinar Series

Jeff Boyd, Nelson Boyd, PLLC, Seattle
Ian Birk, Keller Rohrback, Seattle

October 6, 2020

“Alternate Venues” is a polite way of saying warehouses, conference halls, or auditoriums – places we never dreamed would be used as courtrooms. The COVID pandemic has changed the practice of law forever. Adapt or die. Your trial preparation and presentation must embrace this new reality, whether you like it or not.

The good news is, there are many reasons to like it. Like many unintended consequences of the pandemic, the adaptation needed here is just an acceleration of trends that were already good trial practice. Meeting the needs of COVID-era jurors is more work up front, but substantially less work at trial, because you’re going to be more focused, you’re going to take less time, and you’re going to have everything that is important up on that big video screen behind you.

It’s a swarm of “bees”:

- Be Simple
- Be Brief
- Be Clear
- Be Visual
- Repeat

BE SIMPLE

It is 100% certain that complexity favors the defense. We’re all scared! We are all preoccupied with disease, a dismal lifestyle, child and elderly parent care, horrendous politics, and a bad economy. “I have no time to listen to your complexity.” This is no time to teach algebra. I have absolutely no data to back this up, but I think most people’s brains are running at about 60% of their normal capacity for external events. NO ONE is going to figure your case out for you. $1 + 1 = 2$. Bad choices + no training = harm. That’s about all people are going to listen to.

BE BRIEF

NO ONE is going to pay attention to ANYTHING for more than 20 minutes. Period. “I have too much on my mind, buster, for you to keep me here a week on a car crash case.” By the 5th day, I will hate you. I will make sure you lose.

BE CLEAR

1. What did the defendant do wrong?
2. Why was it wrong/who says it was wrong?
3. What was the alternative – what should the defendant have done?
4. What difference did it make?

These points are what jurors care about. Also, don't forget, they want to know why this happened. The "what" – the fact of running a stop sign - isn't enough. Jurors want to know the "why." Only then can they judge the moral fault that is the basis for the damages assessment.

Blah, blah, blah, negligence, blah blah, blah, proximate cause, blah, blah, blah, standard of care. WHAT ARE YOU TALKING ABOUT? Holy cow. If you can't explain your case so a 10th grader can understand it, you're not being clear. A great trial lawyer I know said he tries to never use a word in trial that he didn't use in high school.

BE VISUAL

These days, NO ONE is going to remember ANYTHING that is not reinforced with a visual aid. Here's what they will remember: whatever you put on the GIANT screen behind you. Have you been to a rock concert, and instead of watching the performer, you watched the Jumbotron image of the performer right behind her/him? Yeah, that's what's going to happen when your jurors are 20 feet away from you and from the witness. Control the visuals, control the case.

REPEAT

- We are all preoccupied with disease, a dismal lifestyle, child and elderly parent care, horrendous politics, and a bad economy.
- NO ONE is going to pay attention to ANYTHING for more than 20 minutes.
- Most people's brains are running at about 60% of capacity for external things.
- NO ONE is going to remember ANYTHING that is not reinforced with a visual aid.

Think about this: why are top 10 songs in the top 10? Or, looking at it another way, what do nearly all top 10 songs have in common? The chorus, which is repeated over and over and over. And over. Make your case theme a chorus that the jury will be singing to themselves in deliberations.

SPECIAL CONSIDERATIONS FOR WEARING A MASK:

Put on a mask and go to a drive thru and order a meal. What did you do to be understood? It was probably: **speak more s-l-o-w-l-y, enunciate, and SPEAK UP!**

You need to substantially drop the pace of your speech. The mind takes longer to process blurry sounds under normal conditions, let alone if you're worried that you're going to catch a deadly virus from the person you rode up the elevator with. If you talk too fast, you'll leave your audience behind. If you leave your audience behind, you will lose.

There are special clear masks available, so the jurors and witness can see your face. Would you rather be the one “hiding” behind a mask that makes you look like a bandit, or be the one whose mask is transparent, like their belief in the justice of their cause???

POSITION AND MOVEMENT

The first time I saw a picture of an “auditorium courtroom” two things jumped out at me:

1. That GIANT screen (see “BE VISUAL” above).
2. This is now theatre.

No more looking in people’s eyes, pleading your case for justice one-on-one. What do actors in a theater do? They enunciate. They speak slowly. They look at the audience – not some guy in the witness chair. They move deliberately, with accentuated movements of their body, particularly the arms – think of the body language of someone speaking Italian – IN SLOW MOTION. They put on a little more makeup, wear brighter clothes. You are now on a stage. Step it up.

THIS IS NEW. Practice! Practice talking, practice moving, practice Zoom voir dire, and coordinate your voir dire note taking and grading with the team that is going to be helping you decide who to excuse. Practice working with your remote witnesses and get them to take down the beer signs from their walls. Play with screen-share exhibits and be smooth with getting them up and running. Practice hooking into the courtroom system; do NOT be the person fumbling around with the technology.

This is a new environment! Whether it is playing a golf course, skiing down the slope, or entering an auditorium courtroom: to succeed, you have to be able to visualize success. You have to be able to visualize where you will stand, and how you will relate to the judge and jury and bailiff and witnesses. When will you look toward the witness? When will you walk across the courtroom? How close can you get to anyone while respecting their personal space?

I’d write more, but that would violate the rules above. It’s a new world. Get with it.

Jeff Boyd
October 6, 2020.

THANK YOU

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**Trying Your Case in Conference Centers, Auditoriums,
and Other Alternate Venues:**

Practicing During the Pandemic Project

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