

**Summer 2020
Update**

**Special ADR
Graphics Edition**



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Creative Challenges During the Pandemic.

I sincerely hope you and your family are safe and coping well during this health crisis. At this writing we're three months into balancing work and home life differently than anyone besides dystopian novelists anticipated.

As the legal process lurches through new territory, the importance of early resolution is growing, as I saw first-hand in a recent construction litigation mediation.

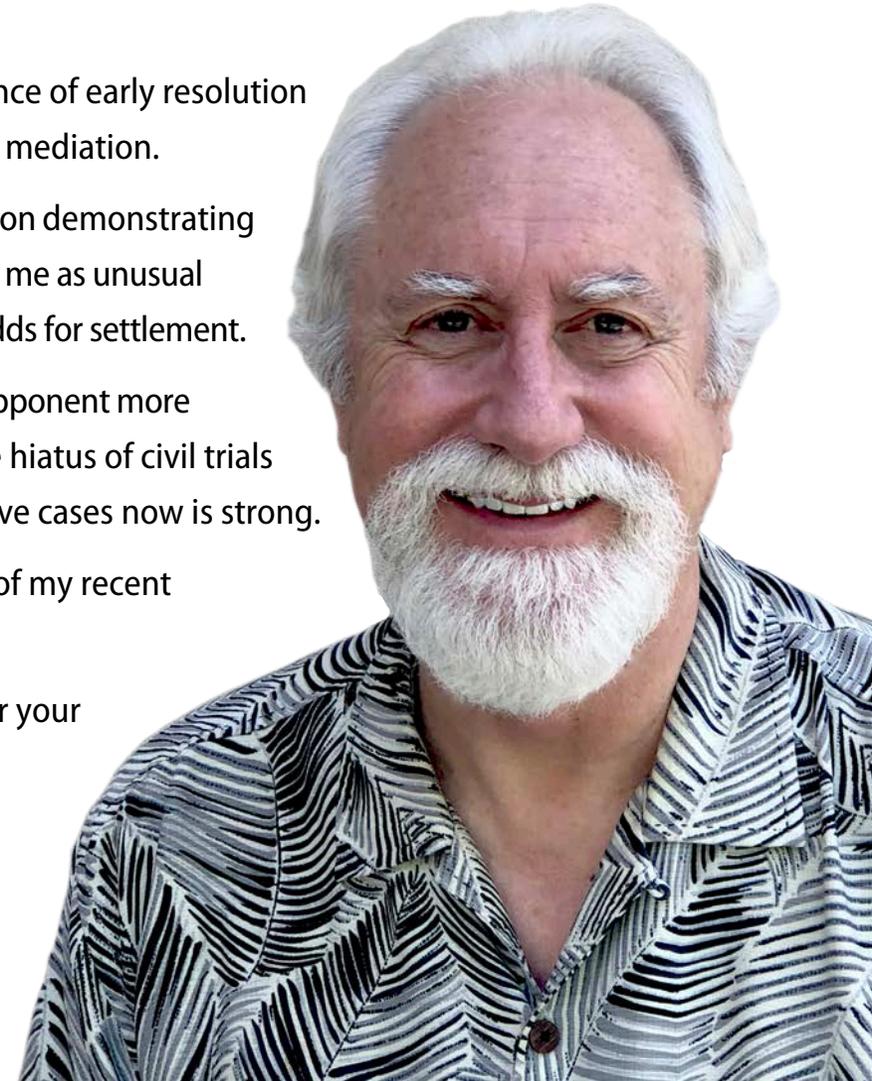
My client and I developed a story-themed PowerPoint presentation demonstrating favorable evidence and counsel's readiness for trial. What struck me as unusual was how aggressive the advocacy was for a case with just even-odds for settlement.

Revealing one's hand in mediation is bold because it gives your opponent more ammunition for trial, However, given the seemingly interminable hiatus of civil trials that will most likely extend well into 2021, the pressure to resolve cases now is strong.

This issue focuses on best practices for ADR graphics, the topic of my recent **Visual Persuasion Blog** post available [here](#).

Let me know if you like what you see and let's work together for your next summary judgment argument, mediation, or arbitration.

– Jim Gripp, President, **Legal Arts, Inc.**



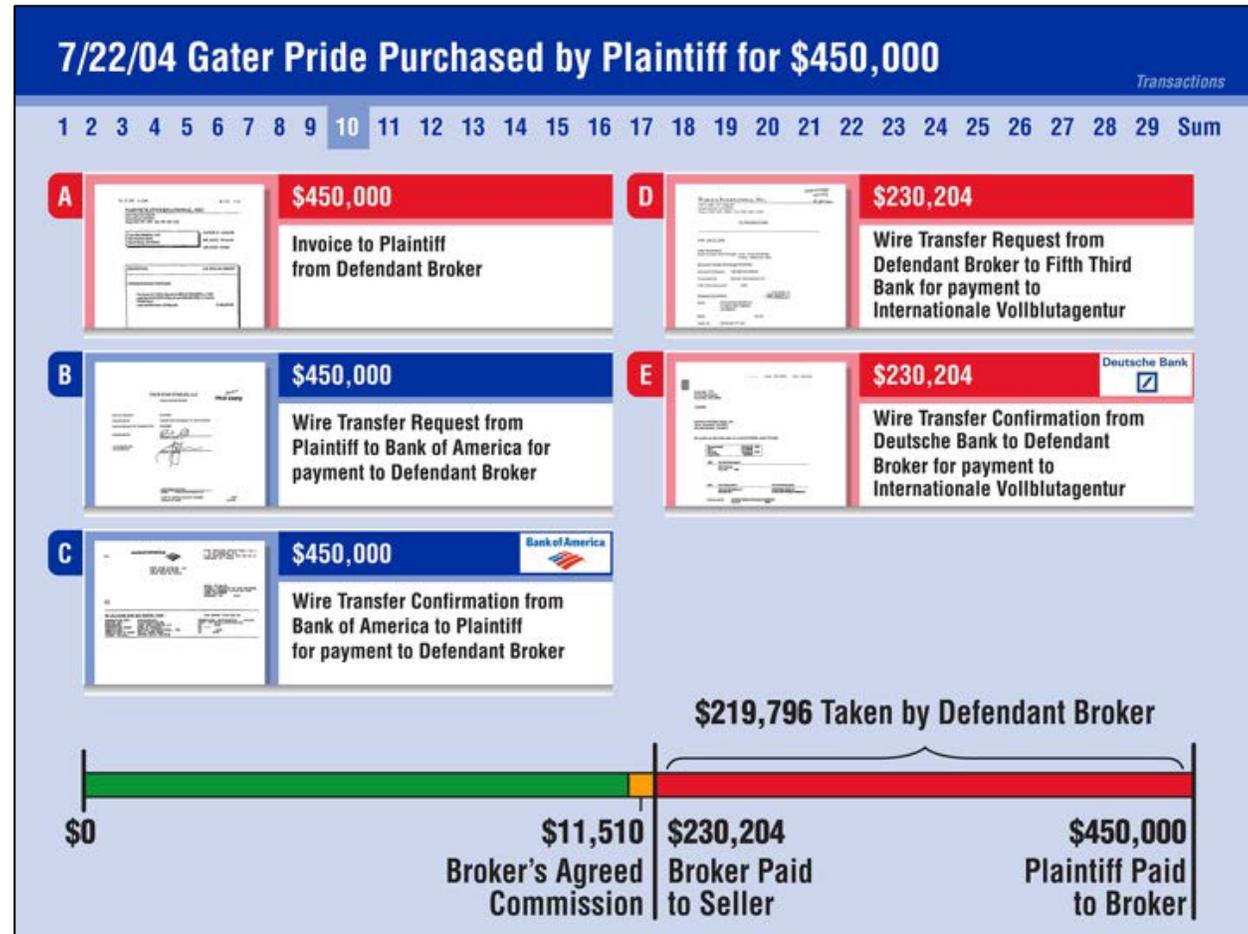
Summer 2020 Update

Key takeaways from our blog post [How Graphics Lead to Meaningful Settlements in Mediation](#)

What mediators want to see:

“Mediators need to quickly and efficiently become familiar with complicated fact patterns, relationships, the cast of characters, the background and the backstory. Graphic representation of the facts are good tools to educate the mediator.”

Mediator Abby B. Silverman, Esq. JAMS San Diego



Breach of fiduciary duty and broker fraud relating to 29 international purchases of thoroughbred breed stock settled in mediation.

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to Meaningful
Settlements in
Mediation](#)

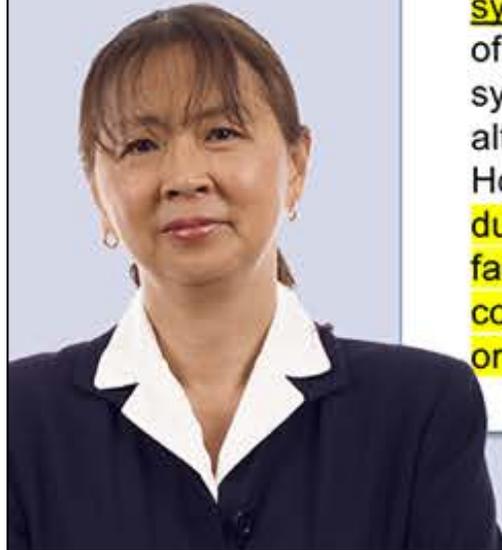
What mediators want to see:

“When counsel presents critical information with explanatory graphics, it signals the level of professionalism that will confront an opponent if the case does not settle. Making the extra effort to prepare graphics for mediation also can enhance the credibility of counsel's position.”

Mediator Charles H. Dick, Esq., JAMS San Diego

Plaintiff Is Not Cognitively Impaired Due to His Accident

Tamara Okira, M.D.
Treating
Neuropsychologist



“Plaintiff does not meet criteria for any cognitive disorder, but he continues to meet criteria for postconcussive syndrome. Research indicates that for the vast majority of patients with concussive injuries similar to Plaintiff, symptoms typically resolve within days to a few weeks, although his age may protract this course somewhat. However, persistent deficits at this point are more likely due to psychological and environmental perpetuating factors and possibly preexisting age related declines in cognitive functioning that are now attributed to the original concussive injury.”

The importance of key deposition testimony and documents might be diminished if buried in mediation briefs. It's easy to create focused PowerPoint slides featuring cut-and-pasted, typed, or video-clipped excerpts.

Summer 2020 Update

Key takeaways from our blog post [How Graphics Lead to Meaningful Settlements in Mediation](#)

Trends in mediation graphics:

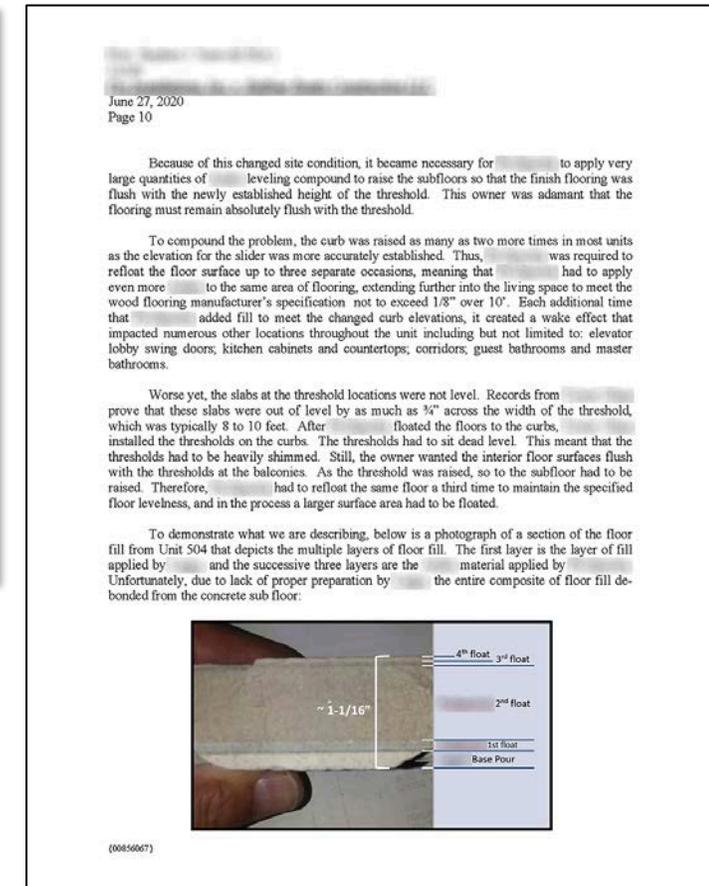
Before the mediation:

- Neutrals greatly appreciate imagery and hyperlinks to demonstrative illustrations inserted into mediation briefs
- Self-running video PowerPoint presentations and tutorials summarizing the evidence, testimony, and expert opinion are acknowledged to be very influential



Above: Video PowerPoint used to settle in mediation a premises liability action relating to purported traumatic brain injury caused by the plaintiff walking head-first into a workplace closed glass door while reading a document.

Right: demonstrative exhibit detail inserted into a mediation brief.



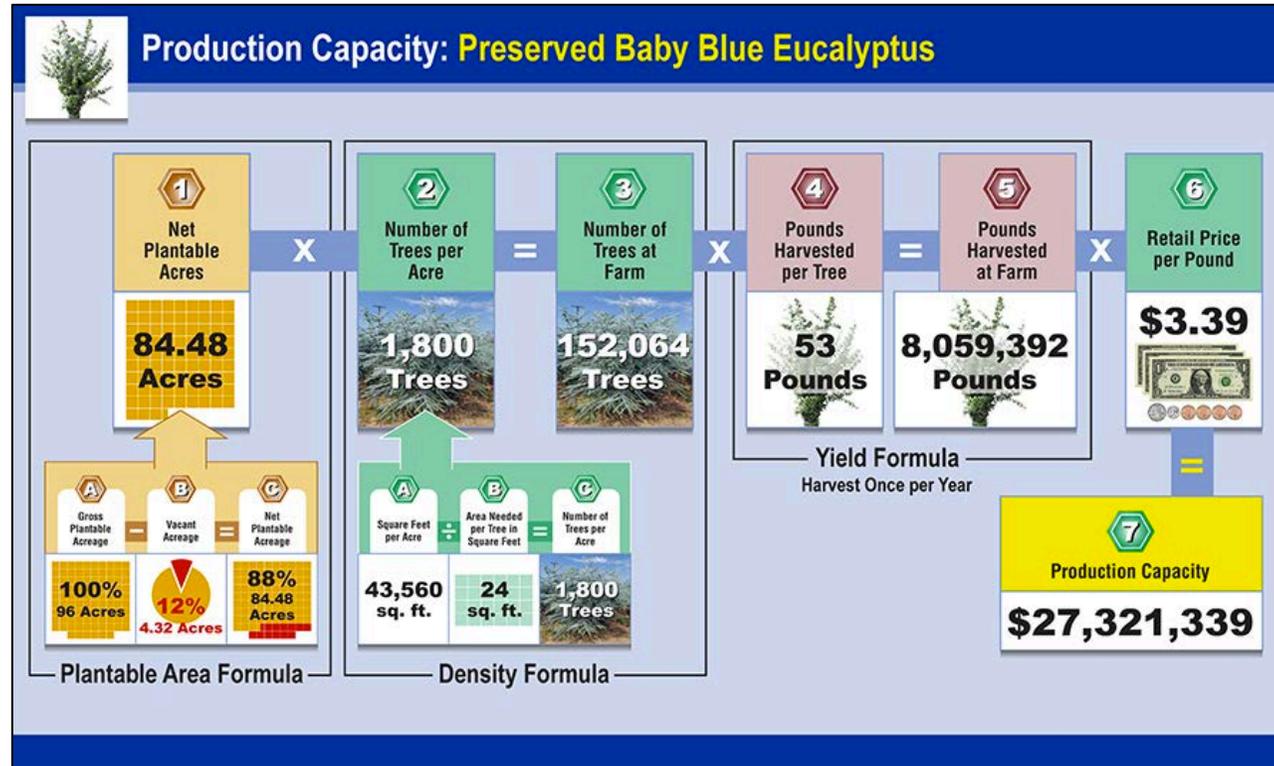
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Key takeaways from our blog post [How Graphics Lead to Meaningful Settlements in Mediation](#)

Trends in mediation graphics:

In mediation:

- Joint sessions are increasingly rare, but well produced and thorough graphical presentations convey your readiness for trial if settlement is not reached
- Showing how damages are calculated and justified will help the both the neutral and your opponent evaluate the strength of your case and sell your settlement offer to stakeholders



One of fourteen [complex damages formulas for botanical plants and products lost in a wildfire](#) presented in mediation helped convince the defendant to increase their starting valuation leading to eventual settlement.

Case Update

Employment – Gender Discrimination

Post-mediation settlement

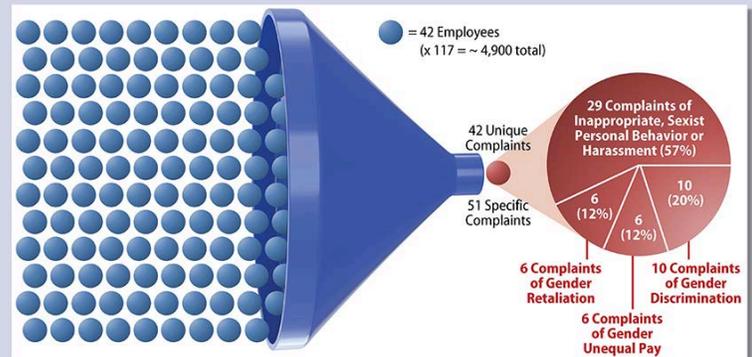
Parties confidential.

The plaintiff engineer at a prominent aerospace engineering firm alleged widespread gender discrimination in her department. The defense countered that the plaintiff’s extraordinary allegations and her purportedly systemic victimhood was contradicted by the low number of complaints in the total workforce, how female professionals investigated most complaints, and was possibly explained by her personal background of male gender-related issues.

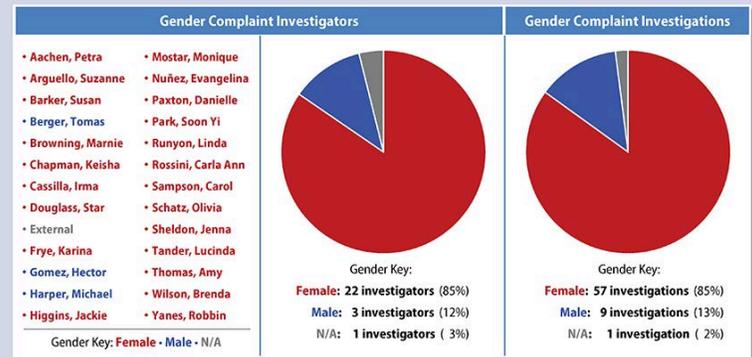
“The case settled today for far less than she asked, and she leaves the company, something we could not get through trial. Thanks so much for all of your help and we’ll be in touch next time we get ready for trial”

Mitch Danzig, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Gender-related employee complaints, 2012-2018



Gender-related employee complaint investigations, 2012-2018



Plaintiff’s life stressors including male gender-related issues



Case Update

Construction – Contractor Liability

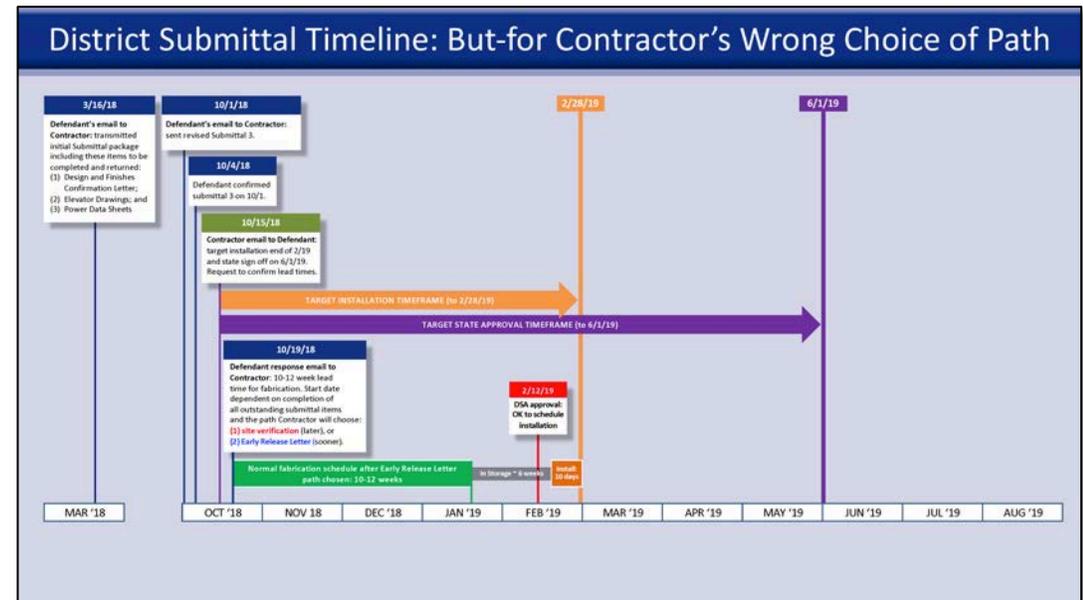
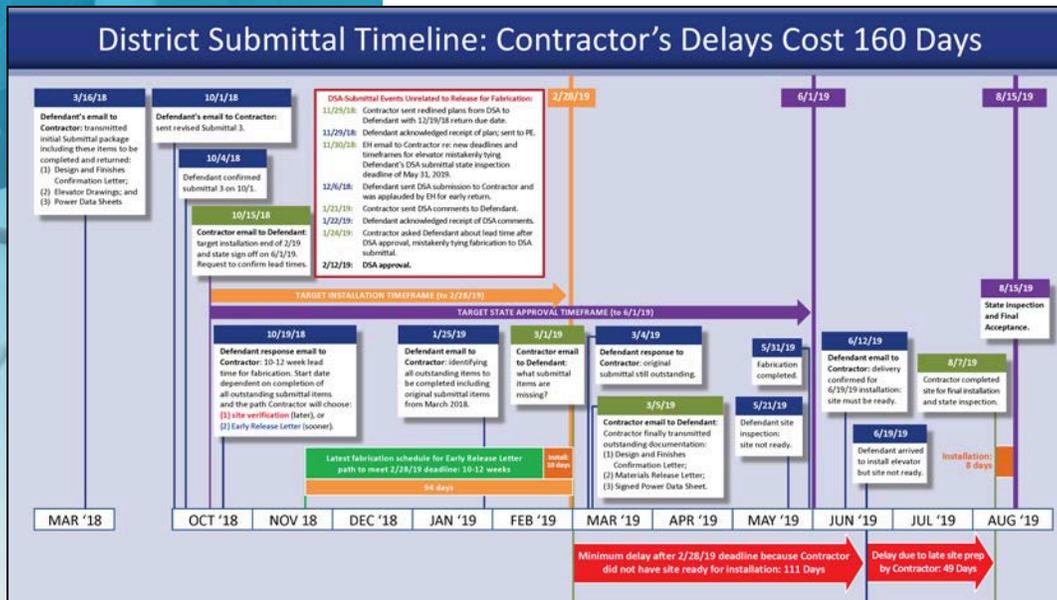
Pre-mediation settlement

Parties confidential.

The defendant elevator company was accused of delaying new school construction almost 6 months due to faulty equipment and poor response. The defendant successfully demonstrated it would have complied with the schedule but for the general contractor’s failure to perform.

“Quite the excellent job that gave us exactly what we needed yesterday to quell the situation with the District. Rave reviews from everyone in attendance about our PowerPoint (including plaintiff’s counsel). I certainly look forward for a chance to work with you again in the future, and sincerely appreciate all of your hard work, creativity, and dedication these past couple of weeks.”

Anthony S. Chalifoux, Esq., Balestreri Potocki & Holmes



Case Update

Military Justice – War Crimes

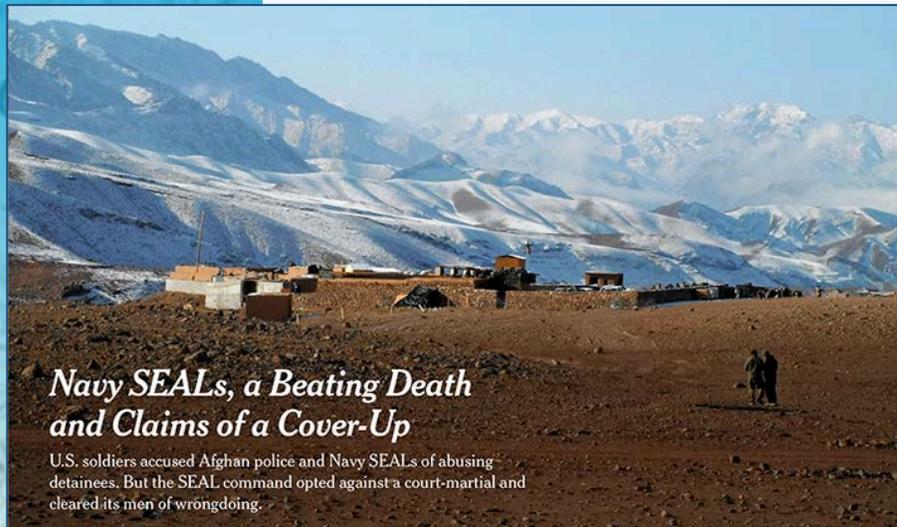
United States v. Special Operations Chief Petty Officer (SOC) David Swarts, USN, SOC Xavier Silva, USN, SO1 Daniel Silva, USN, and Lt. Jason Webb, USN

Charges dropped.

The four members of SEAL Team 2 had been accused by U.S. Army personnel of abusing detainees at Village Stability Platform Kalach in the Chora District of Afghanistan’s Uruzgan Province on May 31, 2012.

“All charges against Dave and the others were dropped. Thanks for your detailed investigative help sorting out the inconsistencies of witness statements and developing the 3D reconstruction of the scene. The men are very happy to put this behind them and get back to the Team.”

Colby C. Vokey, Esq., The Law Office of Colby C. Vokey



The New York Times, Dec. 15, 2015:
<https://www.nytimes.com/2015/12/17/world/asia/navy-seal-team-2-afghanistan-beating-death.html?searchResultPosition=1>



Case Update

Defendants Used Hubert Hansen's Name

Intellectual Property – Publicity Rights

\$9.6 million jury verdict + \$7 million in legal fees

Hubert Hansen Intellectual Property Trust v. The Coca-Cola Company, et al.

A San Diego jury found the defendants misappropriated Hubert Hansen's right of publicity by putting his name and depression-era backstory of every bottle of almost two dozen varieties of Hubert's Lemonade.

"Thank you so much for the hard work! It really paid off! We are very pleased to win! And definitely would like to work with you in the future."

Jordanna G. Thigpen, Esq., Johnson & Johnson, LLP

Field Marketing Intro, May 6, 2015 – Exhibit 1216-1, 8, 9

Package Elements

**New Website
Feature:
Visual Persuasion
Blog**

The Visual Persuasion™ Blog available at legalarts.com

[How Graphics Lead to Meaningful Settlements in Mediation](#)



[The Best Economic Graphics Are Designed for the Math-Challenged](#)



[Know Data Visualization Rules Before Breaking Them](#)



[Chart Your Visual Pathway to a Victorious Outcome](#)



[How to Design "Colorblind" Safe Graphics](#)



[Avoid the Pitfalls of Imperfect Graphical Analogies](#)



[Make Your Homicide Visualizations as Credible as the Sagon Penn Reenactment](#)



[Test Eyewitness Credibility with Graphic Proof](#)



**New Website
Feature:
Illustrated Case
Studies**

Mechanism of Failure:
Close Up of Improperly Secured Planks

The Legal Arts Case Bank available at legalarts.com

Dozens of illustrated case studies in 20 practice areas will inspire your trial team's creativity. Learn what your peers did to forge favorable outcomes by visually persuading mediators and fact finders.



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Mechanism of Failure:
Close Up of Improperly Secured Planks

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- All litigation practice areas
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