

March 2016

MAGNAFYI

Spotlight on Jury Research

Director's Cut: Magna Acquires Creative Counsel

A conversation with
Creative Counsel
President Denise Montiel



Chopped for CHOP Interviews

Richard Fabian, Jack Hipp
John Fleming, Robert Kopka
Kevin Breeze, Jeffrey L. Diamond
Theodore M. Schaer, Dan Brunson
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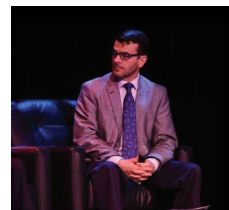
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Friends of Magna LS,

Allow me to introduce you to Jury Evaluator! It's not a survey, mock trial or a traditional focus group. It's a new patent pending program that is daring you to think differently about how you value your cases. It's the same Magna thinking innovation you've known and loved for 9 years, with a slightly different aim. Shall I explain?

Well, recently, a client challenged us to help them accurately predict what value jurors would put on their case without spending a ton of money. We decided to take on the challenge. As we began the process, we noticed that most of the current tools relied on old data, different fact patterns, unrelated venues and only BIG money solutions addressed the current media climate. So, we knew we needed something fresh.

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Anyway, it's been a huge success and we are hoping to change the way clients value cases at every stage of litigation.

With that, here's what else is going on at Magna...

Magna Legal Services merges with the premiere litigation graphics design shop in Chicago, Creative Counsel. Read more about it in our interview with Denise Montiel.

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Don't miss the sequel to last year's Mock Crisis CLE Seminar at Breakers in West Palm Beach on May 19th and 20th.



CHOPPED

MOCK TRIAL CHALLENGE

2015 Interviews



**Motley Crue meets
pro hac vice.**

**Asbestos tangles with
Angelo “Bud” Crue –
whoever the heck that is.**

**CHOPPED 2015 sorts it
all out. And takes on the
American justice system.**

Some called attorney Angelo “Bud” Crue a champion of victims’ rights for the way he inhaled settlement money out of asbestos defendant trusts as if it was smoke from one of his cigars.

Through the decades, he had amassed a yacht, a basketball team, and a penthouse on the Las Vegas strip dubbed the “Dust Den.” His high-profile lady friends included a federal judge, a successful actress and the manager of a well-known Vegas escort service.

But on stage at Magna’s 2015 CHOPPED mock trial, Crue was a defendant.

Crue stood accused of legal malpractice for allegedly unethically and illegally preparing witness/claimant Samantha Malone, suborning perjury and securing recoveries from multiple sources for injuries allegedly suffered as a result of exposure to asbestos. Malone – a two-pack a day smoker - was also suing Crue for emotional distress.

Crue hailed from the firm of Lee, Neil and Sixx, one of the world’s most profitable: per partner revenues hovered at \$3 million, although that was chump change to Crue’s \$16 million-plus annual earnings.

And yes, this may be the only time you ever see a fact pattern with allusions to Motley Crue and a reference to “pro hac vice admissions” – as in judges who revoked

the admissions for Lee, Neil attorneys, which all came after an anonymous source sent a copy of an internal Lee, Neil memo entitled “Prepping the Asbestos Witness for Success” to The Washington Post.

Of course, this being America, congressional hearings, various referrals to law enforcement and other investigations followed.

All the while Malone - a 42-year-old well-liked high school history teacher with a fatal cancer diagnosis – said she just wanted to clear her name. And to get justice.

If this doesn’t sound like just another day at the Borgata Hotel Casino & Spa in Atlantic City, we asked the CHOPPED participants to tell all.

What is CHOPPED?

JOHN FLEMING, CHOPPED judge; general counsel for ESIS, Inc.: It’s essentially a mock trial heard in a theatrical court of law. Instead of a jury, there’s a panel of judges. A presiding judge is also there, although that is more for entertainment than to officiate. There’s a fact pattern, and four attorneys go through the various stages of the trial: An opening statement, a direct examination of a witness, a cross examination of a witness, and at each stage of the trial, the judges decide to eliminate – or CHOP - one of the competitors.



You're at The Music Box at the Borgata, which is an event venue, so you truly are on stage given the lighting and the ambience.

And this is not exactly a high school mock trial.

ROBERT KOPKA, CHOPPED panel presenter; managing partner, Kopka Pinkus Dolin: In a typical seminar, you usually have someone giving a speech, or a panel of so-called experts. With CHOPPED, attorneys are challenged, showing their craft and displaying their talent.

KEVIN BREEZE, CHOPPED audience member; director, casualty claims, Everest National Insurance Company: What intrigued me the most was the quality of the attorneys on the panel, the actual participants. It gave me an opportunity to see top litigators that I'm familiar with, and seasoned attorneys I'm not familiar with.

How do you come up with this stuff, anyway?

RICHARD FABIAN, CHOPPED moderator & scenario author; senior vice president, general counsel, RiverStone Resources: When I'm writing the fact patterns, I usually have two or three starts before I tap into something. I need to come up with something that's winnable on both sides. I need to keep it balanced so there's an equal opportunity, no matter which side of the case you're on, to be victorious.

Then I try to think of things that are maybe ripped out of the headlines, or something that's a hot legal topic. This year, I really dealt with fraud in the asbestos world, which is a prevalent issue, and very important to a lot of lawyers, and costing the public a lot of money. But I also want to do something that's interesting to the audience, so it tends to be "sexier," meaning something

that's scandalous or loaded with emotions.

The other thing I'm working on in the back of my mind is, I need a twist in this competition. I build in ambiguities I can play with. The whole point is to put them in an uncomfortable position and see how they react — because that's what really happens in a trial.

How about those twists and turns?

JEFFREY L. DIAMOND, CHOPPED contestant; J. Diamond and Associates:

It was like nothing I've ever seen or been involved with. I started my opening and barnyard animal sounds came through the loudspeaker. I realized I wasn't in Kansas anymore — no, I was in Oz.

I wasn't sure whether that was some kind of glitch in the system. I remember looking over my shoulder toward the audience, thinking "What is going on?" Finally, it dawned on me — this is intentional.

But you have to try and drown all that out. After I was CHOPPED, I had the perspective of seeing the last two rounds from the audience.

The audience members had handheld devices, and they give you a bunch of different options that you could select from to throw at the contestants in the next round. The audience was intent on screwing up the contestants: Every time there was an option for "All of the above," that was the overwhelming choice.

THEODORE M. SCHAEER, three-time CHOPPED champion; shareholder, co-chair of property and casualty defense department, Zarwin Baum DeVito Kaplan Schaer Toddy: During cross examination of the defendant attorney, Magna put people in the audience who were protesting in favor of the lawyer accused of malpractice, who was perceived to be a champion of victims of asbestos exposure — he was a darling of the victims and he was hated by industry. They had signs, they were chanting. Part of my theme was that he had orchestrated everything in his favor, including these faux protestors.

DAN BRUNSON, CHOPPED judge; director of litigation and large loss, The General Automobile Insurance Services: It was very competitive, and it got more so throughout the day. For something that's supposed to be kind of fun, it seemed like Schaer put as much effort into this as he would preparing for a real trial.

It's sort of an artificial skills competition, like the slam

dunk competition: You see guys do one thing over and over again. In this one, it's the cross-examination skills.

What is it like to be on stage?

ROBERT L. SHANNON, CHOPPED contestant; senior partner, Hall Booth Smith: More intense than I thought. You're competing with other lawyers - and then we're flipping roles from plaintiff to defense. It's fluid. I found it exhilarating and exciting to walk on stage and perform.

You're going head to head with your peers – talented lawyers. And at the end of the day, the end of every round, we're all being assessed based on our effectiveness by rotating panels.

You see contrasting styles, and how those styles played out in front of the judges. You're getting immediate feedback. You have to win or lose every round. In other mock trials, you don't have that threat: "Hey, you're CHOPPED."

What are some of the takeaways?

JACK HIPPI, CHOPPED judge; vice president, claims, for Allianz Global Corporate & Specialty:

This is an opportunity to see how something works in a controlled environment – largely, how the dynamics of a mock trial can be used in real-life work experiences. Until you've actually observed one and experienced one, you really don't have a good idea of how useful it might be.

KOPKA: How far can an attorney go in preparing a witness, before they actually cross the line and actually suborns perjured testimony, or induces somebody to lie? There's no black and white. It's kind of a gray area.

What's the best way to avoid getting CHOPPED?

CHRISTOPHER GREENE, CHOPPED judge; vice president, general counsel & secretary for Canal Insurance Company: I look for style, but more importantly, did the attorney ferret out the right information ger-

mane to a case? They know the fact pattern beforehand, but they don't know which side they're going to have to argue in each round. And there's always kind of a surprise issue that pops up. In questioning the witnesses, I look at how they handle these surprises and present themselves.

Why should I want to see an attorney get surprised?

ARTURO ANTEZANA, CHOPPED judge; assistant vice president, excess casualty claims for ACE Group: With a regular mock trial, the attorneys know what's coming. Here, you can really see how an attorney has to think on their feet. It may not be that difficult to land a plane in perfect conditions, but that changes when you throw in rain and other challenges.

What keeps the audience watching?

PAMELA PETTUS, CHOPPED judge; director of claims and insurance litigation, BFC Financial Corporation: You want to know who's going to be CHOPPED. You're on pins and needles. We're at lunch, we're sitting around, and everyone's talking about what they liked, what they didn't like. You can't wait to go back and see if you're right: Is this guy going to get CHOPPED?

RENEE BLUM, CHOPPED audience member; vice president of claims, Quality Distribution: You're not just sitting there at a stiff conference. It's live and the story feels real. You're able to in your own head say, "This guy would be great in front of a jury."



And the audience is playing a role in voting on the performance of the attorney. Did he handle that piece of the evidence in part of the trial? Did he do a good job, or would you CHOP him?

I bet you somebody's going to steal the idea. Other conferences are all very educational, but when you get to participate, to see the roleplaying, you engage more and take more away from it.

DEBBY GILLIAM, CHOPPED audience member; director of claim litigation for Union Standard Insurance Group: One thing we hadn't used that Magna demonstrated at CHOPPED is a ghost jury that sits in the audience and gives real-time feedback. We have a high-exposure case in trial and I thought that might be really beneficial.

DANIEL DEITCH, CHOPPED judge; vice president, associate general counsel for NFI Industries: They make the event enjoyable and entertaining. I've been to a lot of seminars and conferences, and I feel like they haven't

given much thought to innovation. What Magna also does well is seek out feedback from the attendees.

How do the CHOPPED judges enhance the event?

HIPP: With the more traditional mock trial, you'd have an actual jury there, and it'd be a jury reflective of what you'd expect to get at trial. They'll be reacting more to the evidence presented and giving you a result, as opposed to commenting on the performance of the individual. So, not only do you get the benefit of observing a mock trial in its full sense, but then you also get kind of professional commentary along the way. Magna is at the forefront of this.

How's the after party?

SHANNON: People came up to me and said, "I want to shake your hand." That really took me aback. I'd never had anything like that happen to me before. I would see two or three people standing off to the side. You almost felt like a celebrity.



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SPOTLIGHT ON JURY RESEARCH

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COMMONWEALTH V. CHARLES SEVERANCE

Magna's jury consulting team, led by Senior Litigation Consultant, Rachel York, Ph.D., recently assisted the City of Alexandria in convicting a serial killer during a triple-murder trial. This high-profile case, Commonwealth v. Charles Severance, involved the serial murders of three people over the course of 10 years who were shot and killed in the doorways of their homes because of a hatred the defendant held for the City of Alexandria.



RACHEL YORK, PH.D.
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As the Commonwealth's Attorney, Bryan L. Porter stated, "jury selection is a crucial stage in any trial. Far too often, in my experience, criminal attorneys on both sides are so uninformed with regards to prospective jurors that the *voir dire* process essentially becomes guesswork. I felt that, given the gravity of this case, I

needed substantial assistance with jury selection and I reached out to Magna."

When the Commonwealth's Attorney sought our help with jury selection to ensure that Charles Severance was held accountable for the senseless violence he committed, our team was ready, with Porter saying "at the end of the selection process, I was confident that we had empaneled

a jury comprised of intelligent, conscientious and thoughtful citizens."

Our team at Magna was pleased to offer not only insights about the attributes that the Commonwealth should seek in a prospective juror, but also detailed observations and analyses once the *voir dire* process began.

After a five-week trial, the jury returned a verdict of guilty on all ten counts of the indictment and recommended three life sentences without the possibility of parole along with an additional 48 years of incarceration and a \$400,000 fine.

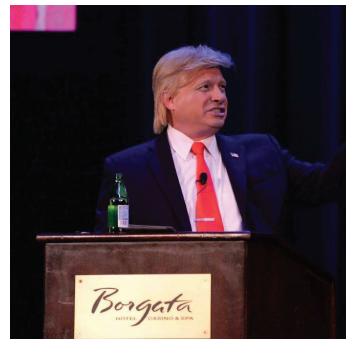
More information on the case can be found here:

<http://bigstory.ap.org/article/6caf61230ed74f38814656dac10f218b/deliberations-reach-day-3-alexandria-triple-murder-case>











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DIRECTOR'S CUT: Magna acquires Creative Counsel

A conversation with
Creative Counsel President Denise Montiel



It's Oscar time for winning cases through photo, animation and video. Don't forget the Djembe drum.

Q. So you're sitting in a conference room in Kuwait, knowing you may end up in international arbitration in London, and you're thinking, "I need a picture of myself being stood up for a billion-dollar-plus failed ac-

quisition." Take a selfie, or call Creative Counsel?

A. This may be a bit biased, but professionally speaking, call Creative Counsel.

Q. Why?

A. We provide visual presentation services for all types of cases, from large commercial and financial litigation such as breach of contract to smaller personal injury. To break it down a bit more, we translate data, facts and ideas into photos, video, animation and other mediums as necessary. In a products case for example we might do a technical tutorial: how a product works; how it was supposed to work; how it failed.

Q. But I have a selfie stick and I know PowerPoint. Can't I illustrate my own case?

A. Legal teams might think to throw a photo on the screen with PowerPoint. What we bring to the table is the information design expertise to know how to most effectively communicate the issue at hand. Photos, a more low-tech approach, could work in the right context; but we might suggest a collage to convey a down-home or family-owned company. Or we might suggest a zoom or pan, for example, to emphasize the size of facility. We know the best way to use the many tools in the visual design toolbox for maximum effectiveness.

Q. OK. I think I need an animation for my case.

A. Not so quickly. Let's not get ahead of ourselves. Our success is tied to focusing on the idea first and the graphics second.

Step one: We focus on what the client needs to communicate and the key thing they need people to know

to side with them so that they can win their case. The first step is the conceptual development. Do we need a tutorial on how these loans are made? On a chemical process? What does an accountant do – the rules or responsibilities - if we need to explain how they fell down on their job. The visuals fall easily out of that.

Step two: The actual graphic design. Clients and other firms may skip right to that step without defining the message, and that's the problem. Or competitors try to make three points with one graphic, which is overwhelming and people want to look away rather than get absorbed.

Step three: Easy. Now we decide the medium for the message. Maybe PowerPoint or animation or illustration on a board.

Clients usually go backward and start by saying they want an animation. I gently take them back to step one, and turns out animation may not be the solution.

Q. How did you do the Kuwaiti deal – or I guess, lack of a deal?

A. We illustrated the deal room with all these manila folders and thousands of documents and no one in the chairs. But we also showed how the deal was structured, how it was supposed to happen, the timeline, how the other party bailed at the last minute, and what the damages should be.

Q. Are you saying a long legal brief isn't effective communication?

A. Not necessarily. Unless you are a lawyer, have the time, and know the subject matter.

Q. Is all your work presented during trials?

A. No. Our work is also used for arbitration, settlement and mediation. We will also illustrate expert reports or briefs for issues that may not come through with words.

Q. Do you ever get stumped?

A. You need to boil it down. At the end, if we can't explain it simply, then our clients are not going to win. An attorney or expert may live with a case so long, they know what it means, but everyone else is lost.

The solution is to go back to the basics. Sit down and write an outline.

Q. Do illustrators, animators, etc. ever have to testify to their work?

A. I remember one time early in my career in 2002, which was also the early days of legal visuals. I was deposed over a 3D computer model of a warehouse that

had burned to the ground given that I had used a number of different drawings as sources.

Now that visuals are used more frequently, it's adequate for the expert or witness to say "this is an accurate representation based on my testimony." Then it usually gets admitted. If you do a re-creation, however, you have a higher basis for admission vs. something demonstrative.

Q. How did you get into this business?

A. I have a master's in materials engineering from Johns Hopkins University. I started out working in a government lab as a civilian employee designing things for the Army and Navy and figuring out why some materials failed, so they would not fail again. I had a knack for translating complex topics so people could understand them. It was a natural fit for visual communication.

Q. How did you get hooked up with Magna?

A. Magna was already an end-to-end litigation company. As litigation graphic specialists, they saw that we could greatly expand their current graphics capability. Magna, in turn, has far greater resources like jury consulting, trial

technology, video editing, translation services and court reporting that we could capitalize on to bring more value to our existing clients. I'm not going to lie: Magna having an office in New York City was pretty cool too.

Q. When you're not beating down the opposition in the courtroom, you're banging the djembe drum?

A. My hobby is Latin, African, Japanese and classical percussion. I especially like to play the Djembe, which is an African hand drum.

Q. What's the connection between courtroom graphics and percussion?

A. They are both creative endeavors, and you have to be clear on what you endeavor to communicate. If you just blare on a trumpet or bang on a drum, it won't be great. You need to plan the notes and sequence, and you need to make sure that what you create is consistent with your message. You might want to make something energetic, reflective or "cry your eyes out" emotional. Sometimes it's all three. That could apply to Beethoven, or a courtroom exhibit.



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