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PAST EVENTS

Thursday, May 09, 2019 [Effective Trial Presentations](#)

Effective Trial Presentations

- When

Thursday, May 09, 2019

- 12:00 PM - 1:15 PM
- Location

Alfred A. Arraj Federal Courthouse 901 19th Street, Denver Courtroom A201

****THURSDAY, MAY 9, 2019****

"EFFECTIVE TRIAL PRESENTATIONS"

**Chief Judge Philip A. Brimmer
Magistrate Judge N. Reid Neureiter
United States District Court, District of Colorado**

12 noon - 1:15 p.m.

ALFRED A. ARRAJ FEDERAL COURTHOUSE
901 19TH STREET, DENVER
COURTROOM A201

Chief Judge Brimmer and Magistrate Judge Neureiter will present a CLE that will focus on techniques and best practices for effective trial presentations. Topics to be discussed include effective use of Powerpoint and the newly-installed document viewers as well as creative deployment of technology and summary analyses for demonstratives, opening statements, and closing arguments.

This CLE will be delivered in the ceremonial courtroom to facilitate live use of some of these technologies.

2 General CLE Credits approved. Click [HERE](#) for the written materials.

“HERE” =

<https://www.facultyfederaladvocates.org/resources/Documents/Technology%20and%20Graphs%20in%20Court--May%202019--US%20District%20Court--Version%20May%206%20-%20-%20%20Read-Only.pptx>

TOP 10 MISTAKES LAWYERS MAKE

1. Confusing the existence of a fact with its significance.

We can all stipulate that the temperature at 1:00 p.m. on November 4, 2016 was 48 degrees, even if we disagree as to whether that was cold enough to require a coat or not. Most facts in a lawsuit are not actually in dispute, although the inferences one should draw from them are. Stipulate to the fact, but argue the significance.

2. Misunderstanding the difference between a fact and a conclusion.

Pleading and evidence require facts, not mere conclusions. “The Plaintiff was routinely harassed by her supervisor at work” is a conclusion. “The Plaintiff’s supervisor would repeatedly tell the Plaintiff that she was ‘ugly,’ that she ‘was the worst employee I’ve ever seen,’ and that she was ‘an anchor pulling down the rest of the staff’” is a fact.

3. Appeals to emotion instead of reason.

Avoid adjectives and especially adverbs in briefing; stick to nouns and verbs. It is one thing to inform the court that you believe that witness is “incredible.” It is another thing to inform the court that the witness is an “inveterate liar and con man.” Judges are wary of appeals to their emotion. An argument that is trying to push emotional buttons will often cause a judge to assume that the attorney is resorting to an emotional argument because they cannot articulate a rational one.

4. Reasoning backwards

Many attorneys conceive of a claim or argument by thinking about the result they want first, then trying to construct an argument that will lead to that result. Often, those arguments do not stand up to scrutiny when reasoned forward – that is, when one begins instead with the evidence and elements. A certain comment by a decisionmaker may seem damning if you are already operating from the perspective that the decisionmaker was biased, but if you start from the assumption that the decisionmaker was not – as the court will likely do-- that same comment may appear to be entirely innocent.

5. Issue spotting, rather than issue sorting.

Law schools teach students to spot every conceivable issue or argument that could apply to a given set of facts, but few require students to then decide which of those issues or arguments are the strongest. Courts want your best argument or best claim, not every argument or claim you can come up with. If your best argument can’t win, weaker ones won’t either.

6. Arguing what you wish the evidence said, rather than what it actually says.

There is a difference between a witness saying “I don’t recall if he told me about the meeting” and the attorney arguing in a brief that “He never told the witness about the meeting.” Judges will check whether the record supports your assertions of fact and misrepresenting what the record says is one of the fastest ways to lose your credibility with the court.

7. Reflexively filing exhibits, especially those containing sensitive material.

Exhibits should be used sparingly, and only when the fact to be established by the exhibit is in dispute. Don’t assume that a document is more probative of something than testimony is. You need only attach that portion of an exhibit that is germane to the dispute. If the public filing of an exhibit will trigger a motion to restrict access, give extra attention to the question of whether the exhibit is necessary to establish a disputed fact and whether alternatives like summarization or redaction are appropriate.

8. Misunderstanding why you’re citing cases.

Know the difference between a holding and *dicta*. Know the difference between binding authority, persuasive authority, and a case that only serves as an example of something. String cites rarely provide additional value. Always read the whole case – the era of electronic research encourages “cite biting,” where a case is cited because it contains a handy turn of a single phrase that popped up in a text search, but when read in full, the case stands for an entirely different proposition.

9. Not getting to the point.

Courts rarely need to be informed of the summary judgment standard. They rarely need a lengthy factual or procedural recitation. Often, the critical part of a 10-20 page brief is as little as one or two sentences or a single paragraph.

10. Not knowing why you’re using that deposition at trial.

Are you impeaching? Refreshing recollection? Or did you just not like the answer the witness just gave? Impeaching and refreshing have specific foundational and procedural steps that you should know and follow. And be aware that impeaching with a deposition just attacks the witness’ credibility; it doesn’t constitute substantive proof of the fact recited in the deposition.

USDC – Colorado Courtroom Technology Tips / Checklist

Before Your Trial / Hearing:

- Arrange with the judge's Courtroom Deputy Clerk (CRD) to visit the courtroom and test your laptop connection and use of courtroom equipment. See Judge's [Practice Standards](#) for CRD info.
- Learn the protocol for requesting presentation of the evidence through approval by the Court and projection by the CRD.
- Read the USDC-Colo. Courtroom Technology Manuals (Arraj or Rogers Courthouse), available on the USDC website under "General Attorney Information."
- Familiarize yourself (or your 2nd chair or paralegal) with the specific laptop that you'll be using. Each has different control and display buttons and tools that you'll need for the evidentiary presentation.
- Arrange with the judge's Court Reporter the use of realtime reporting (be aware of substantial fees).

Day of Trial / Hearing:

- Arrive early and test your laptop & evidence a final time. Ask CRD if the system has been turned on or reset - usually the court's IT department does that the day before a trial (Fri. before a Mon.).
- Probably not a bad idea to bring paper copies as a backup – use the Document Camera for that, if necessary.
- Also ask CRD to have the Annotation Screens (Evidence Presentation Cart and Witness Stand) turned on.
- If in A201, make sure the Lectern microphone is turned on.

Connections and Equipment:

- First, be aware that if you're using a hotspot for an internet connection, don't use it near the microphones – it interferes with the signal and creates feedback.
- Be aware that there's a **hand-held microphone** – "Phil Donahue style" for demonstrative exhibit explanations, voir dire, etc. ... but ask the Court for permission, of course.
- Also, the CRD has headsets for Assistive Listening purposes and use by language interpreters, if necessary.
- **Laptop connections** – HDMI connectors, which are better, have built-in audio connections. The more dated VGA connectors (the ones with screws on the side) use a separate audio jack.
- To present images, video, and audio from your laptop, use Function F7 or F8 to toggle between your laptop screen and projecting it to the Evidence Presentation System.
 - For example, "Duplicate" vs. "PC Screen Only."
 - Remember that the Court and the CRD control which side's evidence is being presented, and whether it will be displayed to the jury.
- There is at least one laptop connection in the attorney table for Plaintiff and Defendant. There are two in Courtroom A201 in the Arraj Courthouse.
- Connection cords are in the center trough of each counsel table, as well as a power strip.
- The Evidence Presentation Cart has an HDMI connection through the Document Camera, and a power strip.
- **Document Camera:**
 - Power comes on and off when you lift the camera arm.
 - A light switch is at the base.
 - Zoom, Focus, AutoFocus (AF), Freeze (allows you to lock an image and switch underlying papers), Preset image (ask IT), and Extern connection (use for laptop presentation).
 - You may connect your laptop to the Document Camera, and toggle between the laptop and the camera for presenting images, or video/audio.
- Annotation Screens: Be aware that the Evidence Presentation Cart and the Witness Stand screen allow "annotations" to be made – different colors to circle or underline, or highlighting to emphasize text, are available.
 - The annotation controls are as follows (gently tap each position on the screen for each control):

Change Color – Upper Left

Highlight Tool – Upper Right

Clear All Marks -- Lower Left

Clear Last Mark – Lower Right

Great Resources:

- Courtroom Technology Manuals (Arraj or Rogers): see USDC website under "[General Attorney Information.](#)"
- [Read](#) Chief Judge Brimmer's/Mag. Judge Neureiter's "Effective Trial Presentations" from 5/9/19, FFA [website.](#)