

Five common mistakes in courtroom presentation

As technology and design sophistication rapidly advance courtroom; Markman; and pre-trial presentations, trial attorneys continue to be led into unnecessary and sometimes costly mistakes. Here are five of the most egregious:

5. Taking your courtroom for granted

There is nothing inconsequential about knowing your courtroom. While some jurisdictions make it difficult to know — until the last minute — *exactly* in which courtroom you will try your case, surveying it is critical to your success. Your visual consultants and their trial techs need to survey the court to optimize your style of presentation, to prepare for technical setup, to assess potential glitches and to research the judge's preferences and needs.

We have discovered state-of-the-art federal courthouses with substandard projectors. We have averted embarrassing blackouts in older courts caused by insufficient circuits. And we have learned that a judge was hard of hearing, in a case where video depositions were critical.

4. Distracting technology

Do not use monitors for almost every juror empanelled. It is clear from all cognitive research that using multiple monitors creates a *lack* of focus in the jury, distracting jurors from counsel and her message.

While it is important for the judge, both counsel tables and the witness to each have a monitor because of courtroom geography, the most successful trial attorneys keep the jury focused on one screen that *they* command. In that way, *what* the attorney says and shows is integral and inseparable from the facts. The attorney is imbued with veracity.

3. Redundant media

Too much of even a good thing can be dangerous to your case. Almost 10 years ago, in one of our first trials, our client had developed a compelling set of facts, built over 10 years (!) of discovery. That decade of discovery produced a preponderance of evidence and some 349 strong video depositions, most of which they wanted to show to the jury. Earnest discussion reduced the presentation to fragments of 14 depositions — and even those videos had to be interspersed with live testimony and demonstratives throughout the trial so jurors would not nap.

Our clients prevailed in that case, but we've seen other recent cases where counsel insisted on presenting pivotal information in an endless litany of charts — all with the same visual look and lacking emotional reference. The results were not so rewarding. In the interest of making your arguments stick, mix media and visually compartmentalize your key arguments.

2. PowerPoint less

PowerPoint[©] can be useful for organizing your thoughts, but it is a snoozer when it comes to reaching juries. A juror can read words three times faster than you can speak them, so don't use the slide as your script. Information design authority Edward Tufte points out in his book *Beautiful Evidence* that PowerPoint

"tends to make audiences ignorant and passive, and also to diminish the credibility of the presenter."

This is because stacked information, even with frilly clip-art, doesn't communicate context or evaluate relationships. It is a voice-mail menu system made visual. It is not an effective way to tell a story.

1. Killing with minutia

Details are important in every case. But not every detail! Our experience in trials — even bench trials and arbitrations — is that when counsel wants to build the case brick by brick in opening statement they are almost assured of losing the jury — even if their facts are strong.

Instead, based on your facts, frame your story in a universally understood context, built on 3 key points, devoid of as much jargon as possible. Allow your audience (judge, jury, arbitration panel) the time to be conversant with your overarching storyline — the who did what to whom — before you start overloading them with details.



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