

Legal Word of the Day: Contemporaneous

Executive summary. In a construction matter, the quality of evidence can be as important as the evidence itself. Using contemporaneous information can be invaluable in your legal matter against an opposing party.

What is this word, contemporaneous? In layman's terms it means recording information as it happens. A note recorded immediately after the event is a note recorded contemporaneously. A note recorded days, weeks, months, or years later is not.



How does this fit into my construction business? Every day in your business you are building something and every day could be the day that you lose money, or do something wrong, and it becomes necessary to pursue another party for time or money, or worse, someone is coming after you for their lost time or money. Having evidence to support your position is critical.

Why is it important, and how do I use it? It's important because it increases the quality of your evidence. Just like an excavator operator, they're not all the same. Some dig 500 feet a day of pipe, some dig 200 feet a day. But, they're both called operators. Same with evidence, the quality can make all the difference.

Those close to the matter in the field are keeping notes: on paper, on a tablet, via a phone camera, by email, and by text. All of this is good, and necessary; however, you having a picture taken the day that the general contractor didn't have the excavation dewatered for you, is much more powerful than a year later in deposition when the general contractor says that "we always had the subcontractor's work areas dewatered and ready to go". You had a picture of the excavation the day it wasn't dewatered – he didn't. You win.

My story. Sometimes I've seen the word current in, say, the application of a "current schedule" to assess true delay impact. Use of the word current here is synonymous to contemporaneous. But, heck, let's face it, contemporaneous makes you sound a lot smarter than that other guy, and might loosen him up to getting out his checkbook since he thinks you've already talked with your attorney!

I recently spoke at a conference jointly with a partner of the construction law firm that has represented me for a couple decades. Although I've heard the word contemporaneous before, it never really resonated and stuck with me like it did during her use of the term. Now I pass it around all the time. Just like today, thanks for reading! Work safe!