

Winning at Trial in the Time of Covid

**How in-house counsel can facilitate effective trial preparation
and presentation**

February 2022 | Anna Rotman, Taj Clayton, Diana Benton, Nick Benham

Kirkland's Covid Trial Experience

700+

Global litigation attorneys

100+

Trials, including several virtual trials

50/50

Approx. half our trials were for plaintiffs; half for defendants. Half were jury; half were bench

16

Litigator of the Week Awards; Won Litigation Department of the Year

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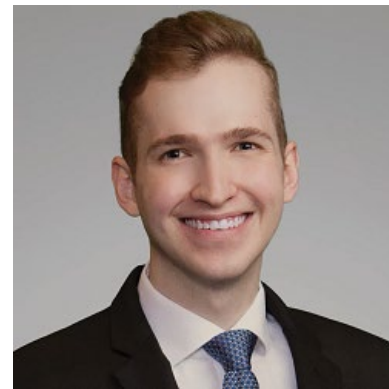
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Trial Preparation Phase

You Know The Business



- ▶ Your knowledge of the business brings invaluable perspective in developing trial themes.

You Know The Industry



- ▶ Why are we the good guys? Why is the other side the bad guy? How does this dispute fit within overall industry dynamics?

You Know The Witnesses



- ▶ Your support of fact witnesses is key from depo prep through when they're excused from the stand.

You Know The Witnesses



- ▶ It's critical that outside counsel develop a solid rapport of trust with the witnesses.

You Know Your Outside Counsel

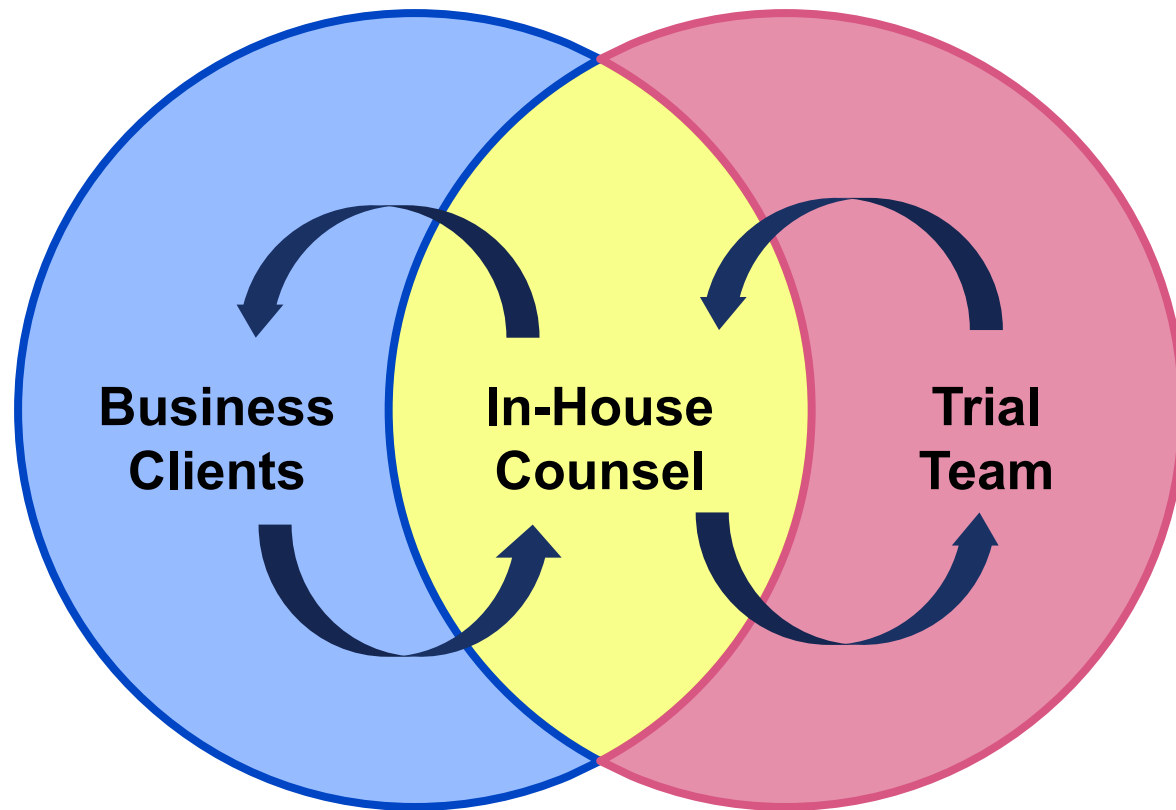


- ▶ If you have an opinion, weigh in (early!) on who you want to cover what at trial.
- ▶ Keep outside counsel apprised on settlement strategy and progress.

You Know Your Real Budget



You're at the Center of the Communications Flow

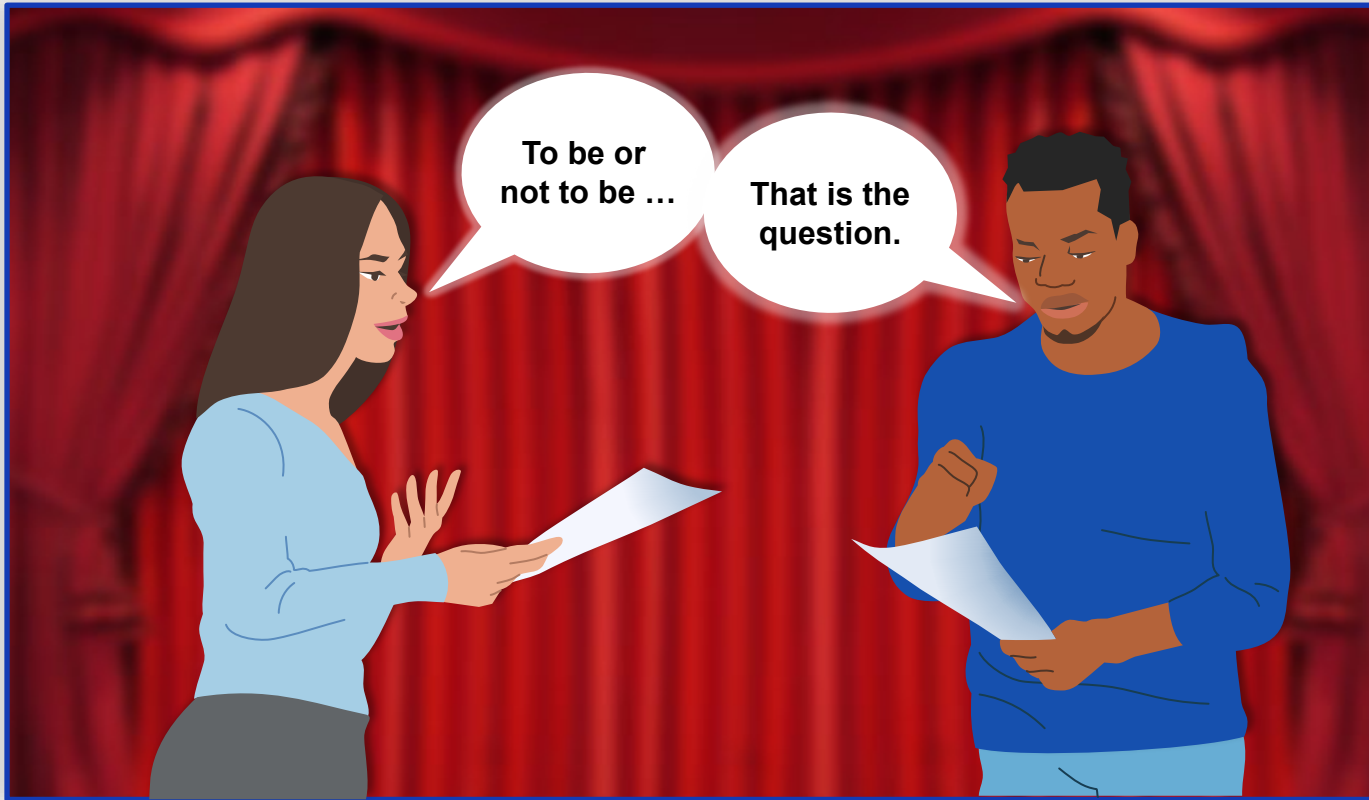


Trial Phase

Openings: You Have To Make The Investment



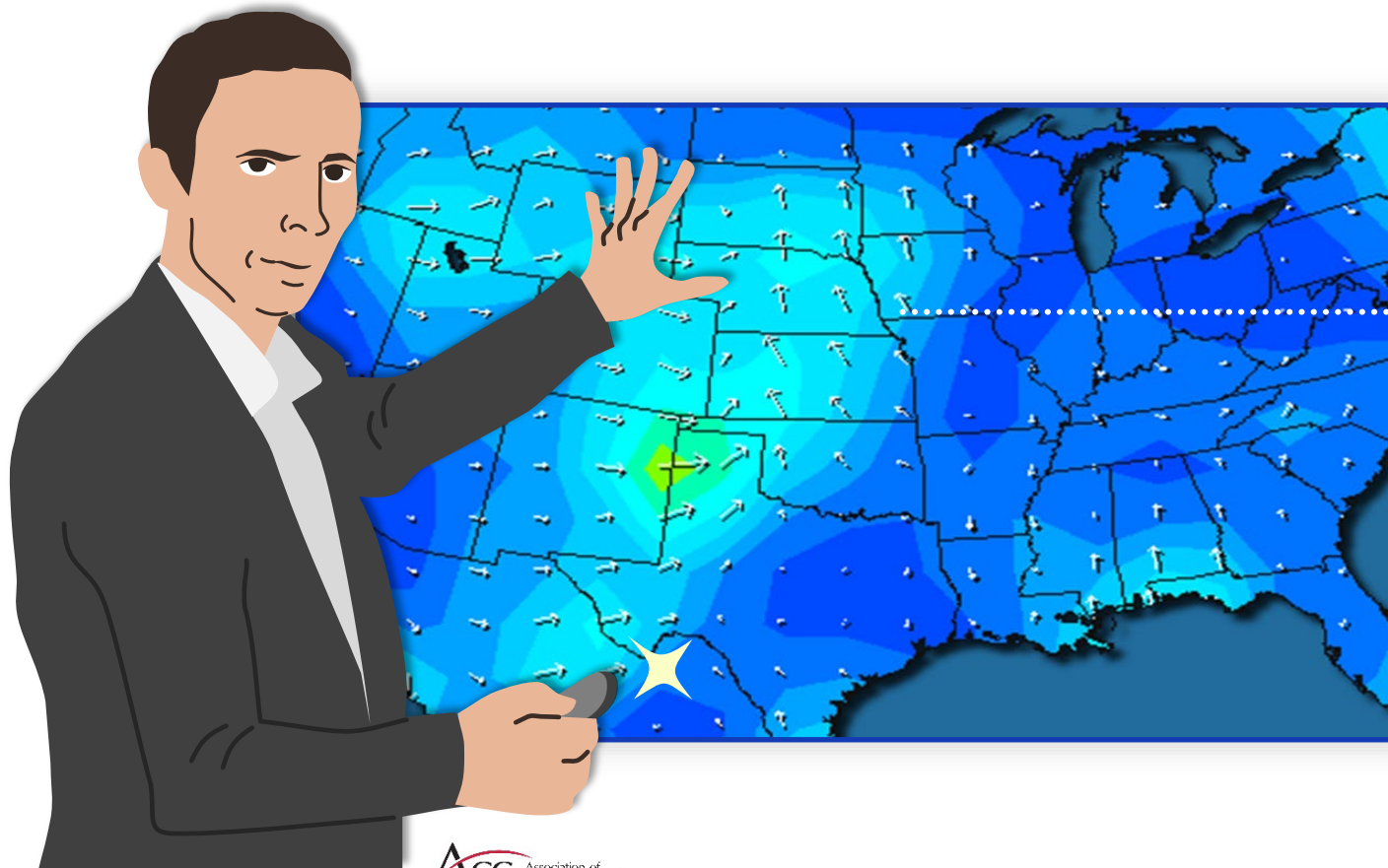
Fact Witnesses: You Need to Make Them Rehearse



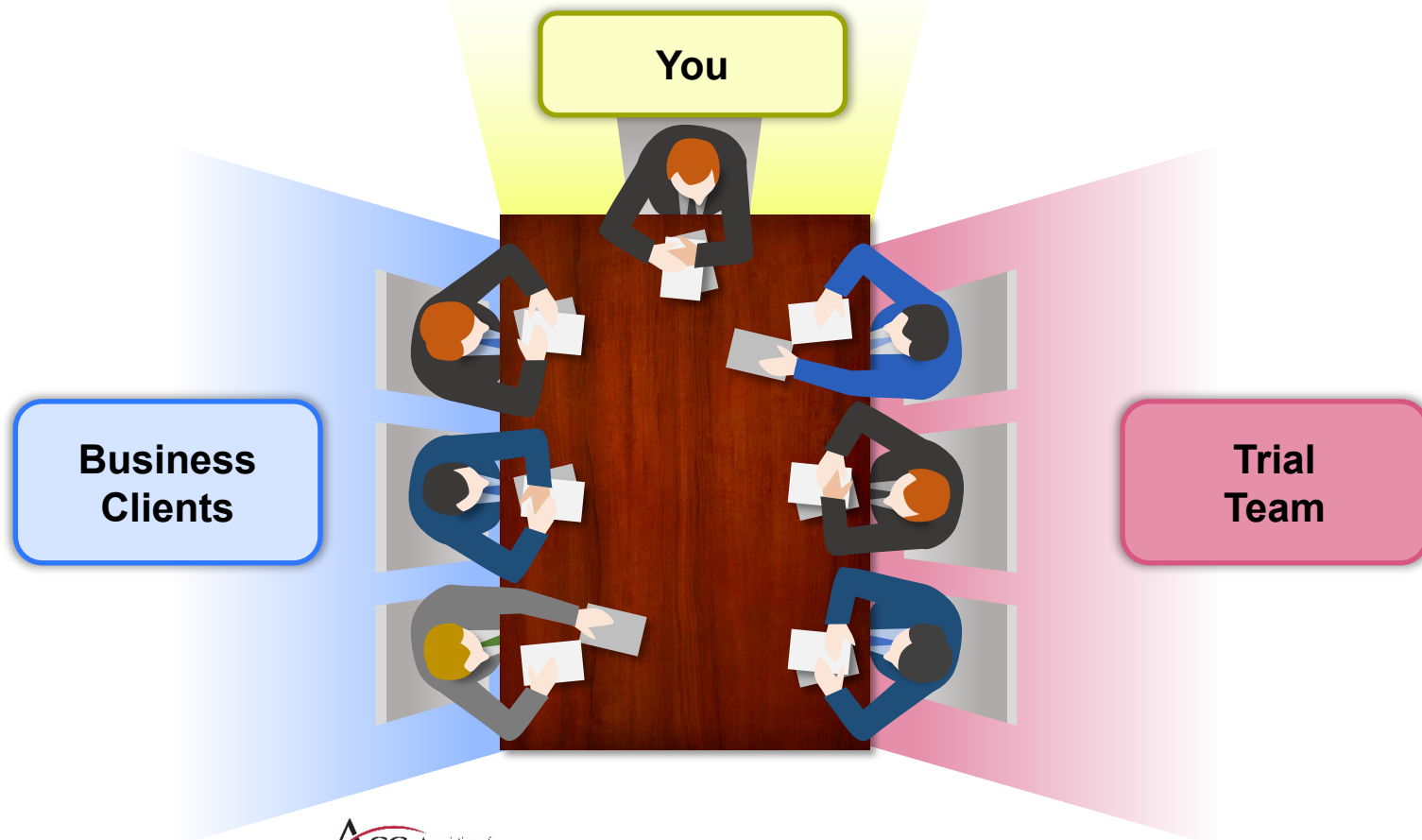
Expert Witnesses: You Need to Carefully Steward Them



Voir Dire: How To Think About Jury Consultants



Debriefs: Your Perspective Is Invaluable



Key Characteristics of Effective In-House/Outside Counsel Trial Teams



Mass Action Litigation

Key Considerations for Mass-Action Litigation Strategy



Key Considerations for Mass-Action Litigation Strategy

▶ **Decide where to invest the resources.**

- Teams dedicated to individual cases/plaintiffs/trials, and an overall leadership that understands the big picture.
- Broader leadership team ensures overall objectives and makes strategic recommendations to stakeholders on resource allocation, defenses, settlement, etc.

▶ **Build expertise within the team.**

- In very complex, long-running litigation, a lot of knowledge and training time is invested in the attorneys, experts, and staff.
- Team members should develop expertise with certain witnesses or certain aspects of the litigation.

▶ **Communications are critical.**

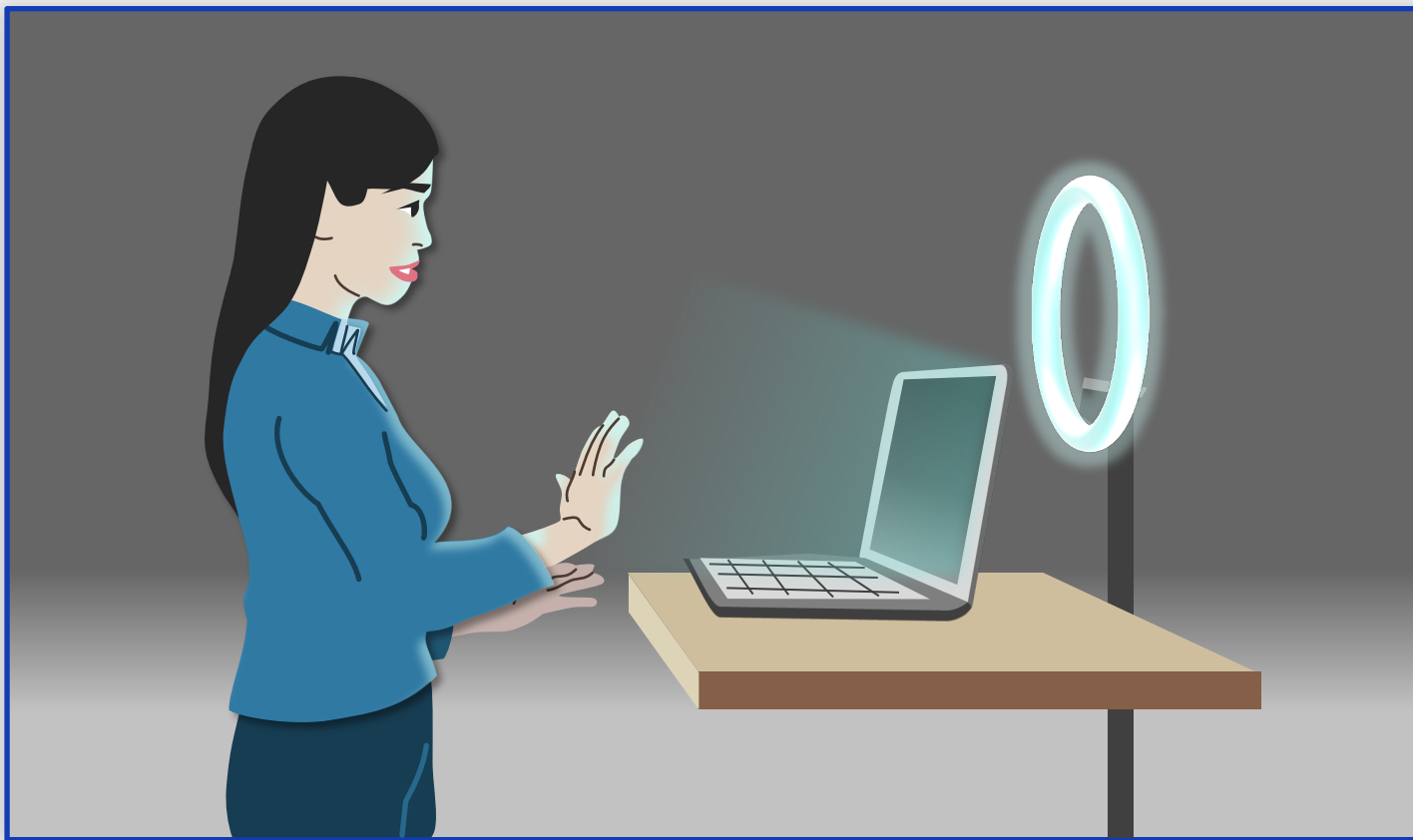
- Avoid wasted effort by sharing helpful work product.
- Avoid a disjointed strategy when interacting with opposing counsel or the court(s).

Key Considerations for Virtual Trials

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The Silver Linings of Going Virtual



Q&A -- What's On Your Mind?



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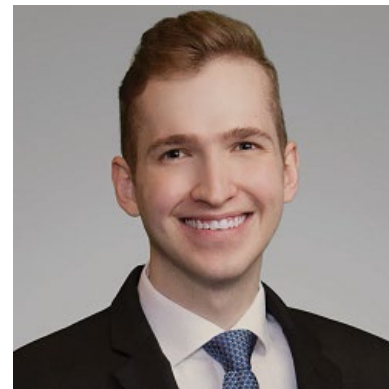
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