

The background of the slide is a blurred image of a road stretching into the distance. At the top center, there is a bright yellow light, possibly a street lamp or a car's headlight, which is out of focus. The overall color palette is a mix of cool blues and greys, with the yellow light providing a focal point.

Trial Tips for Commercial Litigators

Judge Timothy S. Driscoll



How many cases have you tried?

- One?
- More than five?
- More than ten?
- More than 20?



Trial is a front row seat
to – or an invitation to
participate in ...

THE GREATEST SHOW ON EARTH

Welcome to the Academy!

Current
Membership:
“Academy of Pre-
trial Lawyers”

Desired
Membership:
“Academy of Trial
Lawyers”



What do
Commercial
Litigators do
well?



DRAFT

Pleadings
Motions
Briefs



ARGUE



Zealously (and respectfully)
represent their clients



Trying cases
is a different
(albeit
related) skill
set



Storytelling (rather than pure
advocacy)



Timeframe to tell the story

Trying cases is a STRESSOR

1

Stress on the client

2

Stress on you

3

Stress on your
practice

Trying cases is a challenge for the Judge

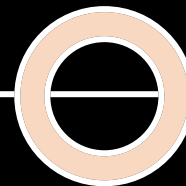
Busy calendars

Standards and Goals

Other types of cases Judge is handling

Diminished resources

- Court Attorney Referees
- JHOs
- Courtroom Support staff
- Jurors



But fear not ... here are
“Driscoll’s Disquisitions”
(also known as
“Timmy’s Trial Tips”)



Tip 1 – Know your Judge



Sit / stand? And where?



Time for trials



The Courtroom Clerk is your greatest resource



How to deal with “stuff” during trial

11 pm emails

Pocket Briefs



Tip 2 – Is
this a case
that needs
to be tried?

- Consider Settlement
 - Ask Judge for settlement conference
 - Commercial Division mediation program
 - Nassau County Bar Association
 - Private Mediation (JAMS, NAM, etc.)



TIP 3 - TELL A STORY!

There is no “Script” for what happens in a courtroom!

- Lose the script – particularly in openings and summations
- Listen to the judge
- Listen to the witness

Tip 4 – Find
(and help your
witnesses
find) the
“Courtroom
voice”

Speaking in a courtroom can be
nervewracking

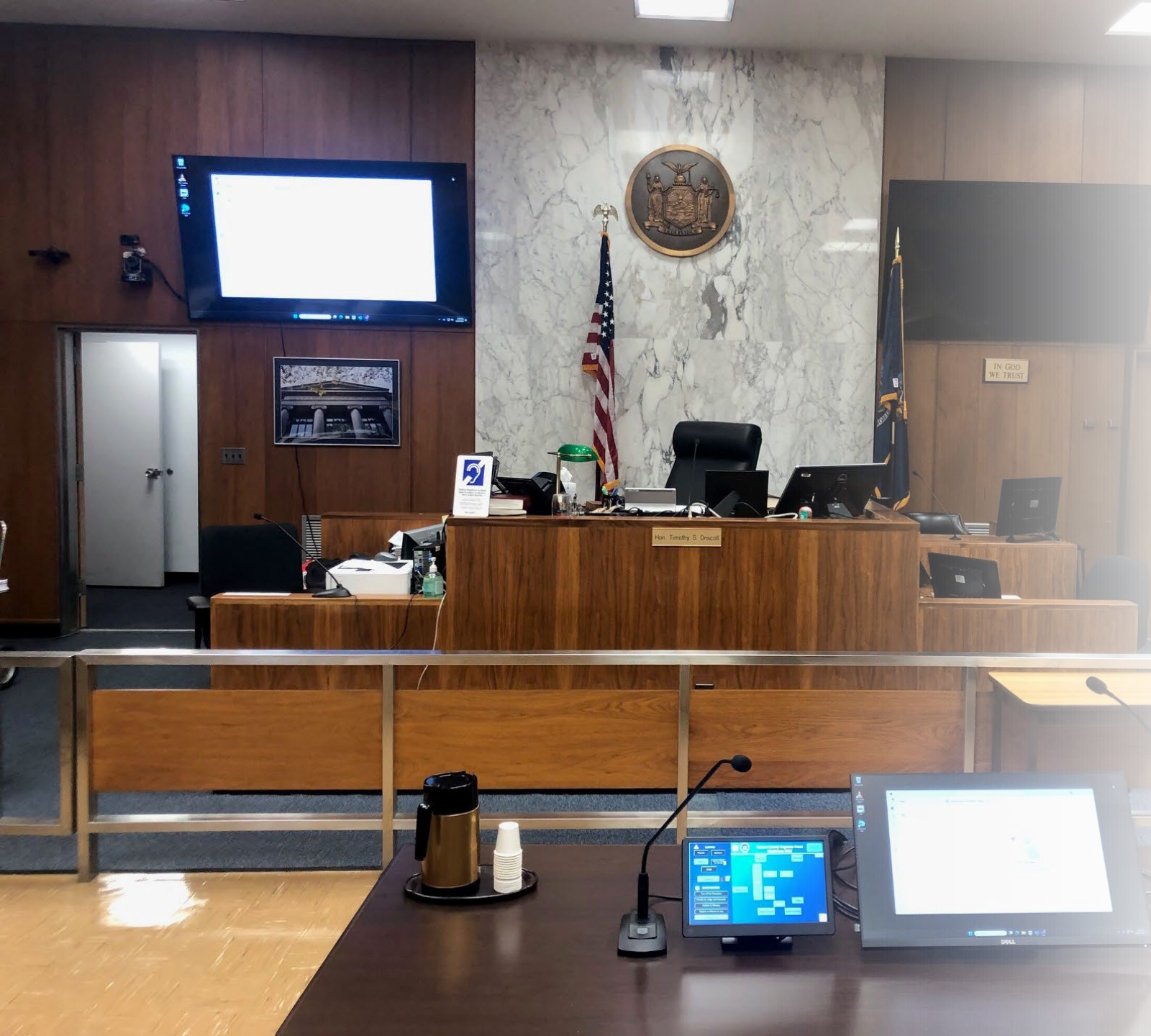
Focus the witness on the specific part
of the exhibit you are using

Don't speak too quickly

- Heed the Court Reporter
- Model a cadence and volume you want from your witnesses

Tip 5 - Use Technology Carefully

- Use of PP in openings and summations
 - Enlarge text
 - Use graphics
 - BUT don't just read from the slides
- Know what the Judge will / won't allow
- Try a "Test Run" of the technology before trial ... and have a "Techie"
- Have a "Plan B" in case technology fails
 - Extra laptop
 - Hard copies



Tip 6 – You
don't get a
second
chance to
make a first
impression

- LEAD with something memorable
 - Opening and Summations :
Theory / Theme
 - Case in Chief: Witnesses who
tell the story – NOT, e.g.
document custodian
 - Cross-Examination: Primacy
and Recency

Tip 7 – Know Your Evidentiary Foundations



Business Record



Authentication of docs produced by other party – CPLR 4540-a



Concerns re: Artificial Intelligence



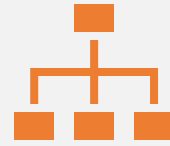
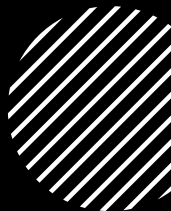
BUT ... do you always want to object?



“Judicious” use of sidebars



Tip 8 - Don't Abuse the Motion in Limine



Do you want to make one at all?



Do you want to make one in a bench trial?

Time
Money



Is your Motion in Limine really another Summary Judgment motion

Tip 9 – Take YOUR time and do it right

Is there a time limit/ Direct by Affidavit

Careful Drafting of Jury Instructions / Verdict forms

Direct Examination – space between A & Q

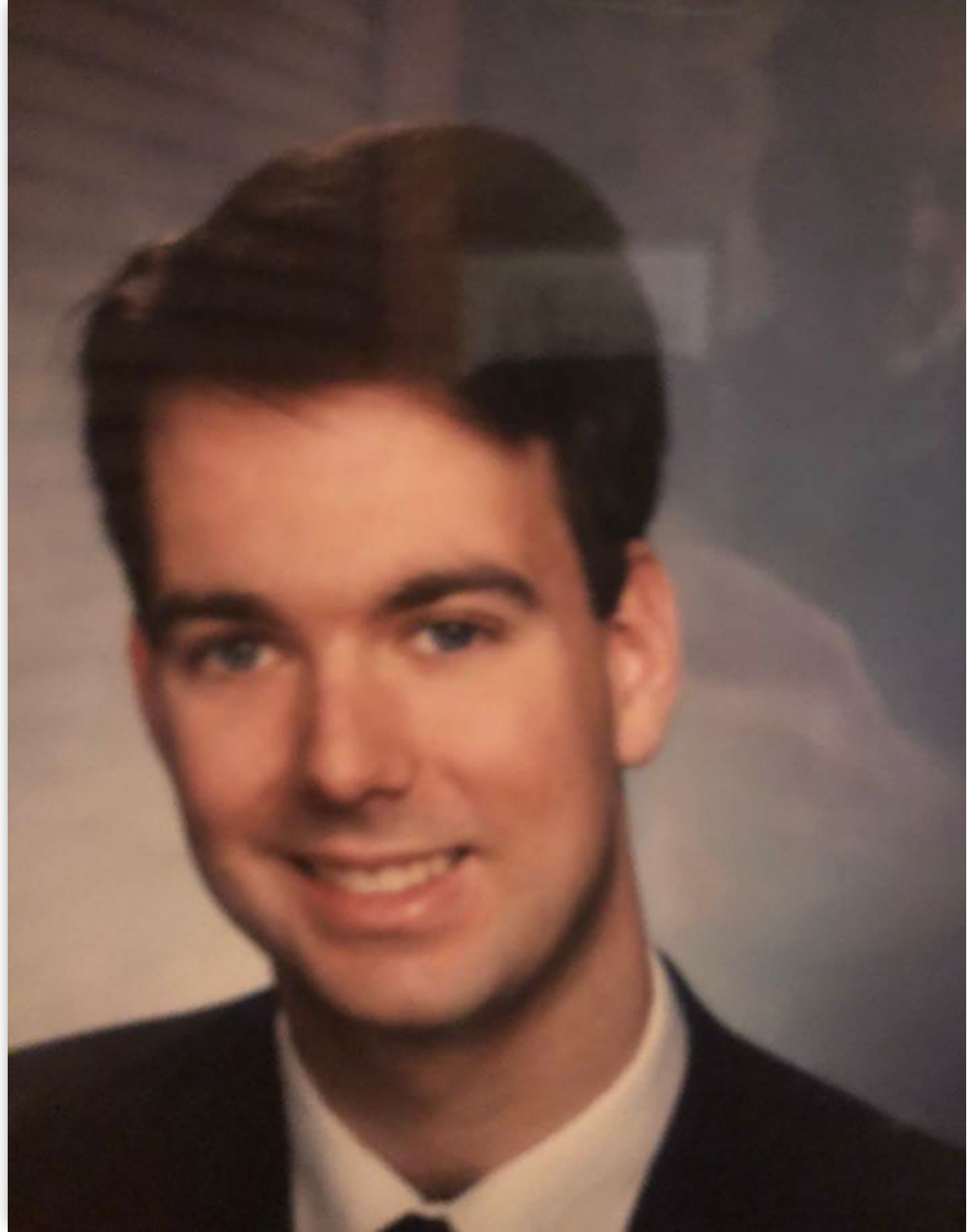
OH BOY, Deposition Transcripts ... said no one ever

Expert Witness – get to the point



Tip 10 – Be yourself!

- “There’s no better you than you”
- Stuff happens during trial – “it will be okay!”





THANK YOU!