

Map Your Case

Prepared by:
Dr. Ken Broda-Bahm
Persuasion Strategies - a service of Holland & Hart LLP



LORMAN[®]

Published on www.lorman.com - June 2019

Map Your Case, ©2019 Lorman Education Services. All Rights Reserved.

INTRODUCING

Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ☑ Unlimited Live Webinars - 120 live webinars added every month
- ☑ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ☑ Videos - More than 1300 available
- ☑ Slide Decks - More than 2300 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

Map Your Case

By Dr. Ken Broda-Bahm – 1/31/19

If you're a trial lawyer, chances are very good that you have marked up a flip chart or whiteboard in order to get a handle on your case. With its boxes, arrows, and circles, we might view the resulting "map" as a kind of metaphor: The ideas of the case are laid out in space as if it was a kind of territory. The more we learn about cognition, however, the more it becomes clear that this actually isn't a metaphor. One interesting new development in cognitive research carries some practical implications for what we are doing when we use these maps to analyze and communicate our cases.

The cognitive research story begins with the broad question of why we think. After all, from evolutionary perspective, we need to fight off predators, find food, and find mates. But we don't really *need* higher order thinking. We could survive and reproduce without philosophy, art, literature, or even necessarily a concept of self. So why did those things develop? According to research coming from the Max Planck Institute for Human Cognitive and Brain Sciences ([Bellmund et al., 2018](#)) and summarized in a recent [ScienceDaily](#) release, it might come down to a novel act of repurposing. When we or other mammals move around in an environment, cells in the hippocampus and grid cells in the entorhinal cortex form a connection that allows orientation in space and navigation. Recent Nobel-winning research shows, however, that in humans those cells are active

not just when exploring environments, but also when learning new things. When research participants are learning about the traits of various kinds of birds, for example, it appears as if the brain is sorting the new information into physical piles and then moving among those piles. Our ability to spatially navigate a physical world is also used to organize and navigate a world of concepts. According to Jacob Bellmund, the first author of the study, these discoveries have led to a new theory on human cognition: “By connecting all these previous discoveries, we came to the assumption that the brain stores a mental map, regardless of whether we are thinking about a real space or the space between dimensions of our thoughts. Our train of thought can be considered a path through the spaces of our thoughts.”

So if our brains have creatively hijacked the navigation system in order to use our spatial abilities for cognition, language, and reasoning — like a repurposed version of Google Maps — what does that mean for effective communication and persuasion? It means that we ought to think of that notion of *space* when designing and conveying messages. For the litigator in the courtroom, it is critical to create a conceptual world that jurors will be able to easily navigate.

The Conceptual Space

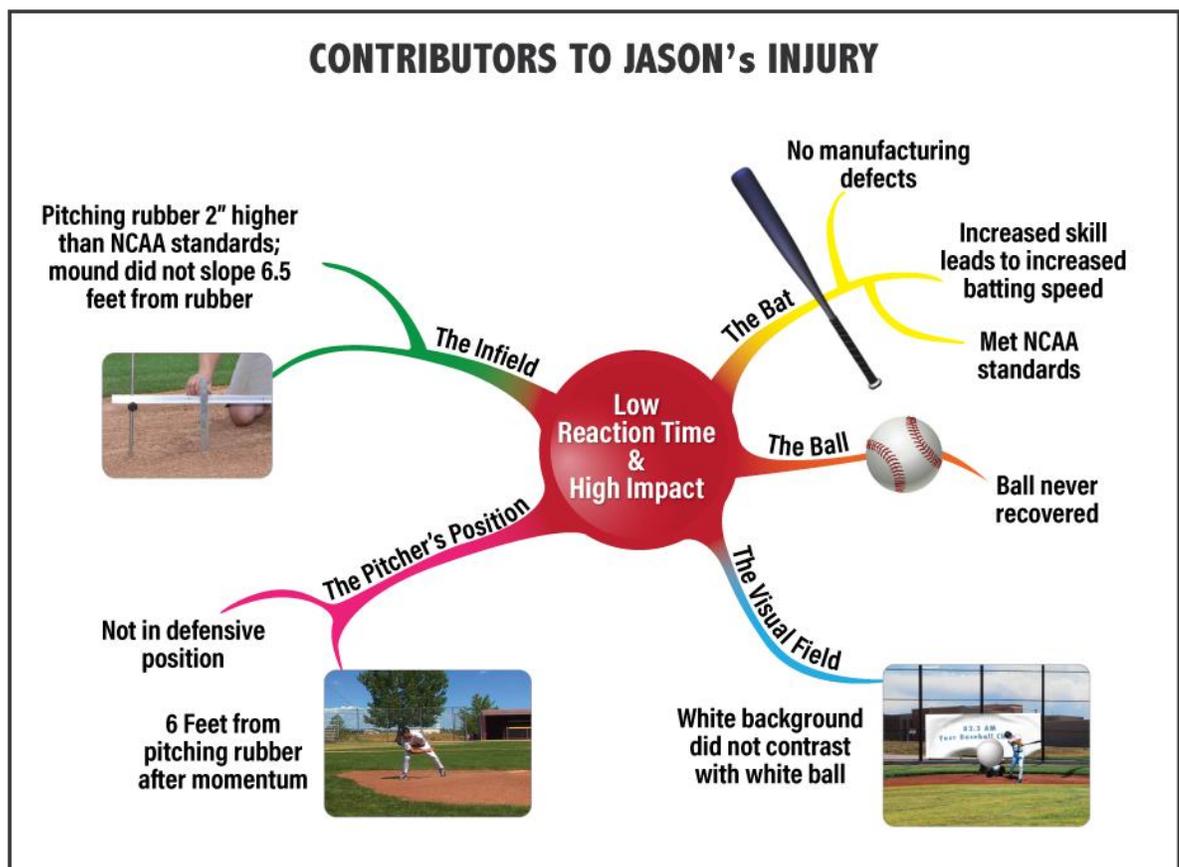
Appreciating the importance of spatial thinking starts with asking the question, what is the “territory” of your case? In other words, what are the key conceptual landmarks and what are the roads and relationships between them? If you don’t already have

the habit of sketching these out on a piece of scratch paper or on a whiteboard, then you should develop that habit. Seeing it laid out can help to develop the main categories, or [“chunks”](#) that you will then use to make it understandable to a jury. Personally, I believe that typing text into a computer is never going to be the same thing as laying those ideas out in physical space in front of you. When I am thinking of case themes, for example, I will usually step away from the keyboard and the screens, and start sketching using key words and arrows. Sometimes it is a circle of ideas all radiating toward one central point, and sometimes I divide the page with terms representing good on one side and bad on the other: [God and devil terms](#).

The Graphic Space

If it is useful for you to think about a case by laying it out visually, it will be useful to jurors and judges for the same reasons. So think visually as much as possible, and put those visuals in front of the jurors. [Our own studies](#) have shown that doing that increases your credibility while also aiding the jurors' comprehension. Even a bullet list of thoughts is going to be helpful in conveying categories and priorities. But more detailed graphics will be even more useful, especially if you think creatively about the arrangement and think about how the viewer's eyes will travel through it, usually from left to right and top to bottom.

For example, a fact pattern in which a baseball bat manufacturer defends against a claim by a pitcher struck and injured by a batted ball can illustrate. In this case, the goal of the defense is to identify the bat as just one factor among many as a way of reducing liability, causation and damages. Here is how a “mental map” of how that point might look:



The Courtroom Space

The conceptual space of the case can also interact with the literal space of the courtroom. For example, one old technique I remember from my days of competitive public speaking is the idea of having main points occupy a physical space. In other

words, if you are conveying four central ideas, then stand in four different spots as you deliver them and move during your transitions. Of course, in some courtrooms you need to stick to the lectern, but even small differences (like standing to one side or the other side of the lectern) can help to physically differentiate the points.

One other implication of courtroom space is to be aware of proximity. When allowed, lawyers like to get close to the jurors. Don't get so close as to invade personal space (i.e. no leaning into the jury box), but being relatively close allows you to effectively adapt and connect with jurors. The same goes for witnesses as well. If you have a good reason to get the witness out of the witness box (to demonstrate something, for example) use it. Experts especially will be better able to connect if they can even temporarily vacate the box in order to use the courtroom space as a teacher would.

For questions regarding this update, please contact: Dr. Ken Broda-Bahm
Persuasion Strategies 555 17th Street Suite 3200 Denver, CO 80202
Holland & Hart, 1800 Broadway, Suite 300, Boulder, CO 80302
Email: KBrodabahm@persuasionstrategies.com
Phone: 303.295.8294

This update is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author. This update is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.