

Oregon  
State  
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CLE  
Seminars

# Mastering the Art of Persuading the Trial and Appellate Judge *featuring* *David Markowitz and Anna Joyce*



**Friday, December 15, 2017**

**1 p.m.–4 p.m.**

**2.75 General CLE or Practical Skills credits**

**MASTERING THE ART OF PERSUADING THE TRIAL AND APPELLATE JUDGE**  
*FEATURING DAVID MARKOWITZ AND ANNA JOYCE*

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## SCHEDULE

### *Presented by*

**David Markowitz**, *Markowitz Herbold PC, Portland*

**Anna Joyce**, *Markowitz Herbold PC, Portland*

### **12:00 Registration**

### **1:00 How to Win at Oral Argument**

- ◆ Create the perfect oral argument
- ◆ Deliver the perfect oral argument
- ◆ Design visual and audiovisual presentations that enhance oral arguments
- ◆ Oral argument for the appellate judge

### **Elements of Trial and Appellate Judge Persuasion**

- ◆ What impairs persuasion
- ◆ What enhances persuasion

### **Why the Same Words May Have Different Persuasive Impact, Depending on:**

- ◆ Who speaks the words
- ◆ How the words are spoken

### **Developing Credibility**

### **Courageous Arguments**

### **Winning the Right Way**

### **4:00 Adjourn**

*One 15-minute break will be taken during the session.*

A series of horizontal lines for writing, consisting of 30 evenly spaced lines across the page.

## FACULTY

**David Markowitz**, *Markowitz Herbold PC, Portland*. Mr. Markowitz is the cofounder of the Markowitz Herbold law firm and considered by his peers to be among the finest trial lawyers in the West. He has received numerous awards and recognition for his outstanding trial work and efforts in mentoring and educating attorneys at all levels. He is a Fellow and former Oregon State Chair of the American College of Trial Lawyers, a Fellow of the International Academy of Trial Lawyers, and a member of the American Board of Trial Advocates. Mr. Markowitz frequently acts as a mediator and arbitrator to resolve commercial disputes, served as a pro tem judge in Multnomah County, and is an expert on attorney fees.

**Anna Joyce**, *Markowitz Herbold PC, Portland*. Ms. Joyce, coleader of Markowitz Herbold's appellate practice, is the former Solicitor General for the State of Oregon. As Solicitor General, Ms. Joyce led a team of attorneys, attorney managers, and support staff in developing, coordinating, and briefing the state's legal position on appeals in Oregon and federal appellate courts. She also managed human resources and staffing, case load, and the day-to-day operations of the division. Ms. Joyce has argued hundreds of cases before the Oregon Appellate Courts and has written briefs for three cases that went before the United States Supreme Court.





## **Introduction: Challenges to Oral Persuasion of the Trial Judge**

- **Time**
  
- **Judge's capacity to process new information presented during oral argument. The judge must:**
  - **Understand the information**
  
  - **Decide whether to keep or discard it**
  
  - **Determine relevance**
  
  - **Integrate new information with existing knowledge**
  
  - **Apply the information to decision making**
  - **Appellate arguments, generally not new information presented and no new law/case presented**
  
- **Judge's tendency to make quick, intuitive decisions**
  - **For appellate courts, they are not required and generally don't have to make quick decisions.**
  
- **Opponent's efforts to contradict, distract, and confuse**
  
- **Interference with judge's attention**
  
- **Extent of judge's preparation**
  - **Totally unprepared**

- **Decision completed**
- **In the appellate courts, the judges are always highly prepared, decisions rarely completed ahead of time**
  
- **Variance in judge's experience**

## **I. Credibility**

### **A. Importance of credibility - most potent form of persuasion**

- 1. “If he says it’s so, it’s so”**
- 2. In close cases, judges rule in favor of lawyers they trust**
- 3. Judges exercise discretion in favor of attorneys they like and trust**

### **B. Established credibility**

- 1. Judge’s prior observations**
- 2. Reputation**
- 3. Written materials submitted before oral argument**

### **C. Demonstrated credibility - courtroom performance that will establish credibility for this argument, the rest of this case, and for future cases**

- 1. Credibility must be perceived by the judge**
- 2. Conduct which is professional, courteous, and civil toward everyone**
- 3. Demonstrated expertise (rather than asserted expertise)**
  - a. Selection of important matters**

- b. Knowledge of relevant legal authority**
- c. Knowledge of case facts**
- d. Strong sense of organization**
- e. Word selection - vivid descriptions that create a complete, clear visualization v. the opponent's hazy, incomplete picture**
- f. Educational tone**
- g. Goodwill. You have the judge's goals at heart**
- h. Never:**
  - (1) Overstate the facts or law**
  - (2) Misrepresent case holdings**
  - (3) Misstate opponent's position**
  - (4) Use sarcasm**
  - (5) Make personal attacks on opposing counsel**
  - (6) Mislead the court (e.g., inference v. established facts)**

**(7) Advance unsupportable positions**

**(8) Demonstrate dissatisfaction with a ruling**

**i. Always:**

**(1) Be prompt and ready**

**(2) Be courteous and respectful**

**(3) Be concise and targeted**

**(4) Answer court questions directly**

**(5) Be candid**

**(a) Describe what you don't know**

**(b) Concede when appropriate**

**(c) Acknowledge weaknesses and gaps**

**(6) Promptly correct misstatements**

**(7) Know when to quit and move to next issue**



## **II. The Judge(s):**

### **A. The judge's goals**

- 1. Right answer for this case**
- 2. Just and fair**
- 3. Effective use of court's limited resources**
- 4. Speedy case resolution**
- 5. Serve the public's interests**
- 6. Improvement of process**
- 7. Consistency**

### **B. Know your judge**

### **C. Assume the judge needs to be educated**

- 1. About the case**
- 2. About the law**

**D. Judges believe they decide unemotionally, so don't make obvious appeals to emotion**

**E. How do judges judge?**

**1. Deliberative: judges apply the governing law to the facts of the case in a logical, mechanical, and deliberative way**

**or**

**2. Intuitive: judge's follow an intuitive process, reaching fast conclusions that they only later rationalize with deliberative reasoning.**

**3. Chris Guthrie, Jeffrey J. Rachlinski, and Andrew J. Wistrich, "Blinking on the Bench: How Judges Decide Cases" 93 Cornell L. Rev. 1 (2007):**

**Judge's generally make intuitive decisions, but sometimes override their intuition with deliberation**

**4. Intuitive processes occur quickly; deliberative processes require effort, concentration, and time**

**5. Intuitive responses emerge from repetition**

**6. If an intuitive decision is likely adverse, lawyer must explain that the intuitive (quick and likely) decision will be erroneous, and convince the judge to engage in time - consuming deliberative analysis to be accurate**

**a. Need to explain that answer is not obvious or ordinary; not routine**



**F. Judges on the appellate courts**

- 1. Appellate court judges are deciding not just the right answer for this case but for the law of the State of Oregon as a whole.**
  - a. They will be thinking about how your case fits in with others presenting similar issues.**
  - b. Less thought about which side wins, more thought to what is the right answer**
- 2. Although before the trial court you assume that the judge needs to be educated about the case and the law, the same assumption doesn't necessarily apply to the appellate courts**
  - a. They are highly educated on the law and will be well prepared as to the facts of your case**
- 3. Deliberative v. intuitive**

### **III. Content**

#### **A. Goals**

- 1. Focus attention**
- 2. Organize for maximum persuasion**
- 3. Explain**
- 4. Build credibility**
- 5. Persuade**

#### **B. Focus attention: nothing unnecessary is said, and everything necessary is provided**

- 1. Remove clutter to allow concentration on the issues, arguments, and support that will make a difference to the outcome**
- 2. Simplify issues**

**“One expression of true genius in oral argument is seemingly effortless condensation of complicated issues into a simple form, without any compromise of the substance.” Hon. Michael Donson, USDC Mass.**

3. **Use visual aids to focus attention**
  4. **Avoid distractions**
- C. Organize for maximum persuasion**
1. **A good argument is rarely organized like a good brief**
    - a. **A brief is logical and sequential; the amount of space devoted to each point has more to do with its complexity than its strength**
  2. **“The gift of arrangement is to oratory what generalship is to war.” Quintilian – Roman teacher**
  3. **Perfect argument is like a perfect machine: each part is essential and in the right place**
  4. **Generally, organize to place most important issues, argument, and support to the front**
    - a. **Then, as appropriate, organize chronologically, logically, or by typical judicial decision-making process**
  5. **Communicate your organization**
    - a. **Give the judge a roadmap to signal what will be covered**
    - b. **Aristotle: forensic speakers must state their case and then prove it**

**D. Explain**

**1. Animate the law and the facts**

**a. Explain why a rule is reasoned, practical, provides certainty, or supports important policy**

**b. Give life to cases - author, court, facts**

**c. Give detail - use vivid language, add color and context**

**2. Emphasize and explain the key decision points**

**3. Don't read or repeat the written briefs**

**4. Be candid - share the judge's goal of finding the correct answer**

**5. Use visual devices to explain**

**E. Persuade - utilize techniques and style of persuasion**

**1. Persuasive communication goes beyond being informative by attempting to change the listener, to change actions, beliefs, and opinions**

**2. Aristotle on rhetoric: The art of finding in any given situation the available means of persuasion**

### 3. Techniques of persuasion

a. **Have a sense for the judge as the audience - what the audience is thinking, feeling, waiting for, needing**

b. **Narrative – tell the story; if applicable in a powerful persuasive style**

c. **Metaphor - one thing is described in terms of another, usually comparison from one category to another**

**“Clause 1.02 is the engine of the contract; 1.03 is the emergency brake.”**

d. **Personification – human qualities are given to non-human things**

**“Clause 1.02 is the heart and soul of the contract.”**

e. **Balance – two clauses or phrases of matching rhythm and length are brought together for effect**

**“The contract is clear: deliver on the first, or pay on the second.”**

f. **Rhetorical questions - speaker expects no response; used to organize thought or to force the judge to draw a conclusion**

**“Wouldn’t the Johnson court have mentioned the Stone Mountain case if it intended to overrule it?”**

g. **Challenge and defeat fallacies:**

- (1) **Something (usually a case) is true or good simply because it is old**
- (2) ***Post hoc ergo propter hoc* - because one event follows the other, the first causes the second or the second results from the first.**
- (3) **Division - assumes each of the parts contains the qualities of the whole, e.g., every lawyer's style is consistent with the law firm's style**
- (4) **There is a simple answer to a complex question**
- (5) **Straw Man – attacks a fabricated or collateral argument, then declares victory over issues that were not addressed**

#### **4. Persuasive style**

##### **a. Keep language pure**

- (1) **Simple vs. complex**
- (2) **Specific vs. vague**
- (3) **Incisive vs. ambiguous**
- (4) **Well chosen – expresses thought best**

##### **b. Vivid and lively imagery**



- a. **Redundancy – don't**
  
- 6. **Regurgitation of the written brief lowers the judge's perception of sincerity**
  
- 7. **Prepare an ending remark, so it doesn't sound like an engine running out of gas**
  
- G. **Building the perfect motion arguments (both opening and rebuttal)**
  - 1. **Start with a blank slate**
    - a. **Make the most important argument and use the most convincing supporting case or fact**
  
    - b. **Each item added distracts focus from more important**
  
  - 2. **Read everything that may be important to the judge's decision**
    - a. **"If I had 8 hours to cut down a tree, I would take 7 hours to sharpen my ax." A. Lincoln**
  
    - b. **Read for presentation, response to judge's questions, and response to opponent's arguments**
      - (1) **Goal of preparation: never be surprised by opponent's arguments or judge's questions**
  
  - 3. **Identify the issues to argue**
    - a. **Not every issue requires oral argument**



**b. Bases for selection**

- (1) Importance of issue to outcome of case**
- (2) Outcome of the issue is uncertain**
- (3) Important supporting argument missed in briefs**
- (4) Mistakes in either side's briefs on the issue**
- (5) Opponent's written arguments on the issue appear more persuasive**
- (6) Opponent had last written argument on the issue and it requires a response**
- (7) Judge will want to hear argument on the issues**

**c. Strategic assumptions**

- (1) Judge is smart**
- (2) Judge is busy**
- (3) Opponent is smart**

**4. Determine the best arguments for each issue**

- a. **Not every written argument requires oral discussion**
  - b. **Discuss arguments that are most likely to be relied on by the judge (reason for victory or defeat)**
  - c. **Add important arguments that were missed in the briefs**
- 5. Select the legal and factual support for each argument**
- a. **Select only the support that is most likely to be outcome determinative**
  - b. **Select supporting cases**
    - (1) **Factually similar**
    - (2) **Highest authority**
    - (3) **Recognized leading case on subject**
    - (4) **Ruling precisely supports the argument**
    - (5) **Trial judge connection to case**
    - (6) **Most recent**
      - (a) **Update all authorities**
    - (7) **Recognized author or panel**

- c. Select short excerpts from cases to display and/or read**
  
- d. Discuss opponent's cases that are**
  - (1) Most relied on by opponent to support position**
  
  - (2) In actuality, the most important case**
  
  - (3) Subject to attack**
  
- e. Fact support**
  - (1) Most important fact support**
  
  - (2) Actual factual controversy**
  
  - (3) Clearly determinative of argument**
  
- f. Opposition cited facts**
  - (1) Most relied on by opponent**
  
  - (2) Judge may believe to be important**
  
  - (3) Subject to attack**

- (a) Misquoted**
- (b) Out of context**
- (c) Rebutted by better evidence**
- (d) Inadmissible**
- (e) Equivocal**

**6. Edit for length – shorten**

- a. Assume two-thirds of scheduled time, at most**
- b. Eliminate everything unnecessary**

**7. Select the words to speak**

- a. Precisely what will be said about each issue, argument and support (law or fact)**
- b. Remove words to allow slower pace**

**8. Create visual and audio visual presentations**

- 9. Add persuasion - what else can influence judge's decision**
- a. Inferences – but be clear that inference is being argued**  
**“from opponent's silence, can infer - ”**
  - b. Logical extensions of opponent's arguments**  
**“if rule x, result will be y”**
  - c. Flip side of opponent's arguments**  
**“if A is true, B must also be true”**
  - d. Common sense**
  - e. Policy (judicial, legislative, public)**
  - f. Justice**
  - g. Avoid risk of reversal**
  - h. Easiest way to rule in your favor; narrowest holding to dispose of the matter before the court**
  - i. Fairness (wherever possible, supported by a “venerable legal maxim”)**

**10. Organize**

**a. Order and re-order issues, arguments, support**

**b. Change organization of briefs to improve the**

**(1) Focus**

**(2) Intuitive decision making**

**(3) Use of limited time**

**(4) Logical progression and ease of understanding;  
describe issues before discussing facts to put  
facts in context**

**Once the motion argument has been built, it will be improved through the following process:**

**11. Present alone, checking for**

**a. Organization**

**b. Length – need to cut**

**c. Gaps**

- d. **Quality of visuals**
  - e. **Clarity and strength of argument**
12. **Edit, revise, shorten, rearrange**
13. **Present with friendly audience, checking for**
- a. **Length**
  - b. **Understanding**
  - c. **Quality of visuals**
  - d. **Strength of argument**
14. **Edit, revise, shorten, rearrange**
15. **Practice presentation – focus on delivery and content**
- a. **Friendly audiences**
  - b. **Mock judge, with and without questions**
  - c. **Video and review the video**
  - d. **Professional consultant**

- H. Before the appellate courts: the goal is always to engage in a conversation with the court – this is your one opportunity to answer any questions that they have about your case.**
- 1. Unlike many trial court arguments/presentations, your oral argument is (hopefully) going to be a conversation with the court. You will not have the same level of control as you do before the trial court**
  - 2. Preparation**
    - a. You will have to spend more time on preparation for potential questions than you would before the trial court (70% rule)**
    - b. Keep a list of potential questions as you are briefing, preparing for oral argument**
    - c. Practice, practice, practice**
      - i. Moot courts (formal/informal)**
      - ii. Talking out loud**
    - d. Stay flexible**
  - 3. Know your audience**
    - a. Court of Appeals – know your panel**
    - b. Supreme Court – know your justices**
  - 4. Select 3-4 points in advance of argument that you know you want to make before you sit down.**
    - a. Those points should complement what is in your brief, not repeat it.**
    - b. Assume the court is well prepared, so don't use your time repeating facts/obvious points**
    - c. You will get interrupted (you want to be! Interruptions are your friend!) but if you have your 3-4 points, you will have opportunities to work those points into your responses to questions**
    - d. You will always have a distillation of the case in preparation for argument that you didn't have when you were briefing it – use that to your advantage**



5. **What to take to the podium (and knowing your podium)**
6. **As an appellant:**
  - a. **Prepare a few sentence introduction that focuses the court on your case and where you're headed.**
  - b. **A likely focus is rebutting those points made in the respondent's brief – what, if anything, did that brief raise that the court might have questions about**
  - c. **You want to get the court engaged as quickly as possible, so pick those points that you anticipate might generate questions from the court**
7. **As a respondent:**
  - a. **Because time is short, think about ditching a prepared introduction and jumping into the conversation wherever it left off**
  - b. **As a respondent, you have a huge advantage of having seen what the court is or isn't interested in – use that**
  - c. **Balance making your affirmative points with responding to what your opponent has argued**
  - d. **As a respondent, flexibility is even more key**
8. **Rebuttal: short, sweet, and don't add anything new**
9. **Acknowledge weaknesses in the case, and explain to the court why those weaknesses don't control the outcome**
10. **What to do when you get a cold bench**
  - a. **Make your 3-4 points, ask if there are any questions, and sit down**
11. **Yellow light, red light**
  - a. **When the yellow light goes on, think about wrapping up. What haven't you said that you want to?**
  - b. **When the red light goes on – stop talking, ask to finish sentence**

## **IV. Delivery**

### **A. Be eloquent and persuasive**

- 1. Demonstrate reason and candor**
- 2. Choose words carefully**
  - a. Omit filler words and sounds**
  - b. Make every word worth understanding**
  - c. Vivid, specific, simple**
  - d. Don't assume more of a burden than you must**
  - e. Memorize the opening and closing paragraphs**
- 3. Volume**
- 4. Tone and timbre**
  - a. Be educational, knowledgeable, authoritative, interested**
    - (1) "Respectful intellectual equality with the judge"**
    - (2) Imagine a junior partner explaining the case to an intelligent senior partner**

- b. Not arrogant, argumentative, condescending, egotistical**
  
- 5. Avoid parenthetical expressions - take a sentence from start to finish without self interruption**
  
- 6. Limited use of notes; don't read your argument; don't memorize a prepared speech except opening and closing paragraphs**
  
- 7. Pace and pauses for emphasis and understanding**
  - a. Don't speak fast**
  
  - b. Slow down when reading**
  
  - c. Adjust to the judge's note taking speed**
  
- 8. Formal posture and presence; dignified appearance**
  
- 9. Avoid closed posture**
  
- 10. Gestures should represent meaning**
  
- 11. Make eye contact with the judge, not opposing counsel, client, gallery**
  
- 12. Refer to the judge as "your honor"**

- 13. Professional, civil, courteous, and likeable**
- 14. Don't let your opponent control your behavior**
- 15. Don't attempt humor or sarcasm**
  - a. Appreciate judge's humor**
- 16. Don't interrupt opposing counsel**
  - a. Exceptions**
    - (1) Protect your time**
    - (2) Rare valid objections**
  - b. Misstatements of record – save for response**
- 17. Don't tolerate interruptions by opposing counsel - ask the judge for relief**
- 18. Don't argue to or with opposing counsel**
  - a. Argument is presented to the judge**
- 19. Don't feel compelled to fill up open time with unnecessary, insignificant, or repetitive argument**

**20. Know the judge’s practices, standing orders and rules**

- a. Where to stand**
- b. Stand unless instructed to sit**
- c. Permission to approach clerk**
- d. Marking demonstratives as exhibits**
- e. Submission of additional authority**

**21. Don’t demonstrate dissatisfaction with rulings**

**B. Presenting the Responsive Argument**

- 1. A well prepared argument anticipates an opponent’s good arguments, so it should rarely need to be restructured during oral argument**
- 2. If your opponent has made unexpected compelling arguments that render your principal arguments academic, you must “make space” for your argument by eliminating prior impediments, then return to your planned approach**

**C. Tips from the Bench – regarding delivery of oral argument**

- 1. R.P. Jones**
  - a. Be crisp, not tentative**

- b. Hit hard and fast**
- c. Sincerity is the trait of greatest appeal**
- d. Judge's attention span narrows under fatigue and boredom**
- e. Eye contact is critical**
- f. Incivility is a sign of weakness; shows need to obstruct rather than present the case fairly**
  - (1) Never make personal comments about opponent**
- g. Reading excerpts - hold to a minimum, paraphrase to shorten, and watch speed**
- h. Visual aids are effective**
- i. Prepare, rehearse, edit, evaluate. Lawyers are not exempt from preparation.**

**2. Judges John Wittmayer, Don Ashmanskas, Daniel Harris, John Acosta:**

**“It would be impossible for me to say that I hold against lawyers who are rude to my staff – I hope I don’t – but judges are only human.” Hon. J. Wittmayer 2004**

**“The jurors tell me the number one factor in evaluating attorneys is courtesy. And I am the same way; it is a human reaction even if judges try to overlook rudeness.” Hon. D. Ashmanskas 1993**

**“Professionalism will make you a more effective advocate.” Hon. D. Harris and Hon. J. Acosta 2007**

**D. Judge’s questions**

**1. Questions are your friend**

- a. Shows interest, what the judge is focused on, and what is concerning or bothering the judge**
- b. Demonstrates preliminary conclusions that need to be enforced or contradicted**
- c. Questions are a roadmap to refocus your argument**

**2. Always answer the judge’s questions**

- a. Listen to the question and answer the question that was asked**
- b. Be direct and responsive; never evade**

- (1) Never refuse information you think is unimportant**

- c. **Answer first, then explain, if necessary why**
    - (1) **“not this case”**
    - (2) **Unimportant to decision**
  - d. **Rarely delay the response - answer immediately**
  - e. **If the question isn't answered, the judge assumes the most damaging answer applies to the question**
  - f. **If the judge repeats the question, don't simply repeat the answer**
  - g. **Don't guess; admit uncertainty if you are uncertain; offer to find the answer**
3. **Don't appear annoyed by interruption**
4. **Never insult the judge**
- a. **Don't suggest judge's questions are stupid**
  - b. **Correct judge's mistakes deferentially**
5. **Never interrupt the judge, *never!***
- a. **Let the judge fully express thoughts**



6. **Don't be combative with the judge**
    - a. **Don't respond in kind to a hostile judge**
  
  7. **Don't worry about judge's consumption of time:**
    - a. **Questions are more important**
  
    - b. **More time can be requested**
  
    - c. **Don't look at your watch or court clock when questions are asked**
  
  8. **Confirm the judge's correct statements**
  
  9. **Don't make concessions just to appear agreeable**
  
  10. **Follow the judge's directional signals**
  
  11. **If the judge indicates agreement – stop arguing the point**
  
  12. **Remain respectful, regardless of the judge's conduct or demeanor**
- E. Delivery in the appellate courts**
1. **Remember: this is a conversation.**
    - a. **Moderate speed – when nervous, tendency is to talk fast**
  
    - b. **Moderate your volume – microphone**



## **V. Visual Presentations**

### **A. Goals of PowerPoint and other visual demonstrations**

- 1. Focus – emphasizes and calls attention to the most important information**
- 2. Memory – assists the judge in remembering the important parts of the argument; can also be a memory aid for the speaker**
- 3. Understanding – assists in explaining complex information**
  - a. Chronological**
  - b. Relationships/comparisons**
  - c. Calculations**
  - d. Compilation of mass quantities of data**
- 4. Validation – seeing is believing**
  - a. Demonstration**
  - b. Visual proof**

**5. Appreciation – gain a complete appreciation/understanding**

**a. Size or number**

**b. Beauty**

**c. Destruction**

**d. Difficulty**

**e. Speed**

**f. Color**

**g. Comparison**

**B. Creating visual presentations:**

**1. Well designed presentations**

**a. Enhance credibility through clarity of ideas and crispness of message**

**b. Complex ideas communicated with clarity, precision and efficiency**

**c. Clear portrayal of complexity, not complication of simple**

**d. Tell the truth about the information**

2. **Key – simplicity of design, despite complexity of data**
3. **Effective displays of information often have a narrative quality: a story to tell**
4. **In sum, the visual presentation must help the judge reason, not be entertained by artful design**
5. **Displays can be designed to have at least three viewing depths**
  - a. **What is seen from a distance; overall structure**
  - b. **What is seen up close; fine structure of data**
  - c. **What is seen implicitly – behind the graphic; the story it tells**
6. **Five principles of data graphics**
  - a. **Show the data**
  - b. **Maximize the data - to ink - ratio**
  - c. **Erase non-data ink**
  - d. **Erase redundant data ink**
  - e. **Revise and edit**

7. **Creating meaningful and persuasive visual presentations**
  - a. **Place different forms of information within a common visual field**
    - (1) **Show comparisons, contrasts, and differences**
  - b. **Design should assist judge's thinking. What is the judge's decision that this display is supposed to assist and how will it assist it?**
  - c. **PowerPoint bullet point lists benefit the bottom half of the attorneys - forces them to have points and organize. But visual displays can do much more to**
    - (1) **Describe sequence of information**
    - (2) **Make comparisons**
    - (3) **Integrate a diversity of information**
  - d. **Lengthy PowerPoint bullets require the judge to rely on visual memory to make a contrast or comparison between information spread over multiple pages**
  - e. **Visual demonstrations work best when information is shown within one eyespan**
  - f. **Clutter and confusion are failures of design, not attributes of information**

**g. Cosmetic decoration distracts and detracts. If the information is boring, you have the wrong information. Find information that has an important message, then design the visual image to communicate the message**

**(1) Keep out everything that does not convey the message**

**C. Presenting visual displays:**

- 1. Set up in advance, test equipment, and check judge's view**
- 2. Give the judge, clerk and opponents copies of all projections**
- 3. Use the dark button to clear the screen when not discussing the display**
- 4. Don't turn your back on the judge; maintain eye contact**
  - a. Position yourself to be within the judge's eyespan when looking at the screen**
- 5. Keep the pointer steady and use it sparingly**
- 6. Don't read lengthy bullet points**
  - a. Learning decreases when judge is forced to read what is being spoken; additional load on the listener**
  - b. Just as you wouldn't simply read your brief, don't simply read your PowerPoint bullet points**







