

Focal Point *press*

By Guy Grogan | November, 2013

The Art of Sculpting an Expert

“Every block of stone has a statue inside it and it is the task of the sculptor to discover it.” –Michelangelo

When I read that Michelangelo quote, I began to thinking how we, as trial consultants, do something very similar. Namely, our clients come to us with their case, which is like a block of marble. Then we, as legal “craftspeople”, begin to “discover” the story of the case, or the statue inside that block of marble, by carving and chiseling out what is unnecessary—all with the goal of arriving at something visually compelling for the jury to behold.

The beauty of this analogy, at least in my mind, is that it can be applied to all aspects of trying a case before a jury. But it’s particularly appropriate when preparing an expert’s testimony. Here’s a four-step process for doing just that.

Step 1: Understand the Medium

To the average juror, being confronted with an expert’s research materials is a lot like being confronted with a big block of marble—it appears dense, intimidating, even ominous. While that weight and immensity might be a thing of beauty to the expert who mined it from the quarry of her research, I can assure you a jury often has the opposite reaction.

That’s where we come in.



As trial consultants, we are often commissioned with the task of poring over expert reports and analyses that appear to be written in Sanskrit or some other ancient lost tongue. To the curious-minded, this can be quite interesting—it’s often a whole new field of research that we have not yet explored. But we know that too much of this raw material would overwhelm jurors. So once we have a broad understanding of the universe of materials, we start looking for patterns of importance and ways in which the data can be simplified, organized, and ultimately, visualized. This is what I refer to as “understanding the medium.”

Step 2: Establish the Foundation

Think of a “classical” sculpture—that is, idealized marble embodiments of the human form in heroic and

tragic poses situated on a solid base. From a physics standpoint, the base is obviously the foundation, the element that allows the sculptor to create the statue.

An expert's visuals also need a foundation, one that consists of visuals that establish the expert's credentials, thorough and fair methodology, and the reasonable conclusions derived from both. Laying this groundwork enables the expert's testimony to emerge into a convincing and authentic form.

Step 3: "Bring Truth to Materials"

"Truth to materials" is a term in sculpture that came about in the 20th century. It describes the way in which a sculptor responds to the nature of the block being carved as much as the subject. The sculptor incorporates changes in coloration and imperfections found while carving the block into the finished sculpture. Since the sculptor doesn't know in advance what imperfections will be revealed during the course of carving, he needs to remain flexible, fluid, open to new directions in his or her work.

Am I somehow suggesting that we should embrace imperfections in an expert's supporting materials, shrug off errors in the visuals, or disregard inconsistencies? Not at all. I am suggesting that not every demonstrative needs to be a highly rendered finished product. We like incorporating some of an expert's original work (provided it is understandable) into a presentation—or allow an expert to "spontaneously" draw something on a board. It builds credibility with the jury by way of authentic and real-time demonstration. For example, a technical expert might want to step out of the witness box simply draw a data path through a circuit on a flip chart rather than narrate over a 3D animation. In other words, it allows some opportunity for the expert to expose his or her natural, imperfect, and educational style to the jury.

Step 4: Add Details! Details!

Many things make looking at a piece of sculpture such a visually awe-inspiring experience, including the level of detail in the figure's features. To a layperson, it is simply baffling how an artist can shape the arc of an eyelid out of rock with nothing but a hammer and chisel. It is equally mystifying to imagine how the sculptor appears to have known intuitively how to capture just the right amount of detail in doing so—too much and it would seem overwrought, too little and it would seem haphazard. This is what makes the piece so believable and convincing.

The same holds true for an expert's visuals. While this may seem at odds with the overarching goal of simplification, details, when used correctly, can often enhance an expert's integrity. For example, an accounting expert would do well to explain the process behind his or her reconciliation of the opposing party's books. Likewise, an economist can, if the appropriate level of detail is applied, educate the jury about regression theory. But this is a delicate balance and we have seen many failed attempts. A good consultant knows how to strike that critical balance between simplification and clarifying detail.

When it comes to testifying before a jury, experts should be viewed as an asset, not a liability. They are often times the linchpin of a case and their testimony is critical to its outcome. In order to leverage their intellectual horsepower and institutional knowledge, we need to take a craftsman's approach to developing their testimony. We might not be able to wheel Michelangelo's *David* into the courtroom, but with careful extrapolation we can create a compelling and persuasive presentation that will leave a lasting impression with the jury—that he or she bears the gravitas of a renaissance master and, equally important, the jury can understand what he or she is saying.

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